

Submission  
No 87

## INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

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# A submission from the New South Wales Aboriginal Land Council

Inquiry into overcoming  
Indigenous Disadvantage

New South Wales Legislative Council  
Standing Committee on Social Issues



New South Wales  
Aboriginal Land Council

## Introduction

The land rights system in NSW celebrated the 25<sup>th</sup> anniversary of the proclamation of the Aboriginal Land Rights Act 1983 (as amended) on June 10, 2008.

There are many in the Aboriginal community, particularly our young people, who still have little more than a basic interest, or understanding, of the legislation, and what flows from it, including the powers and functions of the New South Wales Aboriginal Land Council.

There is even less interest, or understanding, within the general community.

We consider it important, therefore, to outline the preamble to the legislation, the purpose of land rights, and the statutory objects and functions of the New South Wales Aboriginal Land Council, at the outset of this submission.

We do so in the hope the public release of this submission may assist in stimulating a much wider appreciation in all sections of the community about what land rights is designed to achieve and, just as importantly, what it is not.

It may also assist members of the NSW Parliament gain a better understanding of the land rights system and the demonstrated will of NSWALC to work with all tiers of government to "close the gap," mindful of the political, statutory, and financial constraints placed upon it.

The compensatory regime enshrined in the Aboriginal Land Rights Act is a vehicle for the expression by our people of self determination and self governance.

It has delivered significant and valuable assets to the Aboriginal Land Council network and has provided our people with a degree of economic influence.

But one fundamental point needs to be appreciated.

Land Rights was never introduced as a panacea for all of the social, economic, political and cultural ills of our people.

It is not, and was never intended to be, a magic bullet in this regard.

It was, as then Aboriginal Affairs Minister Frank Walker pointed out when he introduced the legislation in 1983, a crucial "first step" to remedy 200 years of dispossession.<sup>1</sup>

The compensatory regime is just beginning to deliver real socio-economic benefit from the land base which has been accrued over the past quarter century.

NSWALC's Governing Council has demonstrated a preparedness to use the compensation monies from land rights to assist the State and Commonwealth Government's finance major infrastructure projects to assist in closing the gap and improve the health and well being of Aboriginal people in New South Wales.

We have done so in good faith.

It should be noted, however, that a series of seven major rounds of amendment to the legislation (from 1986 through to 2006) has shifted more and more of the transactional cost of land rights, and some aspects of service delivery, from State and Federal Governments onto the self-funded land council system.

The limited socio-economic benefits now being gained, and to be further gained, from the wealth generated through land rights should not be used by State or Federal Governments as a reason to shirk their responsibilities to provide long term funding for basic infrastructure and essential services to our people.

It must also be acknowledged that:

- None of the amendments to the legislation over the past 25 years have appreciably increased the accountability of government to Aboriginal people in New South Wales.
- The return of land into Aboriginal ownership has been the sole form of compensation available under the Act for the past decade but validly claimed Crown land has been returned to our people at a snail's pace.
- This robs Aboriginal people, and their representative organisations, of the ability to use that land to deliver real socio-economic benefits back to our people and to further assist Governments in their efforts to "close the gap."

The Auditor General recently reported that more than \$1 billion worth of land has been validly granted to Aboriginal people in New South Wales but has not been transferred because the Lands Department processes are so slow.<sup>2</sup>

Ongoing claims for land are also often the subject of protracted, costly, and unnecessary legal dispute.

The ability to claim land is also frustrated by the inability of NSWALC and the land council network to access the relevant State Government database.

All of the above run contrary to the spirit, if not the letter, of the Aboriginal Land Rights Act. These issues are canvassed in more detail throughout this submission.

## **Preamble to the Aboriginal Land Rights Act**

- 1) Land in the State of New South Wales was traditionally owned and occupied by Aborigines:
- 2) Land is of spiritual, social, cultural and economic importance to Aborigines:
- 3) It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land:
- 4) It is accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation.

## **Purposes of the Act**

Part 1, 3 Sets out the Purposes of the Act. They are:

- 1) To provide land rights for Aboriginal persons in New South Wales,
- 2) To provide for representative Aboriginal Land Councils in New South Wales,
- 3) To vest land in those Councils
- 4) To 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
- 5) To provide for the provision of community benefits schemes by or on behalf those Councils

## **Objects, Functions and Funding**

A clear understanding of the objects, functions and funding of the New South Wales Aboriginal Land Council are essential to a full understanding of how the land rights system operates in New South Wales, the socio-economic opportunities it has, and can generate, and the political and financial constraints within the system.

This is particularly so in relation to the ability of land rights to act as an effective and sustainable springboard for better service delivery to improve the lives of Aboriginal men, women and children.

As noted in the Committee's Interim Report the objects of the New South Wales Aboriginal Land Council are to be found in Section 105 of the ALRA.

They are:

- (a) To improve, protect and foster the best interests of Aboriginal persons within New South Wales, and
- (b) To relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness of Aboriginal persons within New South Wales.

At face value these objects would appear to provide NSWALC a wide ambit of responsibility to improve the health and well being of our people

They obscure a number of facts.

NSWALC and the land council network has no statutory power to keep Governments (State or Federal) accountable for programs designed and delivered with the aim of improving the health and well being of our people

No specific statutory mechanism exists for us to do so.

No funding was provided for the socio-economic and welfare roles that were originally assumed in the legislation, and by those who framed it.

Twenty five years on, no such social benefits or welfare funding has ever been provided.

Inevitably, the land council system has been subjected over this time to increasing demands for non-land related services.

It has borne the brunt of cost and responsibility shifting from all tiers of Government.

Just as inevitably, the NSWALC, Local Aboriginal Land Councils, and, to a lesser extent, the legislation are all unjustifiably blamed for the lack of progress in improving the socio-economic outcomes for Aboriginal people in New South Wales.

This point cannot be over-emphasised, particularly given the cloud of ignorance which constantly hangs over the land rights system.

Another problem is the Act's assumption that at the local level, Aboriginal communities will act in a way that fits a Western model of community interest.

Apart from failing to acknowledge the general lack of capacity at the community level this assumption also denies the existence of internal social and political

systems that differentiate small Aboriginal communities from their non-Aboriginal counterparts.

The Act thus came into existence against a background of:

- Well intentioned but poorly defined motives.
- A confused and conflated set of unrealistic expectations of what limited land rights could achieve.
- Structural shortcomings and a poor understanding of the dynamics of small Aboriginal communities.

This situation largely prevails today.

The New South Wales Aboriginal Land Rights Act 1983 (as amended) merely provides the New South Wales Aboriginal Land Council (NSWALC) a mandate to provide for the development of Land Rights for Aboriginal people in NSW.

We can do so through:

- Land acquisition either by land claim or purchase
- To facilitate business enterprises to create a sustainable economic base for Aboriginal communities and to, ultimately, act as a steward on community, land and business plans to be adopted by Local Aboriginal Land Councils.

In addition, NSWALC acts as an advisor to the Minister for Aboriginal Affairs on matters relating to Aboriginal land rights.

However, our "advice" is largely external to the internal workings of Government, both State and Federal.

NSWALC and the land council network is accorded no meaningful and overarching place at the decision table in assisting to devise or implement government policy or programs in Aboriginal Affairs.

For example, we are accorded:

- No opportunity to provide the normal co-ordination comments routinely sought from each government department on Cabinet submissions on Aboriginal Affairs.
- No input to working papers in the NSW Government's collaborative approaches with the Commonwealth through the Council of Australian

Governments (e.g. the Ministerial Council of Aboriginal and Torres Strait Islander Affairs).

- No access to the Chief Executives Committee which drives the implementation of policy and service delivery priorities within the New South Wales State Plan.

We can play a pivotal role in vastly improved delivery of services to our people.

NSWALC has the potential to be a “critical insider,” in a new relationship with Government, both State and Federal, based on mutual trust, respect and, above all, accountability.

The Governing Council has already demonstrated its ability to be taken into the confidence of Government, and to respect that confidence, particularly in relation to those matters which require the observance of Cabinet or Commercial-in confidence.

We have demonstrated our ability to respond to that situation.

We have demonstrated we are, and can continue to be, part of the solution.

This is best evidenced by the negotiating process which led to the partnership agreement recently entered into between NSWALC and the State Government to provide joint long term recurrent funding for the maintenance and monitoring of water and sewerage infrastructure in more than 60 discrete communities across the State.

This has led to the commitment of more than \$100million of Aboriginal compensation monies to assist in closing one gap in the struggle to improve the health and well being of our people, in addition to the commitment of a similar amount of taxpayer’s monies from the State Government.

The NSWALC Governing Council has accepted its responsibilities in this regard.

State and Federal Governments should now do likewise.

In essence we are asking both Governments to turn on the tap, politically and financially.

We would request the Social Issues Standing Committee recommend a new policy of mutual accountability be developed between these parties as a key lynchpin in a combined and continuing attempt to close the gap, particularly in life expectancy, educational attainment, and employment outcomes.



## A New Political Relationship

On the political level, there needs to be an end to the political lip service around the word partnership.

We seek a concrete commitment to true partnerships between all tiers of Government and peak Aboriginal organisations tied to a recognition of Aboriginal rights.

No specific rights-based agreement, or apparatus, currently exists which allows organisations such as NSWALC, a legitimate platform in their dealings with the New South Wales Government or the Federal Government.

The current key whole of government documents and objectives on Aboriginal Affairs in New South Wales are:

- the New South Wales State Plan,
- Two Ways Together: The NSW Aboriginal Affairs Plan 2003-2012
- The Overarching Agreement between the New South Wales Government and the Commonwealth on Aboriginal Affairs.
- The key objectives of the COAG Indigenous Reform Working Group.

None explicitly recognise the authority of organisations such as NSWALC.

None are rights-based.

The capacity of the New South Wales Land Council and the land rights network to effectively influence their scope, direction, or outcomes, is severely limited despite a written commitment in most to work in partnership **with** Aboriginal people and their representatives.

A number of written submissions lodged with this Inquiry have urged the Committee to consider the Aboriginal rights issues that must be addressed if Aboriginal disadvantage is to be overcome, particularly in New South Wales.

We do not seek to re-address those in this submission.

We do request, however, that the Committee formally note that the New South Wales Aboriginal Land Council wholly concurs with the views expressed in the submissions from the Jumbunna Indigenous House of Learning<sup>3</sup> and the central argument contained in the submission from Ms Elizabeth Rice.<sup>4</sup>

Both have submitted that unless Aboriginal rights are fully recognised and fully integrated into policies, plans, programs and services intended to improve outcomes for our people, there can be only limited gains from attempts to overcome disadvantage.

We would urge the Committee to pay particular attention to those views and the principles of self determination, which have never been given full policy expression at the State or Federal level, in framing its final recommendations to Government later this year.

There is a recent historical precedent for this rights based approach in New South Wales with particular relevance to service delivery.

This involved an overarching agreement between the New South Wales Government, NSWALC and ATSIC.

It is detailed in our response to the Service Delivery section of the Committee's Interim Report and provides a counterpoint to the current Overarching Agreement between the New South Wales and Commonwealth Government's.

## **A New Financial Relationship**

On the financial level, long term funding commitments on housing and essential infrastructure are required, particularly from the Federal Government.

The Rudd Government has established an appropriate vehicle, Infrastructure Australia, to do so. Funding for long term housing and infrastructure projects for Aboriginal communities in Australia's most populous states should be the number one priority for projects flowing out of Infrastructure Australia.

The recent water and sewerage partnership entered into between the State Government and NSWALC has set a precedent for long term funding commitments to tackle seemingly intractable problems to improve the health and well being of our mutual constituents.

It should be noted that this agreement, which will be funded for at least 25 years, has been struck without any financial commitment from the Commonwealth Government which retains a massive budget surplus.

The human, financial and political implications of this agreement are canvassed in detail later in this submission along with NSWALC's decision to establish a self-funded \$30million Education Endowment Scholarship.

Our ability to fund new and innovative ways to financially assist both State and Federal Government's to improve the health and well being of our people is hampered only by our ability to generate sufficient funding beyond our statutory constraints and our ability to manage and develop our land for the benefit of our people.

While we appreciate the current budget constraints on the New South Wales Government it would appear the sole constraint on the Commonwealth Government is political will.

The issue of the financial sustainability of the current land rights system cannot, and should not, be divorced from any thorough examination of the financial and political issues impacting upon the delivery of services to Aboriginal people at the State or Federal levels.

A thorough understanding is required of the financial climate in which we operate and the cost constraints upon us.

## How We Are Funded

A NSWALC Statutory Investment Fund was established under the NSW Aboriginal Land Rights Act (1983).

For fifteen years—from 1 January 1984 to 31 December 1998—the Act provided for guaranteed funding through the payment of an amount equivalent to 7.5 per cent of NSW Land Tax (on non-residential land) to NSWALC, as compensation for land lost by the Aboriginal people of NSW.

During this period, half of the funds were available for land acquisition and administration.

The remainder was deposited into a statutory account to build a capital fund to provide ongoing funding in the future.

The total funds allocated were \$537 million.

Of this amount \$268.5m was deposited in the Statutory Account.

The capital, or compensation, accumulated over the first 15 years of the Council's existence stood at \$281 million at December 1998 when the land tax payments stopped.

Since then, the NSW Aboriginal Land Council and the land council network have been self sufficient. The network is not, as is widely believed, funded by the taxpayers of NSW.

## Management and Value

The Statutory Investment Fund is managed on behalf of the New South Wales Aboriginal Land Council by Chifley Financial Services, a company established by Unions NSW (formerly the NSW Labor Council).

The company is now owned by the Local Government Superannuation Scheme, the Energy Industries Superannuation Scheme and the Labor Council of NSW. The value of the Statutory Investment Fund was \$620.6 million as at 30 June 2008.

This is well above the statutory limit of \$485m currently prescribed in the ALRA.

During the 2007/2008 financial year, the value of the Statutory Investment Fund decreased by \$78.4 million due to the share market meltdown in local and international equities after a strong period of consolidation.

A drawdown of \$37.3 million was made during the year to fund the operational expenditure of the land rights network.

There is a view which has taken hold in some ill-informed quarters that this money simply sits in a bank account. This is given periodic credence by ill informed reports, particularly in the mainstream media.

This serves only to cloud the real issues about the lack of long term funding available from the State Government and the Commonwealth Government to increase the health and well being of Aboriginal people, particularly in New South Wales.

It does a great disservice to all of those in the land rights system who are working for the benefit of their people.

### **Where Our Money Goes**

The major impact on NSWALC's annual budget is the direct funding to Local Aboriginal Land Councils, comprising nearly \$14 million of its total expenditure.

This funding is delivered in a direct grant allocation of \$130,000 to each funded Local Aboriginal Land Council to assist with its administrative costs.

Indirect funding to the land rights network accounts for a considerable amount of the balance. Many Local Aboriginal Land Councils have difficulty meeting their financial and reporting obligations.

NSWALC must support those that are under-performing and supervise them more closely.

This places additional burdens on NSWALC and the land council system through the increased costs which need to be allocated to investigators, administrators, legal expenses, intensive assistance projects and the cost of meeting LALC liabilities.

## Current Objectives of the Fund

There are two current primary objectives for the fund.

1. To provide sufficient income to meet the basic administrative expenses of Local Aboriginal Land Councils and the administration of NSWALC.
2. To ensure sufficient funds are put aside so that the value of the fund increases with inflation.

NSWALC has adopted a conservative investment strategy for the fund to meet its objectives.

It has an annual growth target of 5 percent plus CPI.

## Growth of the Fund

There is a view often expressed that NSWALC should loosen the purse strings on the Statutory Fund to bolster the administrative funds it provides to the network of Local Aboriginal Land Councils, particularly as they shoulder more service delivery functions and inflationary pressures place added burden on their bottom line.

It is also suggested a more aggressive investment strategy be adopted to gain a better return on its investments.

This ignores two fundamental points.

The fund is to provide compensation for future generations. Prudent financial management is essential to maintain growth.

A less risk-averse strategy could increase returns but could clearly increase the risk of losses.

It is important to understand that while NSWALC has a great deal of money invested it is not able to spend more than the realised income and interest from investment—less the allowance for inflation.

To do so would be a breach of the current provisions of the Aboriginal Land Rights Act.

NSWALC will soon be discussing with the State Government the relevant section of the Act which covers the preservation of money in the Statutory Investment Fund to set a more realistic statutory benchmark.

Given the Governing Council's recent funding decisions in relation to the water and sewerage initiative, the Education Endowment Fund, and others, and the most recent amendments to the ALRA, a third "closing the gap," objective for the Fund is under consideration.

NSWALC's Governing Council will soon consider adopting an additional objective to fund, where possible, community benefit schemes designed to further improve the health and well being of Aboriginal people.

The objective would be framed to reflect an intention to make those monies available, when possible, directly from NSWALC, or in partnership with Local Aboriginal Land Councils or with State or Federal Governments, or philanthropic organisations

There is a view expressed within some quarters of the land rights network that the State Government should again "turn on the tap," by re-introducing the payment of a percentage of land tax on non residential properties into the NSWALC Account.

NSWALC understands the genesis of this view.

It largely arises from a belief that the compensation proposed in the original legislation was insufficient. That view is now compounded by the increasing cost pressures on the land rights system.

NSWALC does not support a return to any primary form of taxpayer funding for land rights.

We believe our current self-funding funding arrangements provide a degree of financial independence from Government, albeit limited, and proposals to "turn on the tap," in a second wave of monetary compensation would run contrary to the principles of self-determination.

As noted earlier the issue of the financial sustainability of the current land rights system cannot, and should not, be divorced from any thorough examination of the financial and political issues impacting upon the delivery of services to Aboriginal people at the State or Federal levels.

A number of key challenges face NSWALC in this regard and these are also canvassed in further detail in the body of this submission.

Before we do so, we wish to canvass a number of major issues on service delivery and environmental health which are set out in the Committee's Interim Report.

## Service Delivery

The New South Wales Aboriginal Land Council has no statutory responsibility, or power, for the delivery of services to Aboriginal people in New South Wales. We do, however, assume political responsibility as the State's peak representative body.

We wholeheartedly concur with the view expressed in the Committee's Interim Report that the method and adequacy of service delivery to Aboriginal people in NSW is in need of improvement.

We note that Aboriginal people from a broad spectrum of geographic and social circumstances have told the Committee of the need for effective consultation and have emphasised the need for communities to have a greater input in deciding what services are required and the most effective method of delivery.

This view accords with frequent representations made to NSWALC on service delivery from within the land rights network.

NSWALC endorses the Committee's view that there is a lack of clarity in leadership and responsibility for service delivery to our people.

We further endorse its view that the way services are provided to our people has a significant impact on the ability of those services to address disadvantage.

Current funding levels are sorely inadequate.

NSWALC notes the Committee's view that Federal funding does not currently reflect the fact that a large proportion of Aboriginal Australians reside in the urban areas of New South Wales.

This view is wholeheartedly endorsed.

There is a fundamental need for a new approach to the funding and provision of service delivery in New South Wales to counter the current disconnect between those who receive those services and those who are charged with funding and delivering them.

This view was reflected in evidence before the Committee from NSWALC Deputy Chairperson Tom Briggs, highlighted in the Committee's Interim Report.

Councillor Briggs emphasised the point that the first priority of Government should be to develop an effective relationship with Aboriginal communities before it starts to implement programs and services.

He is not a lone voice.



Many Aboriginal representative voices, including his fellow Councillors, consider there is a massive gap between government service provision and community needs.

There needs to be far greater recognition by State Government agencies of peak Aboriginal representative organisations in the delivery of service to communities and individuals.

NSWALC would request the Committee recommend a Service Delivery Partnership Agreement be negotiated as soon as is practicable between the New South Wales Government, the Commonwealth Government and the New South Wales Aboriginal Land Council, as the State's peak Aboriginal representative body.

The State-based representatives from a new National Indigenous Representative Body could be brought into the Agreement, on behalf of the Commonwealth, should the Rudd Government establish such a body outside of the existing Aboriginal representative structure in New South Wales.

We would remind the Committee that a NSW Service Delivery Partnership Agreement was signed in November 2002 as part of the New South Wales Government's whole of government response to Aboriginal Affairs issues.

The parties to the agreement were NSWALC, ATSIC and the New South Wales Government.

The Agreement was signed by the then Premier Bob Carr, then ATSIC Chairperson Geoff Clark, the three NSW ATSIC Commissioners, then NSWALC Chairperson Les Trindall, Secretary, and two other NSWALC office bearers.

The Agreement was an essential element of the proposed whole of government response enshrined in Two Ways Together, the "new plan," for Aboriginal Affairs announced by then Premier Carr in February 2001.

A reference to the need for, and importance, of this document can be found in the introduction to the Two Ways Together Report in June 2005.<sup>5</sup>

It is instructive, in light of subsequent events, to revisit that document, particularly its description of Two Ways Together as a new plan "by which Aboriginal people and the New South Wales Government will work together through partnership. The NSW Government recognises that Aboriginal people know best the needs of their community."

While this remains the central focus of Two Ways Together all reference to the Service Delivery Partnership Agreement between the Government and the peak Aboriginal representative bodies was dropped, without explanation, from the Two Ways Together Report on Indicators 2007.

The duration of the agreement was for a period of three years.

It was developed by the parties "in recognition of the comparative disadvantage of Aboriginal and Torres Strait Islander peoples within NSW."

The agreement identified how the parties would work together in such a partnership, with a focus on improving existing structures, relationships and governance, in order to work towards better outcomes for Aboriginal and Torres Strait Islander peoples in NSW.

The document held the promise of "greater co-ordination of, and collaboration between, the NSW Government, ATSIC and NSWALC."

The document's vision was that "Aboriginal and Torres Strait Islander peoples in their own communities, and through their representative bodies, will play the lead role setting directions and developing solutions and approaches to address issues affecting Aboriginal and Torres Strait Islander communities."

Key principles included the recognition of the right to self determination and the recognition of NSWALC and ATSIC as being democratically elected Indigenous bodies with a key role in decision making and a fundamental role in advising the NSW Government on the needs and aspirations of Aboriginal and Torres Strait Islander peoples in New South Wales.

This said, the parties acknowledged the existence and validity of other Aboriginal and Torres Strait Islander representative and peak groups in New South Wales and acknowledged the role in decision making and provision of policy advice to the NSW Government that these groups play by virtue of their expertise and responsibilities.

The document recognised that one of the key factors in self determination and improved outcomes for Aboriginal and Torres Strait Islander peoples is "building on the development of the skills, knowledge and competencies of Aboriginal and Torres Strait Islander people, communities and organisations.

The agreement contained a commitment to accountability and to evaluating the "impact of this agreement and its effect on co-operation between the parties."

It also established protocols to work in partnership and with mutual respect, including co-operation "through the sharing of information."

The four priorities listed in the Agreement included “building on the existing capacity of Aboriginal and Torres Strait Islander peoples, their organisations, and their community representative structures to make decisions about issues that affect their well being.”

The agreement committed the parties to establish a Partnership team to oversee the implementation and monitoring of the agreement “to meet two or more times a year for the duration of the agreement.”

The Partnership Team would be convened by the NSW Premier’s Department and membership “will comprise representatives at the Director General level from the NSW Government, and the senior elected representatives of ATSIC and the NSW Aboriginal Land Council.”

The agreement also provided that the parties “may agree to jointly establish other working arrangements as required to assist in the implementation and monitoring of this agreement.”

The agreement also stated “the Partnership Team will provide an annual report regarding progress towards achieving the Agreement’s priorities to the ATSIC NSW State Advisory Committee, the NSW Aboriginal Land Council and the Premier.”

It was further agreed priorities would be developed and implemented through an action plan which allocated implementation responsibilities to named lead agencies and detailed specific actions to be taken.

All parties were held jointly responsible for undertaking actions in the Action Plan.

Lead agency responsibility was allocated for the purpose of ensuring one agency co-ordinated and reported upon the activity.

The agreement stipulated that NSWALC and ATSIC be involved in all actions with particular government agencies identified under each priority area. (NSWALC was allocated lead agency status in one key area—building the capacity of Aboriginal community organisations.)

The Partnership agreement was clearly intended as an “overarching” commitment from the NSW Government to work with NSWALC and ATSIC in recognition of the founding principles of self determination of both organisations and the need to build capacity at individual, community and organisational level.

It contained a clear recognition of the inherent rights of Aboriginal and Torres Strait Islanders as the first peoples of Australia that were never ceded and that exist in addition to citizenship rights.

It is clear from a reading of the Partnership Agreement and Action Plan that the principles enshrined in it, and its proposed implementation, provided:

- a practical and political vehicle for both NSWALC and ATSIC to hold the NSW Government to the stated commitments in the Agreement
- A recognition of Indigenous rights
- A clear and unequivocal signed commitment to improving the well being of Indigenous people, their families and their communities.

Unfortunately the politics of the day subverted the purpose and intent of the agreement.

It was never fully implemented despite the negotiation of a detailed Action Plan.

A copy of the Partnership Agreement and the Action Plan are attached to this submission for the Committee's consideration.

We would respectfully request the Committee compare that agreement and action plan with the current Overarching Agreement on Aboriginal Affairs between the New South Wales Government and the Commonwealth Government 2005-2010 which is partially cited in the Committee's Interim Report.

As noted in the Interim Report the current Overarching Agreement "builds on and complements" existing bilateral agreements and is underpinned by the National Framework of Principles for Delivering Services to Indigenous Australians, endorsed at the COAG meeting on June 25, 2004.<sup>6</sup>

The Interim Report further noted that this agreement sets out strategic approaches for joint and innovative action in partnership with communities.<sup>7</sup>

But, with respect, the agreement goes much further.

Under the sub-heading Working Together the published document contains a commitment that both governments will:

- Work jointly on service planning and delivery and investment in Aboriginal communities

- Review and re-engineer programmes and services to achieve more flexible arrangements
- Work in partnership with Aboriginal people and their representatives.

Under the sub-heading Integrated Approach for Aboriginal Service Planning and Delivery on page 4 there is a commitment that both governments will “implement an integrated model of working together and in partnership with Aboriginal communities.”

A peak steering body, “called the Intergovernmental Aboriginal Affairs Group, will be established that will provide a way for both governments to jointly develop a strategic framework in which implementation will occur.”

This group would comprise “senior officials of the New South Wales Government from the Premier’s Department, the Cabinet Office and the Department of Aboriginal Affairs, and of the Australian Government, from the Department of the Prime Minister and Cabinet and the Office of Indigenous Policy Co-ordination. The Group will seek advice from Aboriginal people in developing this framework, including through existing structures established under Two Ways Together.”

It further states: “The Governments will provide adequate resources to support capacity at the local and regional levels. The governments will work with Aboriginal people to determine arrangements for Aboriginal consultation and representation.”

Consistent with COAG principles, the agreement cites the encouragement, “wherever possible,” of Aboriginal community representation at the local, regional and state level processes.

The Howard Government’s policy of not recognising or resourcing Aboriginal representative organisations, and its subsequent abolition of the Aboriginal and Torres Strait Islander Commission, meant the meaningful exclusion of elected Aboriginal representatives from this important agreement.

The agreement also contains a commitment that it be “jointly reviewed after three years.”

This agreement, between the Lemma Government and the Howard Government, was announced in April 2006.

NSWALC assumes it was due to be reviewed in April next year.

NSWALC firmly believes it needs to be re-negotiated and replaced now.

It needs to be replaced by a new overarching agreement which takes account of the current policy and political settings.

The Howard Government has lost office.

The agreement is null and void, both practically and politically.

The Howard administration has been replaced by a Labor Government which claims the Australian Government's relationship with Aboriginal and Torres Strait Islander people is "being recast through meaningful engagement, not just consultation for its own sake..."<sup>8</sup>

It has promised a new partnership with Aboriginal and Torres Strait Islander people: "working with Aboriginal and Torres Strait Islander people rather than imposing solutions on them."<sup>9</sup>

Indigenous Australians, according to Minister Macklin, must be "involved in developing and driving solutions.....Our 'closing the gap,' commitments require effective engagement with Aboriginal and Torres Strait Islander people at all levels. Government needs to involve Indigenous people in the design and delivery of programs locally and regionally, and share responsibility for outcomes. Solutions on the ground must be driven by the communities that will ultimately determine their success or failure."<sup>10</sup>

A new agreement is clearly required between the NSW and Rudd Governments to reflect the new political realities and promises.

Such an agreement should include NSWALC as an equal partner.

NSWALC has recently re-emerged as a powerful peak representative body in New South Wales. The Rudd Government proposes to re-establish a National Indigenous Representative Body and regional representative structures.

The NSW Government claims it recognises that Aboriginal people know best the needs of their community.

All of this should be brought together and reflected within a new agreement.

We put forward this recommendation conscious of the written submission provided to the Committee by the Minister for Aboriginal Affairs, Mr. Paul Lynch.<sup>11</sup>

In that submission he expressed the deep commitment of the NSW Government to take “timely, substantive and effective action to reduce Indigenous disadvantage here in the nation’s oldest and most populous State.”

The Governing Council of NSWALC has formed a close working relationship with Minister Lynch since its election in May last year. He clearly has a deep personal and political commitment to driving practical and symbolic measures to improve the health and well being of our people.

We have also sought to maintain constructive working relationships with all major and minor parties in the NSW Parliament.

There would appear to be a renewed political will at both the State and Commonwealth levels to seek to find new ways to better engage with Aboriginal and Torres Strait Islander communities to close the gap.

But the Commonwealth commitments have yet to translate into practical action from the Rudd Government for Aboriginal people in New South Wales almost a year after it taking office.

Considerable ongoing resistance to the active involvement of our communities and representative organisations in the area of service delivery is also encountered within the Federal and State bureaucracies.

Bureaucrats talk to Aboriginal people, not with us.

## **Community Engagement and Governance**

The gap between the rhetoric of politicians and the reality of dealing with bureaucrats is perhaps best evidenced at the state level by a recent internal report to the Department of Aboriginal Affairs on community consultation on its draft Community Engagement Framework which is being developed under the Two Ways Together Partnership.

The Department commissioned a small team of consultants to undertake a two-stage project to seek community views on a draft prepared by DAA of a Partnership Community Engagement Framework.

The first stage involved nine community meetings across NSW to seek community views on the framework.

The Second stage is to provide a new draft of the Framework, based on the consultations, and the views of stakeholders on the TWT Community Engagement Working Group.

This Working Group comprises DAA, other State and Federal agencies, and a number of Aboriginal peak bodies, including NSWALC.

Once finalised the Framework is intended to provide the NSW Government with a policy and process through which each Aboriginal community will have a recognised community governance body empowered to negotiate with government about the planning and delivery of services at a local community level.

The consultations were undertaken in July this year with meetings attended by over 270 people, from approximately 61 communities.

The second stage of the consultancy will be the preparation of a new draft of the Community Engagement Framework, taking into account all the input so far received.

This was due to be presented to the Director General of DAA in the first week of September. She would then make a decision on what to recommend to the Minister for Aboriginal Affairs.

It is understood DAA's objective is to finalise the Framework by the end of September, 2008.

The Community Engagement Framework is a new policy, still in draft, which was designed to ensure that all government and non government agencies involved in local service delivery work collaboratively through the one designated community governance body in each of these communities.

It aims to ensure that this body is acceptable to the whole community and that the government can have confidence that the body does speak for the whole community.

The consultants have reported that community participants and representatives of the peak bodies revealed greatly varying understanding of the policy context and implementation process, and many criticisms and concerns were raised in the open forums and small group discussions.

Many people were "frustrated by the lack of any clear evidence that the work that was already going on in communities has been used to inform this new policy proposal."

The consultant reported that this was "part of a more general sense of frustration and anger about the continued inability of government at all levels to work effectively with people at a local level to provide adequate and coordinated services and achieve real improvements in community living standards."



There was "a widely held view that all three tiers of government had failed to adhere to the basic principles which underpin Two Ways Together: collaboration, accountability and cultural appropriateness..."

Strong criticism of the Department was expressed at every meeting.

Despite this there was widespread support for the establishment of the Framework, because communities "want all levels of government to recognise and work through one community governance body."

The report makes it clear communities are unwilling to agree to work through the Framework without certain conditions being met.

Chief among them is a guarantee that DAA and all other NSW Government agencies will recognise and work through the body which is endorsed at the community level.

Furthermore, local government, non government agencies and the Commonwealth should agree to work through the same body.

In some cases those bodies could be Local Aboriginal Land Councils.

NSWALC is of the firm belief that these conditions should be met and enshrined, where appropriate, in the proposed new overarching agreement between the New South Wales Government, the Commonwealth and NSWALC.

This would reflect a renewed commitment to the underlying principles of Two Ways Together and the "new partnership," principles enunciated in Minister Macklin's budget statement.

NSWALC, through its role in the TWT Co-ordinating Committee and its working groups has sought to ensure that Local Aboriginal Land Councils, with the demonstrated capacity to be the community governance body, should be designated as such.

It has worked with the Department of Aboriginal Affairs in this regard.

## The Need for Good Community Governance

NSWALC is aware of the copious literature and research which is available on the vital link between good governance and sustainable development.

This link has been drawn particularly in the pioneering work in this area of the Harvard Project in the USA on American Indian Governance and the Applied Research of Gitxsan leader Neil Sterritt with Canadian First Nations.

The current Governing Council, and NSWALC administration, have been instrumental in both framing the new governance provisions of the most recent amendments to the Aboriginal Land Rights Act, and in implementing those provisions during the first year of the Governing Council's elected term.

The details of work being carried out in this area are to be found later in this submission.

Suffice to say, at this point, that NSWALC's Governing Council is wholly committed to good governance across the land council network, and in the wider Aboriginal community, and will continue to work in partnership with the State and Commonwealth Governments to achieve this.

But, again, we would argue there is an urgent and equal need to improve the governance of governments in relation to Aboriginal communities.

In this regard we draw the Committee's attention to research undertaken by the Indigenous Community Governance Project, an applied research initiative between the Centre for Aboriginal Economic Policy Research and Reconciliation Australia.

This is a national project which is funded by the Australian Research Council and the Australian, Western Australian and Northern Territory Governments.

Comparative research analysis across 11 community research sites has collated important information about the key factors, practices and conditions which contribute to successful community governance

The community views expressed about the DAA consultation process, and the governance challenges with the NSW land rights network, resonate in a letter to the Senate Select Committee on Regional and Remote Indigenous Communities in June this year from Ms Janet Hunt, Senior Research Manager for the project<sup>22</sup>

Ms Hunt has informed the Senate Committee the project contends, based on the research, that it is critically important to place a high priority on strengthening Indigenous community governance and improving the governance of governments in relation to Indigenous communities if gains in Indigenous well being are to be maintained and sustained.

The residents of many communities are poorly educated and under skilled in governance.

Despite documented governance successes it remains the case that many communities lack credible decision making, are unable to enforce local law and order, unable to sustain economic development initiatives, and are facing entrenched dysfunction and disadvantage.

At the same time the Indigenous population is growing rapidly and is youthful.

Governments, organisations and their leaders will be increasingly challenged to meet the accelerating needs of these communities.

Ms Hunt says the researchers are concerned that present government policies are not giving capacity development for community governance priority, and "we fear that public resources intended to ameliorate the situation of Indigenous people may not be used to greatest effect as a result."

The research indicates that if improvements are to be sustained communities need to have legitimate and effective governance in place but the legitimacy needs to cut two ways: decision-making and authority must reflect contemporary Indigenous views of what are 'proper' relationships, forms of authority and cultural geographies in their region.

At the same time the community governance arrangements must be seen as legitimate in the eyes of government.

Getting the right balance between these often conflicting views of governance is the key to success. But it is often exceptionally difficult within current government approaches.

This has considerable relevance for the Community Engagement program currently being put in place in New South Wales.

Importantly, Ms Hunt reports, the research has revealed that a community development approach to building governance skills can work, despite the current constraints of government frameworks.

Accordingly, the researchers encourage, governments to reinvest in community developmental approaches within their relevant departments and to re-engage on the ground with Indigenous organisations and leaders who are attempting to rebuild and strengthen their governance.

The project has also proposed the establishment of an Australian Indigenous Governance Institute to work nationally to implement a governance training and capacity development strategy and develop materials and resources to support Indigenous governance-building needs.

The Research project has found there are major institutional and implementation failings within government that exacerbate the problems of poor Indigenous community governance.

○ The laudable intention of developing whole-of-government approaches to working with Indigenous communities invariably evaporates by the time the policy is implemented on the ground.

Community organisations delivering services are finding that the new policy approach, rather than helping them to streamline their programmes, has often increased the complexity of the administrative demands placed upon them.

This matter, Ms Hunt submits, needs urgent attention since government policy, program and funding frameworks largely shape the environment in which Indigenous community organisations operate.

Government funding and policy frameworks could be much more facilitative of good Indigenous community governance.

○ This is a key issue, in addition to long term funding, if policies and programmes aimed at seeking to close the gap are to meet their targets.

## Meeting the Targets

Minister Macklin has described the new Federal Government's key objectives to close the gap on Indigenous disadvantage as "ambitious."

We applaud those targets:

- To close the life expectancy gap within a generation.
- To halve the gap in mortality rates for Indigenous children under five within a generation.
- To halve the gap in reading, writing and numeracy achievements within a decade.

We believe every Australian would hope they are achieved.

We do, however, consider the objectives, in the current context, would be more aptly described as heroic.

They will remain so unless they are matched with long term Commonwealth funding commitments in New South Wales to programmes framed in response to evidence based research and policies

There is a welter of evidence on the public record from advocacy groups involved in the Closing the Gap Steering Committee, led by Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, to show that current health spending by the Federal Government will fail to close the gap.

Those groups have identified the shortcomings in the \$1.2 billion in new and directed funding provided Indigenous measures by the Federal Government in its first Budget.

Just over half is directed at the ill-conceived Northern Territory Emergency Intervention.

New spending on national programs for Indigenous health average less than \$40 million a year over the next five years.

Based on estimates from the Australian Medical Association, the National Aboriginal Community Controlled Health Organisations and the Close the Gap campaign this is only about a third of the urgent funding required.

They have estimated that the Federal Government currently spends only 92 cents on Indigenous people for every dollar spent on the rest of the population. An additional \$200m a year would be required to reach dollar parity.

Health monies are not being directed to where the majority of Aboriginal people live.

Data from the Australian Bureau of Statistics show just over half the Aboriginal population live in major cities or inner regional areas. As many Aboriginal people live in Sydney as in the Northern Territory.

Those groups also report that almost one in ten urban Aboriginal people report difficulties in understanding or being understood by health service providers.

In closing this section of our submission we would draw the Committee's attention to the evidence cited in its Interim Report from the Director General, Department of Premier and Cabinet, Ms Robyn Kruk about the role of the Two Ways Together Co-ordinating Committee.<sup>13</sup>

We note that Ms Kruk has described the Committee as the 'principal co-ordinating body for Aboriginal Affairs policy and service delivery at the State Wide level.'<sup>14</sup>

We consider it important to make a clear distinction between its co-ordination roles as against its lack of any decision making powers.

NSWALC is a member of this Committee.

Its membership of this Committee provides it one of its only available avenues to access internal working documents of Government.

It is important, however, to emphasise that the Committee primarily functions as an information exchange.

It is not a forum for significant debate or resolution of political issues affecting Two Ways Together.

We also note Ms Broun's acknowledgment to the Committee that there is a need for DAA to improve its community engagement strategies<sup>15</sup>

We do, however, believe there needs to be more political oversight of the work of the TWT Co-ordinating Committee.

This is an issue we believe should be addressed in the negotiation of the proposed new partnership agreement with the New South Wales Government.

In conclusion, NSWALC is conscious it has no statutory responsibility for the delivery of services to our people.

We have, however, accepted political responsibility, as stated earlier.

This is reflected in a new Corporate Plan, developed and adopted by the new Governing Council, which seeks to invoke the principles of the NSWALC's objects as enshrined in the ALRA.

A copy of the Corporate Plan is attached to this submission.

We would draw the attention of Committee members to the eight key corporate priorities and the practical action and commitment taken by NSWALC in partnership with the State Government which is outlined in the following chapter on Environmental Health and Infrastructure.

We venture to suggest those monies would not have been allocated by the State Government without a similar commitment from NSWALC.

The Committee has rightly pinpointed a lack of clarity in leadership and responsibility for service delivery for Aboriginal people in New South Wales which results in our people continuing to endure third world conditions.

We urge the Committee to recommend the new partnership agreement outlined in this submission be struck between the State Government, the Commonwealth and NSWALC as a "first step" towards greater clarity in this area with firm and measurable benchmarks to close the gap.

## Environmental Health and Infrastructure

The New South Wales Land Council welcomes the Committee's emphasis on environmental health and notes its view that environments that promote good public health, including adequacy and quality of drinking water, sewage and waste management and safe, healthy housing are essential elements of modern society.

We concur.

Many of these essential elements, as the Committee has already reported, are missing in many of our communities.

Much space is taken up in the Committee's Interim Report discussing that fact that many Aboriginal communities are often required to manage their own water and sewerage systems, with limited resources.

NSWALC has noted the Committee's expression of concern by the evidence it received early in its hearings that some Aboriginal communities are lacking basic services including water, sewerage and waste services, and the significant negative health impact this has on people living in those communities.

We have also noted the Committee's view that where communities are not serviced by local government, "it is essential that an alternative service delivery framework is put in place, with the local community and Local Aboriginal Land Council. This will be considered further in the Final Report."<sup>16</sup>

As the Committee members would now be aware NSWALC, in partnership with the State Government, has taken practical action to assist in closing the gap in this area by putting an alternative service delivery framework in place.

We have entered into a partnership with the State Government to provide joint recurrent funding (50-50) for the maintenance of water and sewerage infrastructure to improve the well being of residents in more than 60 former Aboriginal reserves and missions.

The aim of the maintenance and monitoring program is to provide safe and effective drinking water and sewerage services in those discrete Aboriginal communities.

This is paramount to protecting the health of the men, women and children who live there.

The drinking water and sewerage services in those communities do not meet the basic standards expected by the wider Australian population.



The flow of effluent into homes is not uncommon.

Land and properties owned by 50 Local Aboriginal Land Councils have been identified for inclusion in the proposed maintenance program. Most, if not all, have been consulted in a survey of water and sewerage systems in their communities.

A business case, developed by State Government agencies, and supported by NSWALC officials, stipulated that a commitment to funding for a minimum of 25 years, and full annual indexation, were essential to ensure participation by local water utilities and other service providers in the proposed program.

This initiative has a long history.

It would be instructive, in our view, to outline this history to provide an insight into the lead times for such initiatives to translate into practical action in our communities.

It also provides a valuable insight into just how much work, commitment and co-ordination will be required to "close the gap," in other areas given the issues highlighted in this one crucial area of need and the many hurdles that need to be overcome.

### **Water and Sewerage Working Group**

In 2004 the New South Wales Aboriginal Community Water and Sewerage Working Group was established by NSW Health to develop a co-ordinated strategy to investigate water quality monitoring and water and sewerage infrastructure needs.

The group consists of representatives from 18 NSW Government departments, the Australian Government and peak stakeholders. NSWALC is a member.

In May 2007 (as the current Governing Council of NSWALC was being elected) the Working Group issued a detailed 59-page Issues Paper which had five key aims.

They were:

- i. To explain the status of water and sewerage systems and their current monitoring and maintenance in NSW discrete Aboriginal communities.
- ii. Identify the current capacity with Local Aboriginal Land Councils to effectively manage their water and sewerage services over the long term.

- iii. Assess how effectively government programs support water and sewerage services.
- iv. Develop practical strategies that involve all levels of government working with the New South Wales Aboriginal Land Councils to improve service provision to standards recognised in national guidelines and government legislation and regulations.
- v. Seek a recurrent funding program from Government to assist with the monitoring and maintenance of water and sewerage systems in discrete Aboriginal communities.

The Issues Paper noted that drinking water and sewerage services were poor in many discrete Aboriginal communities.

Those services did not meet the basic standards expected, and enjoyed, by the wider Australian population. The situation, it said, needed to be fixed.

The paper noted that the provision of safe and effective drinking water and sewerage services within discrete Aboriginal communities is paramount to protecting the health of Aboriginal people and their environments.

It also noted that while NSW Government agencies and the Australian Government have provided support, including advice, services and capital upgrade funding programs to assist Local Aboriginal Land Councils improve their water and sewerage services, many problems continue to occur.

Existing capital upgrade programs do not support the necessary ongoing maintenance of water and sewerage systems.

The Issues Paper noted that the long term operation and maintenance of water and sewerage systems must be addressed as part of the provision of adequate services.

The need for new capital infrastructure should be addressed separately in the evaluation of the Aboriginal Community Development Program—the largest State funded capital upgrade program, which at the time, was fully committed.

It is worth remembering in this context that the ACDP program was set up in 1997—a decade ago—when the then NSW Government developed its Statement of Commitment to Aboriginal People.

As part of offering a formal apology to the Stolen Generations, the Statement recognised the need to redress years of neglect of Aboriginal communities where basic services and infrastructure were either absent, or in disrepair, through the establishment of ACDP.

As Committee members are aware the State Government has more recently launched its State Plan in which it commits to improve cultural, social, economic and environmental outcomes for Aboriginal people.

The provision of adequate water and sewerage services aligns with a number of the Plan's five key areas of activity.

The Working Group noted, however, that mainstream Government support services have limited capacity to support Local Aboriginal Land Councils with the ongoing management of their water and sewerage systems.

There was also limited scope for community contribution towards the costs of such services.

## **Ten Key Recommendations**

The Issues Paper made ten key recommendations.

The principle recommendation was that a recurrent funding programme for operation, maintenance and monitoring be developed to support the water and sewerage infrastructure in the relevant Aboriginal communities.

It recommended two stages.

The first would be a detailed analysis of each water and sewerage system and preparation of a funding and service delivery strategy.

The second stage would be the establishment of the recurrent program to assist with the ongoing operation and maintenance of water and sewerage systems.

Other recommendations included the need for the Department of Water and Energy

- vi. to co-ordinate the recurrent funding program with advice from a steering committee made up of relevant agencies, including NSWALC,
- vii. the development of a public health risk management system to improve the monitoring of water and sewerage services, and
- viii. the establishment of an Aboriginal traineeship program to build capacity in the operations and maintenance of water and sewerage in Aboriginal communities

The Paper also recommended:

- ix. funding be provided to improve state government technical support and advice to LALCs in the management of their water and sewerage systems,
- x. that funding options from the Australian government be explored, and
- xi. that a central and accessible repository system for the storage of infrastructure plans on Aboriginal communities be explored and developed.

It also recommended a number of issues be further investigated.

These included the development and application of model service agreements between LALCs and local government, and identifying how On-Site Sewerage Management Strategies prepared by local government may be effectively implemented in partnership with LALCs.

The paper also recommended the further investigation of means to provide Aboriginal communities with assistance to cart water in times of drought, similar to that provided to Local Water Utilities.

While we hear a lot about the plight of farmers and their livestock in times of drought, we rarely hear about the fact that increasing levels of salinity in groundwater and the sourcing of water of appropriate quality and quantity for the men, women and children living in some Aboriginal communities, is becoming increasingly difficult during drought.

It also recommended further investigation of the impact of water pricing policies towards full cost recovery on Aboriginal communities.

The Issues Paper recommended a steering committee oversee the implementation of its recommendations and that a range of principles be adopted to guide the implementation of strategies.

The first principle was the development of a partnership between LALCs, NSWALC, local government and all relevant government agencies.

It recommended a focus on long term sustainable outcomes, recognition of the need for sustainable operational repairs and maintenance, and a requirement for the development of technical capacity within LALCs and their communities.

It also recommended that recognition be given to the need for flexibility to accommodate different circumstances faced by discrete Aboriginal communities, and finally, the need for consultation with other States and Territories.

## NSW Health

It is important at this point to acknowledge the work done by NSW Health in this area.

The Working Group was established under the Two Ways Together program to ensure the necessary evidence was collected to support initiatives within government, and among stakeholders, to ensure all Aboriginal communities have a safe and adequate water supply and sewerage disposal.

NSW Health had expressed before the working group was established that it was committed to expanding the monitoring of water supplies in the relevant Aboriginal communities.

Initial consultations with communities and Public Health Units soon revealed that monitoring alone would not lead to improvements in water and sewerage systems.

One single question continually arose during those consultations:

What is the point of monitoring if there are no maintenance services (for either water or sewerage) to address the problems identified?

The Working Group's Issues Paper pointed out that while large capital upgrade programs had improved the delivery of both water and sewerage systems, premature problems had been experienced in some communities due to the quality of materials, or the methods used to install the infrastructure.

Where infrastructure had been installed or upgraded there had, at times, been basic hand over and training for community members. However in some cases these systems have failed prematurely after commissioning.

The paper cited examples in the Bellbrook, Toomelah and Willow Bend communities.

These problems could be due to local factors (e.g. trained community members leaving the community) or institutional factors that could only be addressed through a co-ordinated and committed system of government support.

The Paper emphasised that the achievement of long term and sustainable improvements to water and sewerage systems owned by Local Aboriginal Land Councils could only be sustained through a commitment from all stakeholders to address the problems in partnership with each other.

## **An Age Old Problem: Responsibility and Cost Shifting**

It is also important to note the appalling status of water and sewerage systems in discrete Aboriginal communities had been well documented.

The Issues Paper cited six studies dating back ten years.

These included a six year old unpublished NSW Health report which found all communities have access to water for drinking but the quality of that water in most communities is in doubt due to lack of monitoring.

Almost all communities are connected to some form of treatment system, but they are not regularly maintained so system failures are common and, of course, there is no regular system of maintenance of water and sewerage services.

This situation remains unchanged today.

The Paper also provides a useful overview of the roles, responsibilities and capacity of Local Aboriginal Land Councils in the maintenance of water and sewerage systems in Aboriginal communities.

It also provides an outline of the support provided by the NSWALC and different levels of Government.

It notes that there are more than 60 discrete Aboriginal communities that have water and sewerage services within their boundary.

These communities are overseen by over 50 Local Aboriginal Land Councils. Communities range in the number of houses.

For example, in the Murdi Paaki region one of these has eight houses, while other communities have between 80-100 houses within their boundaries.

It notes that the *Aboriginal Land Rights Act (1983) (as amended)* determines that all Aboriginal land is private land.

It also determines that any infrastructure installed on Aboriginal land is private infrastructure and is the responsibility of the land holder (the Local Aboriginal Land Council)

Section 50 of the Act specifies that a Local Aboriginal Land Council is a body corporate responsible for the management of the freehold land vested within it.

Discrete Aboriginal communities are either serviced by local water utilities receiving water and sewerage services to their boundary, or LALC's manage their community's entire water and sewerage system.

The majority of communities (82%) have water supply provided to their community boundary by the local water utility and a small proportion (18%) totally manage their own supply.

Approximately half (52%) are provided with sewerage services to the boundary, while the other half have independent systems—managed entirely by themselves.

It is important to understand, however, that while those communities serviced by local water utilities receive services to the community boundary line that is often a significant distance from buildings and dwellings. The LALCs are then responsible for managing those services within the boundary.

In many cases these communities do not have the technical or financial capacity to effectively manage this infrastructure.

System failures are not uncommon amongst those communities where the systems are wholly managed by LALCs.

An added hazard when both drinking water systems and wastewater systems are located on the same site is the potential contamination of the drinking water supply due to infiltration of sewage.

Many LALCs are unable to generate sufficient incomes to finance repairs and maintenance to water and sewerage systems within their community's boundaries.

This, the Issues Paper states, can be attributed to a number of factors.

Chief among them is the lack of economies of scale in small communities; often discrete Aboriginal communities have small populations where the cost per household of providing basic services is a lot greater than in towns or regional centres.

This severely limits the generation of revenue to cover the depreciation of assets, upgrading of infrastructure, and ongoing monitoring and maintenance.

Another major problem is poverty.

The Issues Paper points out that of the forty most disadvantaged communities in NSW, the majority have a high proportion of Aboriginal residents.

Overcrowding and cultural obligations are also cited as contributing factors.

The Issues Paper notes the importance of acknowledging that overcrowding and cultural obligations within Aboriginal communities can impact on the capacity of LALCs to adequately manage their water and sewerage systems.

Where there is demand for more housing in a community there can be large numbers of people living in one house.

This places stress on water and sewerage systems installed for smaller households.

The population of communities can vary significantly, especially when there is "sorry business" and other events when extended family visit.

The Issues Paper also cites other pressing cost pressures on LALC's.

It notes estimates that Aboriginal housing providers and LALCs need in excess of \$100 million to repair and maintain their housing stock.

Importantly, this excludes the costs associated with the maintenance and operations of their water and sewerage systems.

It also notes that LALCs have experienced difficulties paying their local government water supply and sewerage charges.

These are made up of access and usage charges and LALCs are responsible for ensuring they recoup these costs from within their communities.

This is often difficult to do when households are not individually metered.

The Issues Paper also notes that with both National and State governments moving to full cost recovery for water usage, it is envisaged that increased water prices will further impact on LALCs capacity to pay water and sewerage charges.

The technical capacity within LALCs is also a major issue.

The Issues Paper notes the Federal Government has funded the Alice Springs-based Centre for Appropriate Technology (ICAT) to examine models for sustainable management of water supplies in remote Indigenous communities across Australia.

At the time the Issues Paper was being developed ICAT had identified a general lack of knowledge about the recurrent costs associated with maintaining these services and the skills required for their management amongst most communities responsible for managing their own systems.



The Issues Paper notes that in some discrete communities there are people trained and employed to oversee basic maintenance through programs such as ACDP.

Unfortunately, however, these funding initiatives are time limited.

When funds are used up LALCs then find it difficult to find wages to retain these additional service staff and to find a sufficient amount of work to pay a weekly wage due to the small size of many communities.

These servicing issues are further compounded by a major decline in local trade skills in the private sector given the small growth, or even decline, in the rural population and the withdrawal of government services from communities.

The Issues Paper also notes that the professional advice and support from State Government agencies is extremely limited with key agencies being scaled back.

For example the number of Department of Water and Energy inspectors has been reduced significantly across regional and rural NSW.

Departmental staff advised the Working Group in the preparation of the Issues Paper that, apart from emergencies, they now only work with local water utilities providing technical advice and assistance.

A declining Local Government workforce is also having a major impact.

NSW Local government is experiencing significant difficulties in attracting skilled staff to rural and remote areas.

A survey of skills shortages in Local Government across NSW, which is cited in the Issues Paper, reveals that 33 of the 44 rural and regional councils surveyed (75%) have identified engineers as in specific shortage—with a third of Councils in need of environmental, health and building professionals.

The Issues Paper notes that while local government is well placed in some areas to help Aboriginal communities with their water and sewerage systems, and is keen to do so, the staff shortages in environmental health and engineering, make this practically impossible in some areas. Councils need to be funded to do this work.

The Issues Paper also notes that access agreements and easements can be used to secure rights for service providers to access essential infrastructure under the ALRA but warns they will only be successfully implemented if they are agreed to, and understood, by the whole community.

The development of such agreements is a central lynchpin of the proposed water and sewerage partnership.

It is important to note that local government operates the majority of utilities that provide town water and sewerage services in country NSW.

While local government has a broad mandate under its charter it is not bound by legislation to provide water and sewerage services.

The capacity of many rural and remote Councils to maintain and renew their own town water and sewerage infrastructure is being affected by a declining rate base because of the population decline.

The Issues Paper notes that Councils in many areas are finding it increasingly difficult to raise revenue to replace ageing infrastructure and increase basic services to what are often geographically dispersed communities.

The Issues Paper is at pains to point out that it is not the role of local government to provide services on private land free of charge.

There is also a lack of statutory responsibility assigned to any one NSW Government agency or Australian Government Agency to support the provision of water and sewerage services in discrete Aboriginal communities.

The Issues Paper clearly identifies that under the ALRA it is the responsibility of LALCs to manage the water and sewerage systems on their land-but all the evidence shows they are unable to do so without assistance.

## **Stop Gap Funding**

The Working Group also points out that a number of NSW Government agencies administer funding programs to assist and improve water and sewerage services but often these programs have been provided in isolation to other programs, and they have not effectively addressed the underlying issues relating to the lack of monitoring and maintenance of water and sewerage services.

They also rely on one-off grants that do not recognise the long term nature and commitment required to build technical capacity in LALCs and communities.

In many instances these limitations have forced LALCs and government agencies to implement stop gap measures which are often not sustainable and not cost effective rather than fully address the underlying problems.

Should there be any doubt about the extent of the situation the Issues Paper

cites one instance where a pump broke down in one community and there was no funding to bring in a specialist to fix it.

The community had to manually pump out its sewage for twelve months.

The Australian Government has no statutory role in the provision or maintenance of water and sewerage services in Aboriginal communities.

It has provided some limited funding through the former Aboriginal and Torres Strait Islander Commission, and now the Department of Families, Housing, Community Services and Indigenous Affairs.

This has been capital funding to improve water and sewerage infrastructure but without a recurrent funding vehicle for repair and maintenance it has largely been good money thrown after bad.

Between 1999 and 2006 ATSIC and FAHCSIA had provided about \$7.2 million on water and sewerage infrastructure in Aboriginal communities in NSW. The capital funds addressed upgrades. They did not provide for operating funds.

THE ACDP program, which is managed by the Department of Commerce for the Department of Aboriginal Affairs, is currently investing \$240million over ten years to raise the health and living standards of Aboriginal communities but the program is due to end this year.

A small portion of this program (\$20m) has been dedicated to addressing water and sewerage issues.

ACDP had completed 72 water and sewerage projects in 42 communities at a cost of \$12.4 million when the Working Group Issues Paper was released in May last year with a further 15 underway.

The program, however, is limited to capital infrastructure upgrades and does not include sufficient ongoing operation and maintenance support.

In any case, the Working Group noted in May last year that the capacity to add any new water and sewerage projects to ACDP was limited as all funding had been allocated.

## The Way Forward

The Working Group Issues Paper did, however, point to a way forward.

It recommended that monitoring and maintenance requirements be addressed separately to the construction of infrastructure with a well defined and funded model.

It supported the development of a recurrent funding program to support the maintenance and operations of water and sewerage systems within discrete Aboriginal communities across NSW.

It called for the establishment of the Steering Committee mentioned earlier and noted there was considerable support for its establishment.

It noted relevant State government agencies and the Local Government and Shires Association, along with all other relevant stakeholders, including NSWALC, had formally acknowledged the issues faced by discrete Aboriginal communities on water and sewerage services and the need for a whole of government approach.

It also noted Remote Community Water Management Research being conducted by ICAT was showing that where communities are involved in decision making concerning their water and sewerage systems, they learn to identify problems and can actively participate in the development of their own water management plans.

A new funding program outside of ACDP to improve the maintenance and operations of water and sewerage services in discrete Aboriginal communities was recommended.

Importantly, the new program would include ongoing training and support of Aboriginal community members to acquire skills, including an assessment of the availability of technical education, both locally and regionally, together with an examination of the resource constraints on the Department of Water and Energy to adequately provide technical advice and assistance to LALCs.

The Issues Paper points out that the issues faced by discrete Aboriginal communities, the capacity of LALCs, local government and local trades, and the type of water and sewerage systems concerned, all vary considerably.

Any new recurrent funding program would need to be flexible to accommodate different circumstances

## Developing a Business Case

In December last year, on the back of the Issues Paper, NSW Health commissioned the Department of Commerce to visit more than 60 discrete Aboriginal communities to assess their water and sewerage systems, and estimate the recurrent cost of satisfactorily operating and maintaining the existing systems.

The Department was also asked to separately identify any capital upgrade and/or asset replacement work necessary to achieve acceptable levels of service in each community.

It was asked to estimate the costs of such work and the impact of implementation of the capital works on the estimated recurrent operation and maintenance cost of relevant water and sewerage systems.

The object of the exercise was to better inform decision makers and provide a more reliable cost estimate of a recurrent program to follow on from the desktop audit conducted as part of the Issues Paper.

The Business Case re-emphasised the human dimensions of the situation.

It reported that studies had shown the risk of diarrhoeal disease associated with sub-standard water and sewerage systems was between 2.5 and 3.85 times higher than in communities with well-managed systems.

There was also an elevated risk for many other diseases such as respiratory illness and infections.

The national standards for drinking water (ADWG) required that 98 per cent of water samples are free of the E Coli bacteria, which indicate faecal contamination and the possible presence of other disease causing micro-organisms.

Monitoring for E Coli contamination had been carried out in a number of Aboriginal communities since 2001.

Average results did not meet the ADWG standard and are well below the quality provided to mainstream communities. The water supplies in Aboriginal communities are much more likely to be contaminated with the E Coli bacteria.

The most common response to this is a "boil water" alert which often remains in place for a long time due to the lack of support to fix the problem.

This is a great inconvenience and increases the risk of burns and scalds.

For example Bellbrook has had two boil water alerts since 2005 which have lasted six months, and two months, respectively.

By comparison boil water alerts are relatively infrequent for local water utilities and are usually in place for days rather than months.

Frequent interruption to water services is another problem.

Since November 2006, Toomelah had run out of water on four occasions, each lasting up to a day and a half because of a lack of technical support.

By comparison local water utilities can correct interruptions immediately before there is any inconvenience to consumers.

Some communities have water with chemical characteristics, including lead, which do not meet the ADWG standards.

The taste, odour and appearance of water supplied in some communities are such that is not acceptable for drinking.

The Business Case reconfirmed that many Aboriginal communities do not meet basic sewerage standards as required by State legislation—a clear risk to public health and the environment.

It cited numerous examples of untreated sewage being discharged into communities.

One overflow at Nanima had been occurring for at least three years.

All instances make for depressing reading. One can only imagine how community members cope and get on with what resembles normal life.

The Business Case pointed out the proposed recurrent funding program would save the costs to the community, the Government and stakeholders, associated with the management of illness and contamination incidents.

It noted that individual cases of illness can cost thousands of dollars.

Providing appropriate funds to properly operate and maintain water and sewerage systems would be more cost effective in the long term than not providing them and then having to provide additional capital funding later to repair failed systems.

Real health gains are anticipated through improved operation and maintenance.

A 60 per cent reduction in non-food-borne diarrhoeal disease is expected with successful implementation of appropriate operation, maintenance and monitoring.

There will be further health gains through decreases in respiratory and other diseases.

The Business Case emphasised that if the proposed program was not funded, and implemented, the health and well being of the Aboriginal communities would remain compromised and water and sewerage services would not meet acceptable standards.

It also emphasised that a commitment to funding for a minimum of 25 years, and full annual indexation, were essential to ensure participation by local water utilities and other service providers.

NSW Government agencies would fail to achieve State Plan Priority FI (for improved management of water and sewerage services in Aboriginal communities.) if the current situation prevailed.

## **A Proposed Partnership Agreement**

Given all of the above the State Government approached NSWALC with a formal written request that the Governing Council consider entering into a joint funding arrangement (50-50) with the State Government to establish a new recurrent funding scheme for a water and sewerage program on all of the affected communities.

The approach from the State Government raised a number of threshold financial, policy, and political questions and implications for NSWALC.

NSWALC's Governing Council could have taken the soft option.

It could have rejected the approach on the basis the State Government has sole responsibility for providing these services and the proposal was a further attempt to shift the cost of services onto the self-funding land rights system.

The Business Case had acknowledged the transfer of the former missions and reserves under the ALRA in 1983 had effectively removed Government responsibility for these services onto the land rights system.

It also noted the water and sewerage infrastructure was of a poor standard at the time.

## **NSWALC Invokes ALRA Objectives and Corporate Plan**

NSWALC's Governing Council unanimously agreed to enter into the proposed partnership at a scheduled meeting of Council in March this year.

In so doing, it set a number of conditions.

Chief among them was that the Government guarantee it could commit a similar amount of funding over at least the next 25 years and that its initial funding be approved when the State Budget was handed down in June, 2008.

Soon after, the proposed partnership was endorsed by State Cabinet.

NSWALC respected and maintained the commercial and cabinet-in-confidence status of the material supplied to it during this process until the week after its announcement in the State Budget in June.

Council had taken the view the proposed partnership presented an historic opportunity for NSWALC to use some of the limited financial gains from land rights over the past 25 years to help affected communities, and Local Aboriginal Land Councils, over the next quarter century and beyond to close the gap.

It hoped the decision would also send a clear and unequivocal message to all other stakeholders that the Council was, and is, prepared to actively use its financial resources and political and strategic advocacy functions, to take practical long term steps to increase the health and well being of Aboriginal people.

It has shown a preparedness to do so independently, or in partnership with State and Federal Governments, but is clearly limited by its financial base, dependent as it is on international monetary markets, and its ability to successfully add to the network's land bank.

Council's endorsement of the agreement is consistent with the objects of NSWALC as set out in the ALRA and with major elements of the NSWALC Corporate Plan 2008-2010.

The Corporate Plan commits NSWALC to work with all relevant stakeholders to improve outcomes for Aboriginal people and to maintain and strengthen existing partnerships with our LALC network to optimise performance and maximise the potential for economic, social and cultural growth at the local level.



It also states that Council will maintain and strengthen existing partnership arrangements with government and non government stakeholders to optimise performance and maximise the potential for economic, social and cultural growth and prosperity across all regions of NSW.

The core values set out in that document include seeking the provision of adequate services and resources for Aboriginal people and communities and ensuring long term opportunities and sustainability are available to all.

The Corporate Plan also states that NSWALC, as the peak representative organisation in NSW, seeks to take a leading role in improving the lives of Aboriginal people.

It states that Council will work to ensure Aboriginal people enjoy a sustainable social and cultural environment by seeking to close the gap on poverty and improve health and living standards through tightly targeted community benefit schemes and evidence-based advocacy.

Corporate priority four of the Plan—Community Health and Well Being—commits Council to maintain and strengthen its advocacy to ensure meaningful personal and community health outcomes are achieved throughout all regions of NSW by, among other things, promoting Aboriginal community health and well being as a critical priority.

There can be few more critical priorities than the provision of basic safe drinking water and sewerage systems.

The combined State Government/NSWALC recurrent funding agreement will see more than \$200 million committed over the next 25 years on this initiative.

NSWALC is now working with Government agencies to develop a roll out schedule for the works.

Key benefits of the program will be:

- The protection and improvement of the health and well being of those living in the communities, and those visiting them;
- Water and sewerage services will meet acceptable standards;
- Outcomes from capital funding programs will be achieved;
- assets will be properly managed which will extend their life and decrease the need for further capital expenditure to replace failing systems.

NSWALC's Governing Council has also agreed to commit to a 50-50 funding partnership with the Commonwealth Government to survey Aboriginal reserves and former missions.

At present virtually none of these Reserves has a formal town plan or easily accessible records in terms of the layout of essential services infrastructure.

A total of \$6million has been committed to this project.

## **ACDP Funding**

As mentioned above NSWALC is conscious that the Aboriginal Communities Development Program has—and is—investing a significant amount of funding—\$240 million over ten years—to raise the health and living standards of priority Aboriginal communities through its three priority components, priority communities, healthy housing and water and sewerage.

We are aware that this Program has had a beneficial impact in those communities.

We welcome the extension of funding until 2009.

However we join the Committee in its conclusion<sup>7</sup> that the evidence so far presented to this Inquiry leads to the conclusion that there is an absolute necessity for ongoing funding for environmental health programs in our communities after funding for the ACDP ends in 2009.

NSWALC looks forward to the Committee's further examination of ACDP funding.

In closing this element of our submission NSWALC would like to place on the public record that it is conscious of the importance placed on the issue of water and sewerage in our communities at the local government level.

We acknowledge the prominence placed on the need for action in this area in an earlier submission to this Inquiry by the NSW Regional Communities Consultative Council.

We acknowledge that the Local Government and Shires Association have also lobbied for action on this issue for many years.

We look forward to working with both bodies in the next few years to tackle a number of the underlying problems identified in both the Issues Paper and the Business Case on water and sewerage services on the population, skills and resources drain from rural and remote New South Wales.

All have an enormous impact on service delivery, and associated issues, and are contributing to a widening of the gap.

## Education

The Committee would be aware of the large body of research and evidence on the beneficial impact of a good education on life expectancy.

The Interim Report has correctly identified that low literacy and numeracy skills result in fewer opportunities and an increase in risk factors such as poor health and well being, low employment levels, inadequate housing and high levels of incarceration.

NSWALC has noted the evidence and submissions so far presented to the Committee.

We share the Committee's concern over the results in the most recent Two Ways Together Report on Indicators 2007.

This shows there has been "no significant improvement in the proportion of Aboriginal students reaching the literacy and numeracy benchmarks between 2001 and 2005," and that there remains a considerable gap in the achievement of Aboriginal students and all students.

We acknowledge that education is the primary responsibility of the New South Wales government with the Commonwealth Government providing a strategic and funding role with specific Aboriginal education initiatives.

Without detracting from those responsibilities, NSWALC has taken the view that we should carefully consider an investment in the education of our people by assisting in the creation of a new generation, and successive generations, who are better educated and can take advantage of opportunities to create a more productive life path

One way of doing this was to provide scholarships, and other financial support, for our people in need and for those who show additional promise.

To this end, NSWALC's Governing Council decided shortly after its election in May last year to endorse a \$30 million Education Endowment Fund to provide scholarships for up to 200 Aboriginal students a year

It is the first community benefit scheme to be announced by NSWALC in line with the most recent amendments to the ALRA.

Scholarships are open to all Aboriginal people in NSW and funding levels are dependent on each individual's circumstances.

NSWALC has just signed off on the award of the first scholarships for students from primary schooling upwards to colleges and universities as well as technical and mature age students

The funding of this community benefit scheme is straightforward.

NSWALC has quarantined the amount of \$30 million within its Statutory Investment Fund to provide seed funding for the Education Endowment Fund

The scholarships will be financed each year from the interest generated from the seed funding—up to \$2 million in scholarships each year in perpetuity.

The quarantined \$30 million Education Endowment Fund remains inside the Statutory Investment Fund....that is the seed funding never leaves the fund

The eligibility criteria cover financial need, academic performance, connection with the Aboriginal community, commitment to the field of study and leadership potential.

A supplementary focus of the scheme, in conjunction with educational institutions and business, is to connect Aboriginal people with job and career opportunities in key areas of Aboriginal development

We do not believe our support should replace existing benefits available to Aboriginal people in NSW but rather supplement the available resources.

NSWALC will be seeking to expand the scope of the Education Endowment Fund in future years.

We believe a generous financial contribution from the New South Wales and Federal Government's, and philanthropic institutions, would increase the monies available for future scholarships.

NSWALC's Governing Council took the conscious decision to bed down the administrative operations of the scholarship programme and measure the level of demand before seeking external contributions.

We were inundated with applications for scholarships as soon as we publicly announced the Fund. Charities Aid Foundation Australia has been engaged to administer the fund.

NSWALC will soon begin seeking those external contributions

We will also be maintaining a close interest in the Committee's final deliberations in this vital area.

NSWALC has noted the Committee's belief that an increase in the level of specifically targeted funding may be required to effectively build Indigenous capacity and effectively close the gap between Indigenous and non-Indigenous education attainment levels.<sup>18</sup>

Current funding levels are often short term or provided through pilot projects with little consideration given to the recurrent funding of those "pilots," which demonstrate effectiveness.

NSWALC shares the Committee's interest in how the New South Wales Government will achieve its claim in the re-evaluation of the SIP programme that the "gap between Aboriginal and non-Aboriginal students would be overcome within a decade."

We also agree with the Committee that there is no simple solution to improving educational outcomes, and there is no "one size fits all," solution.

We do consider that the modest gains made in recent years can be accelerated through tightly targeted and long term funding commitments from both State and Federal Governments for evidence based programmes.

## The Financial and Operational Sustainability of Land Rights

The future financial sustainability of the current land rights system is, rightfully, the subject of major ongoing debate within the land rights network, particularly in relation to what current and future benefits can be provided to members of the land council network, and the wider Aboriginal community, through NSWALC's principal clients....the network of 121 Local Aboriginal Land Councils.

The core business of those LALCs is land management but many have expanded to include non-core areas.

These include:

- Social Housing.
- Social Support
- Economic Development
- Cultural and Heritage work
- Political representation

Many play a positive role in advocating for local constituents but, it must be conceded, a large number have performed poorly in some areas over the years due to inequitable and unjust responsibility allocation and cost shifting.

These divert resources away from core business and lead to operational difficulties which reflect poorly but unfairly on the entire land council system.

The new governance provisions have left 120 Local Aboriginal Land Councils with more than 1,000 elected Board members and a minimum staff complement of 200 people.

All must undergo governance training.

Each land council has separate reporting requirements.

These include a requirement to develop individual Community Land and Business Plans and Community Benefit Schemes, incorporating Social Housing Schemes.

As the Committee would be aware these requirements flow from the amendments to the ALRA which came into force in July last year.

They flowed from the last Government initiated review of the ALRA which flagged the need for the Act to provide legitimate ways in which Aboriginal people in New South Wales could draw benefits from land rights.

At the time of the review Section 52 (1) (n) required LALCs to “ensure that no part of the income or property of the Council is transferred directly or indirectly,” to members.

The only material benefit that members could legitimately draw from land rights was subsidised housing if their LALC operated a community housing scheme.

The Taskforce reported that although members at community consultations recognised there had been important benefits from land rights, the lack of direct economic benefit to communities and individuals was seen as a major disadvantage and as a reason for declining membership.

It was proposed the restriction to prevent the direct transfer of income or property to members should remain but the Act be amended to allow members to gain benefits through approved community benefits schemes.

These provisions are now captured within the ALRA but must be established in accordance with an approval from NSWALC.

## **Social Housing**

The LALC network collectively “owns” and manages social housing stock of more than 2,500 houses located on 60 reserves across NSW, which came with the missions and reserves transferred from Aboriginal Land Trusts—away from Government—into the control of LALCs in the original ALRA.

They were typically run down housing estates with dilapidated and overcrowded housing.

The majority have never attracted recurrent funding from Government, unlike community housing or public housing which receives significant financial subsidy.

In many cases tenants, justifiably, were reluctant to pay the level of rent required for sub-standard housing, leaving LALCs to fulfill their responsibilities with limited rental income.

It is not well understood that those LALCs which manage former reserves are burdened with not only the normal costs associated with all other housing owners but the additional costs of providing essential infrastructure and service such as:

- Water and sewerage
- Roads
- Street lighting
- Garbage collection
- Upkeep of large common areas that adjoin these lands.

○ As noted earlier virtually none of the Reserves has a formal town plan or easily accessible records in terms of the layout of essential services infrastructure.

These houses represents a third of all Aboriginal housing stock in New South Wales.

LALC social housing accommodates well over 12,000 Aboriginal people—representing 8.5 per cent of the Aboriginal population in New South Wales.

The ALRA Review Taskforce noted social housing programs have proven an unsustainable burden for many LALCs. The provision of community housing (or social housing) is one of the most important issues confronting the Aboriginal land council network in New South Wales.<sup>19</sup>

○ The Taskforce noted that social housing, of its nature, is not financially viable and must be subsidised on a recurrent basis.

It noted that an independent appraisal of the NSW Land Council system prepared for NSWALC by SGS Economic and Planning during the ALRA Review had estimated that the reasonable cost of social housing provided through the LALC network should be approximately \$8-10 million per year<sup>20</sup>

Importantly, this figure did not include subsidies for maintenance or other infrastructure

The Taskforce pointed out that approximately 90 LALCs of a total 120 are registered with the Aboriginal Housing Office but only about 20 received AHO funding in 2005.



The main barrier is the inability of most LALCs to meet the AHO's Key Performance Indicators, in particular, requirements that rates and insurances are paid up to date, and the liquidity of the organisation.

Many LALCs are not in a financial position to repair their houses to an adequate standard and so have had difficulty collecting rents and paying rates and insurance charges.

NSWALC would ask the Committee to recognise that this situation is rapidly changing.

It is time to bury the myth that Aboriginal people do not pay rent and all LALCs are poor housing managers.

LALCs budgeted for \$9.1 million in annual rental income in the 2006-07 financial year.

The latest figures available to NSWALC show rental income received of nearly \$8 million. That's an 86 per cent collection rate.

This shows that despite the lack of any government subsidy many LALCs are doing a good job managing what, for all intents and purposes, was a social housing responsibility the State Government walked away from 25 years ago under the guise of land rights.

As Committee members would be aware NSWALC is required under Sect 44a of the ALRA to meet the payment of Council rates and charges upon LALCs if those rates and charges remain unpaid for a full financial year.

Rates payment by NSWALC have decreased significantly from a peak of \$1.2 million in the 1999-2000 financial year to just over \$167,000 in 2006-07.

Notwithstanding all of the above this sector still does not generate the income required to cover all of the expenses that come with providing social housing...and certainly not enough to cover the long term maintenance and increasing demands from population growth.

Many LALC members expressed concern during the community consultations on the ALRA Review about the housing issue and the burden it places on LALCs.

Many expressed the view that management of housing should be outsourced to professional housing providers.

The Taskforce reported that the situation was not sustainable and inequities in the provision of housing had to be addressed

It proposed LALCs continue to be allowed to continue managing social housing programs only if they could demonstrate they are financially viable.

Many of the options proposed by the ALRA Review taskforce are now reflected in the new social housing provisions of the amended Act.

In summary the Act now prohibits LALCs from providing 'social housing' (defined widely as any residential accommodation to Aboriginal persons) without them first obtaining NSWALC's approval.

(The amended Act originally required such approval to be sought by the end of December this year. Following representations from NSWALC and the Registrar of Land Rights, the State Government has amended the Act to now require such approval to be sought by July 2010. This extension was essential to provide NSWALC sufficient time to develop a policy and approval process for LALCs)

There is a separate regime for approving existing and new social housing schemes but the requirements for both are onerous.

The Act prescribes that NSWALC must not approve a social housing scheme unless it is satisfied that, amongst other matters, the income (including any subsidies or grants) from the existing social housing scheme is, or will be, sufficient to meet all the expenses of the scheme, including long term maintenance requirements.

The ability of NSWALC to approve any scheme is likely to depend on the extent of any subsidies or grants a LALC is able to attract as few of the current schemes are self-sustaining.

This will be particularly difficult for LALCs which manage housing on ex-Reserves given the additional infrastructure and services costs they face. We would hope, however, that the water and sewerage initiative outlined in this submission would partially assist them in this regard.

NSWALC must also determine that a Social Housing Scheme (as with all proposed community benefit schemes) must be fair and equitable and administered in a responsible and transparent way.

This will clearly require LALCs to develop, and have endorsed, a set of policies and procedures on eligibility and allocation of housing which have been the cause of contention in some communities.

LALCs can obtain the assistance of external bodies or agencies in the provision of social housing schemes but the approval requirements remain the same.

Where a LALC fails to obtain NSWALC's approval to operate an existing social housing scheme it may, with NSWALC's approval, transfer the operation of the social housing scheme to another body or agency.

The amended Act also confers a social housing function upon NSWALC. The organisation has not previously had an express housing function.

NSWALC, the land council network, and other stakeholders such as the Aboriginal Housing Office, are now working their way through the implications of these changes on the ability of all stakeholders to seek to provide affordable, appropriate and healthy housing.

We do so in the knowledge of the current economic circumstances of the New South Wales Government and the retreat of the Commonwealth Government from its responsibilities following the replacement of the Community Housing and Infrastructure Programme.

We are aware the New South Wales Government is currently reviewing all infrastructure spending as it prepares for a mini-budget in November. We would hope the water and sewerage partnership entered into by NSWALC is not abandoned as a result.

We would ask the Committee to recommend that the NSW Government proceed with this initiative given the environmental health issues outlined earlier in this submission.

In closing we would also draw the Committee's attention to a report which has just been released by the Desert Knowledge Cooperative Research Centre which suggests the approach taken by governments to remote area housing has contained the seeds of its own failure.

The report<sup>22</sup> suggests there should be an overhaul of the housing approach by State, Territory and Federal authorities.

Their focus should be on technacy, the ability to wield technology, for young Aboriginal people from as early as primary school, which would in turn foster local talent in innovation and engage them in locally relevant construction, repair, manage and design processes about their own future homes and buildings.

The report team has proposed that all future housing approaches should be centred on the "generation of livelihoods."

## Funding of LALCs

While NSWALC and the land council network deal with the cost and responsibility shifting outlined above we are also faced with a range of sustainability issues within the network itself.

Not least of these is the number of Local Aboriginal Land Councils.

The ALRA Review Taskforce and NSWALC raised this issue throughout the community consultation process during the most recent review of the ALRA.

The Taskforce concluded that the land council was resource intensive and over stretched. It could not "continue to resource and fund so many land councils, let alone so many that are under-performing."<sup>22</sup>

That Issues Paper noted that the last review of the Act in 2000 recommended that the number of LALCs be reduced by voluntary processes but this had not worked; the number of LALCs had increased.

The Taskforce proposed LALCs should continue to play an important role, but the number should be decreased to ensure:

- The resources available in the land council system are used most efficiently;
- LALCs have sufficient capacity and the resources to function more effectively.

The Task Force considered the optimal number of LALCs should be approximately 60 and the number be reduced by a compulsory process.

The then Minister for Aboriginal Affairs ruled out any forced amalgamations of LALCs and the Task Force proposals were rejected at a state-wide meeting of LALCs convened by NSWALC.

NSWALC accepts some form of rationalisation is required within the system but considers this should be the subject of lengthy and considered debate.

This debate is one which should rightfully be held, in the first instance, within the land rights network.

In this regard we would ask the Committee to note that the SGS NSWALC Situation Report in December 2004 noted that LALC functions broadly covered two areas: governance and social housing.

It noted that, based on its own benchmarking, the then NSWALC annual budget for LALCs of \$14.5 million was sufficient to cover the governance functions but it "is unreasonable to expect it to also cover the social housing function."<sup>23</sup>

## Reporting, Penalties and Breaches

NSWALC has noted the views expressed by the Committee in its Interim Report about the prescriptive nature of the Aboriginal Land Rights Amendment Act 2006 (NSW) and the difficulties this has caused for LALCs.<sup>24</sup>

The Interim Report cites evidence from NSWALC Chief Executive Officer, Geoff Scott, and Northern Zone Director, Mr. Andrew Riley, in relation to these matters.

The Interim Report says the Committee understands the concerns surrounding the regulatory requirements "however given the endemic level of mismanagement and corruption throughout the land council system up until the 2001 amendments, the Committee cannot condone the relaxation of these restrictions at this early stage."

There is a need, in our view, to clarify the issues involved here.

NSWALC has not, and does not intend to, request the State Government to lift the compliance restrictions on Local Aboriginal Land Councils in the second round of amendments to the ALRA due to be introduced to Parliament later this year.

It merely seeks to ease the arbitrary reporting dates placed upon LALCs before NSWALC is forced to place them in breach of the Act by providing NSWALC a greater "breach window."

With respect, this would have no effect on the tiny minority of LALCs which have serious operational and financial problems.

It would, however, prevent many LALCs from being breached, and therefore being reported as non compliant, for minor technical breaches of the Act due to the actions of a third party, e.g. an auditor who fails to provide the LALCs accounts for provision to NSWALC by the due statutory date.

In this respect a LALC can be in breach one day and out of breach the next.

In the meantime NSWALC is tasked with building capacity within the network through training and development.

## Training and Development

One of the key challenges facing NSWALC and the land rights network is to build capacity within the system.

As Committee members would be aware NSWALC is required to prepare and implement a capacity development plan for the purposes of carrying out its functions under Section 107 of the ALRA.

In May 2008, the NSWALC Board approved a Capacity Development Plan which outlined all planned training for the local Aboriginal Land Council Network, as well as the NSWALC Board and internal staff for the year ahead.

The NSWALC Capacity Development Plan ("CDP") is a living document which will evolve and develop as NSWALC responds to the learning and development needs arising from the changes to the Act.

NSWALC arranged governance training for each Councillor as prescribed in the ALRA. This training was provided within 6 months of the date of the NSWALC Board election, the timeframe prescribed by the ALRA.

The NSWALC Board attended several governance training seminars which were developed in conjunction with the NSWALC Training & Development unit, and conducted by the peak governance body in NSW, Chartered Secretaries Australia.

There has also been an unprecedented level of training provided across the Land Council network.

Section 65 of the ALRA requires newly elected Board members of LALCs to attend mandatory governance training provided by NSWALC within 6 months of the date of their election. The training requirement is specified under section 25(g) of the Regulations.

NSWALC engaged consultants Burdon Torzillo to develop a two day governance training program to meet this mandatory training requirement.

In January 2008, after careful consideration, the NSWALC Board granted a three month extension for LALC Board members to meet the mandatory training requirement.

Between March and June 2008, a team of external trainers delivered the governance training program to clusters of LALC Board members across the State.

The team of trainers included facilitators from the Tranby Aboriginal College and Yarnteen in Newcastle.

A total of 36 governance training sessions were conducted during this first round of training. A second round of governance training is scheduled to be completed in coming months.

NSWALC also developed a two day training program for LALCs focusing on the development of Community, Land and Business Plans.

A total of 26 CLBP training workshops have been conducted around the State.

NSWALC partnered with a Registered Training Organisation in order to provide nationally accredited modules for course participants, in both the governance and CLBP training programs.

These Statements of Attainment are recognised nationally under the Australian Quality Training Framework (AQTF).

To support the requirement for LALCs to appoint a Chief Executive Officer ("CEO"), the unit developed a resource package "Employing a CEO – Guide for Local Aboriginal Land Councils". Training was provided to those LALC Boards seeking to use the package as a guide to recruitment.

Work has commenced within the Training & Development unit to develop future training programs for Boards and staff of LALCs in the areas of Culture and Heritage Development; Finances; and Land Dealings.

## **The Land Bank**

As outlined earlier the making of a claim, and the granting of land, is now the sole remaining form of compensation for dispossession available under the ALRA.

As at 30 June 2008, there has been a total of 81,637 hectares of land granted since the enactment of the ALRA in 1983, which is less than one per cent of the total land mass in New South Wales.

Successfully claimed land may be set aside for cultural purposes, used to generate further housing for the LALC members, developed in a joint venture arrangement to maximise returns, or utilised to provide a means for the LALC and its members to develop business enterprises.

## Status of Land Claims

As noted earlier land is now the sole form of compensation available for dispossession under the Act.

At the 30 June 2008, there have been 16,083 Land Claims lodged since the enactment of the ALRA.

A total of 2,304 (14%) land claims have been granted,

4,276 land claims have been refused.

9,107 land claims await a determination from the Minister for Lands.

358 of these claims were lodged before the year 2000.

The time taken to determine outstanding land claims is an ongoing concern for NSWALC and the LALCs.

The number of granted land claims awaiting survey and Certificate of Title issue by the Department of Lands is also a continued concern of NSWALC and the LALCs.

These delays deprive LALCs of the use of the land granted for a lengthy period of time.

We are currently discussing these matters with the relevant Ministers, Departments and agencies.



## A New Land Dealings Regime

As Committee members would be aware the New South Wales Government is soon proposing to introduce into the Parliament another major round of amendments to the ALRA on the land dealing provisions of the ALRA.

The Act was changed in 1990 to enable land councils to sell land not set aside for cultural purposes.

Despite the slow pace of land claim determinations some Land Councils now have valuable land holdings and a number are, or are seeking to be involved in large-scale land development projects.

As the ALRA Review Task Force reported, problems associated with some of these developments brought to light some serious flaws in the ALRA.

A number of major projects "have run into serious difficulties because of mistakes made by land councils or their advisers, caused largely by lack of clarity in the Act itself."<sup>25</sup>

Many LALCs are also under financial pressure to sell or develop their land, due to the cost and resource burden ownership places upon them and the need to fund social benefits schemes.

A new land dealings regime, if well constructed, should establish strong foundations for LALCs to acquire own and dispose of land in ways that will give Aboriginal people and their communities long term prosperity and independence.

NSWALC worked closely with the ALRA Review Task Force and the land council network in framing the new provisions and anticipates the new land dealing provisions will receive bi-partisan support in the NSW Parliament as occurred with the most recent amendments.

It considers a well constructed land dealings regime within the Act to be essential to the next major phase of land rights, the management and development of land for the benefit of all Aboriginal people in New South Wales.

## Culture and Heritage

NSWALC and LALCs have a function to protect and promote Aboriginal culture and heritage under the ALRA.

Those functions, as prescribed in the legislation, are the same.

They are to:

- Take action to protect the culture and heritage of Aboriginal person in New South Wales, subject to any other law.
- To promote awareness in the community of the culture and heritage of Aboriginal persons in New South Wales.

When he introduced the original land rights legislation Frank Walker noted that it lacked an essential element—the protection and ownership of Aboriginal cultural heritage.

He flagged the introduction of an Aboriginal Heritage Commission bill.

It has never seen the light of day.

Twenty-five years on, responsibility for this protection and management lies largely with the Department of Environment and Climate Change.

The Department does what it can to ensure a high level of Aboriginal involvement in the management and protection of Aboriginal objects and places.

Despite its efforts Aboriginal cultural heritage continues to be destroyed.

The Department has estimated that since 1990 it has approved over 800 permits for the destruction of Aboriginal cultural heritage.

This needs to be stopped.

NSWALC and LALCs are involved in the protection and promotion of cultural heritage on a daily basis through cultural heritage sites work and surveys.

Numerous land councils are also involved in the joint management of culturally significant National Parks.

Mutawinji National Park, Mount Grenfell historic site, Biamanga and Gulaga National Parks and the Worimi Conservation lands have been returned to Aboriginal ownership.

Land councils hold title to the land on behalf of the Aboriginal owners and participate on Boards of Management responsible for the care, control and management of these lands.

We do what we can.....but we are severely limited by a lack of statutory responsibility.

NSWALC believes there is a need to revisit the establishment of an Aboriginal Heritage Commission.

In the meantime we are encouraging Local Aboriginal Land Councils to take up the opportunity for funding offered by the Australian Government's new program 'Working on Country.'

The program aims to provide a connection between Indigenous knowledge of caring for country, improving environmental outcomes on Indigenous held land and in providing essential job training and skills to Indigenous participants.

The Government has committed over \$47million dollars to this program over the next four years.

NSWALC seeks to play an increased role in the protection and promotion of cultural heritage in New South Wales.

It seeks to do this through advocacy, advice and information

Our Corporate Plan commits NSWALC to:

- Developing a business case for the return of all Aboriginal sites in New South Wales.
- Developing guidelines which identify protect and preserve cultural heritage in accordance with traditional customs, obligations and responsibilities of individual traditional owner groups throughout the state.
- Establishing an effective communications process to monitor all land developments to ensure the identification of, protection and preservation of all cultural heritage sites across New South Wales.
- Providing advice, support and direction to local aboriginal land councils in developing a Cultural and Archival centre for New South Wales.

## Aboriginal Representation

The question of improving or enhancing the representation of Aboriginal people in mainstream politics at both the State and Federal levels has long been discussed, debated, and dissected.

Calls for dedicated seats for Aboriginal people, in both the State and Federal Parliament, have been made, and rejected, for almost a century.

The most recent call was made in on September 5, 2008 by the Tasmanian Aboriginal Centre which has called for two dedicated seats for Aboriginal people should the number of seats in the State's House of Assembly be increased from 25 to 35.<sup>26</sup>

NSWALC has noted the evidence cited in the Committee's Interim Report from Mr. Sol Bellear from the Aboriginal Medical Service.<sup>27</sup>

Mr. Bellear believed that proportional representation of elected Indigenous members of Parliament, an initiative canvassed by the Legislative Council Social Issues Standing Committee in 1998, should be reconsidered.

He called on this Inquiry to recommend to the Government that.....

*in recognition of prior ownership of Australia, 10 per cent of the seats in both houses of the NSW Parliament should be allocated to Aboriginal people elected by Aboriginal people of New South Wales and that those Aboriginal representatives should form part of the Government regardless of which party has a parliamentary majority. Preferably there should be multi-party endorsement for such an initiative and the required enabling legislation although an absence of consensus should not obstruct the reform.*

This is unworkable.

The NSWALC would urge a more considered approach.

This year marks the 10<sup>th</sup> anniversary of the publication of the report from the Legislative Council Social Issues Standing Committee on dedicated seats entitled: Enhancing Aboriginal Political Representation: Inquiry into Dedicated Seats in the New South Wales Parliament

That Inquiry was initiated on the floor of the Legislative Council in September 1995. The Committee published its report in November, 1998.

At that time no Aboriginal person had ever been elected to either of the two Houses of the New South Wales Parliament.

This changed in 2003 with the election of Ms Linda Burney as the Labor Member for Canterbury.

It should be noted that there have been over 2,000 members of parliament since the first NSW Legislative Council was constituted in 1924, with a total of 135 members elected to the 53<sup>rd</sup> NSW Parliament in March last year.

Ms Burney remains the sole Aboriginal representative ever elected to the NSW Parliament following her re-election for a four year term at last year's poll.

The Federal Parliament has no Aboriginal MP's among the 226 members of parliament (150 in the House of Representatives and 76 in the Senate).

NSWALC would urge the Committee to revisit the issues raised in that Report, and its recommendations, in keeping with Terms of Reference (c) and (e) for this inquiry.

The previous Committee found that Aboriginal people were clearly under-represented at all levels of government and determined that a "just and equal society requires the representation of Indigenous people in the NSW Parliament."

In an attempt to facilitate public participation in the 1998 Inquiry, the Committee conducted a series of consultations across New South Wales.

More than 400 people attended meetings held in Redfern, Parramatta, Armidale, Moree, Wagga Wagga, Lismore, Bateman's Bay, Coffs Harbour and Dubbo.

At each meeting participants were asked to consider the arguments for and against dedicated seats, how dedicated seats could work in practice, and other options to improve Aboriginal representation.

The Committee reported that many Aboriginal people expressed a strong desire to play a more active role in the political process in NSW.

The Committee found significant support and enthusiasm for the concept of dedicated seats among the Aboriginal, and non Aboriginal people, who attended the consultation meetings, and from key representatives of Aboriginal organisations including NSWALC

However, there was little agreement on the mechanics of dedicated seats, such as the appropriate number of seats, how candidates should be elected, and in which of the two houses of the Parliament they should be located.

The lack of a clearly defined proposal for dedicated seats made it difficult for some people who participated to declare their support for the concept.

Some considered it a form of tokenism.

The Committee reported that the details of implementing dedicated seats—to quote the report—is not widely appreciated and the processes for election together with the political implications involve complex issues.

It went on to report that sufficient time could not be made available to fully explain and discuss these issues during the consultative meetings and the Committee recognised that consensus was unlikely to be reached in those circumstances.

It noted that Aboriginal people, on numerous occasions said that they should have been involved in formulating the proposals before consultations were undertaken.

The Committee made five major conclusions.

In its major conclusion the Committee considered that the following steps “must be taken,” before dedicated seats could be introduced:

- further consultation with Aboriginal people about how dedicated seats would operate;
- the conduct of an education campaign about dedicated Aboriginal seats, which involves individual Members of Parliament, political parties and the community;
- an assessment of the level of support for dedicated seats and its adoption by the people of NSW at a referendum.

The Committee pointed out that these steps posed formidable challenges to advocates of dedicated seats.

Its report said: The Committee is firmly convinced that Aboriginal people should formulate the initiatives to improve Aboriginal representation and believes that the establishment of an Aboriginal Assembly should be considered, as an interim measure, by the Aboriginal community.

Government members (ALP) of the Committee went a step further.

They stated their belief that an Aboriginal Assembly, to meet in the NSW Parliament, should be established as an interim measure to further Aboriginal representation at all levels of government.

The Assembly should be guided by a formal Charter, should be adequately resourced and only be established if it had significant support from the Aboriginal community in NSW.

Other members of the Committee did not support the establishment of an Aboriginal Assembly "at this stage."

NSWALC understands a referendum is not required to create an Aboriginal Assembly.

In June 1997 representatives of the New South Wales Aboriginal Land Council and ATSIC were invited to meet in the NSW Legislative Assembly in what was described as the first "Black Parliament."

A second sitting was held in September, 1998.

Both were attended by the Premier of the day, the Leader of the Opposition and other dignitaries.

Those sittings of the Black Parliament have never been repeated.

The nine-member Governing Council of NSWALC also held a ceremonial meeting of Council in the Legislative Assembly on June 10 this year to mark the 25<sup>th</sup> Anniversary of the proclamation of the Aboriginal Land Rights Act in June, 1983.

This was well received within the land rights network and the wider Aboriginal community.

NSWALC would ask the current Committee to recommend the State Government, in partnership with all major parties, agree to schedule a meeting of an Aboriginal Assembly at least once a year in the NSW Parliament.

We further recommend the agenda for such a meeting be determined between the Government of the day, and the NSWALC, with particular emphasis being placed on a progress report from Government ministers and their senior bureaucrats on the success or failure of proposed outcomes designed to close the gap.

NSWALC considers the debate about dedicated seats should be seen as part of a longer term agenda given the complex political and constitutional questions inherent in such a proposition.

Consideration should be given to a public awareness campaign around the complex issues involved.

## **Indigenous Electoral Information and Education Service**

The 1998 report sought to provide ways to enhance Aboriginal people's representation in the political processes both as political representatives and voters.

In the latter regard the entire Committee urged the then Minister for Aboriginal Affairs to request the federal Special Minister for State to reconsider funding an information and education program for Aboriginal people about the electoral system.

The Howard Government abolished the Indigenous electoral information and education program run by the Australian Electoral Commission in its first budget.

The highly acclaimed program, which was operated at a cost of little more than \$2 million a year, has never been restored.

The NSWALC would urge the Committee to also revisit this issue from the 1998 report.

## **A National Representative Body**

It is generally accepted there should be an elected National Indigenous Representative Body and regional representative structures.

The main debate within Aboriginal Australia centres on the framework within which the NIRB would operate, and how its representatives would be elected or nominated.

The New South Wales Aboriginal Land Council has provided in principle support to the establishment of a National Indigenous Representative Body at this time. It has done so publicly.

NSWALC has reserved its final position on the proposed NIRB pending further consultation with its major client base, the land council network, and other Aboriginal organisations on their preferred position about the role, composition and structure of the new body.

The NSWALC believes the Federal Government should clarify its position on what it sees as the proposed role, composition and structure of the proposed body.

It should also adopt a more realistic schedule of consultation with Aboriginal communities across NSW, and elsewhere.



The Federal Government's first round of "regional" consultations on its proposal to establish a National Indigenous Representative body were held between 29 July and September 1 in seventeen centres across Australia.

Only three consultations were scheduled in NSW, in Sydney, Dubbo and Broken Hill.

The Federal Government has claimed a "comprehensive" mail out is underway to Indigenous organisations informing them about the consultation process and inviting written submissions, which are to be lodged by September 19.

It has also claimed a round of consultations will be held with peak Indigenous organisations and a range of "community" consultations and workshops are, or have been arranged, by the network of 30 Indigenous Co-ordination Centres.

The Government also plans to hold a national roundtable meeting of Indigenous leaders in late October.

As the Committee would be aware the Federal Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, released a 105-page scoping paper on a National Indigenous Representative Body on July 12, 2008.

The release of the HREOC scoping paper has helped fill a vacuum created by the Federal Government in relation to public debate and consultation on the proposed National Indigenous Representative Body.

While the Rudd Government has renewed its promise to establish such a body, and regional representative structures, since its election in November last year it has failed to publicly outline what it sees to be the proposed role, status and composition of the new body other than periodic glib statements that it will not be another ATSIC.

This was a point taken up by Social Justice Commissioner Calma in his introduction to the issues paper.

He noted that the research paper was not designed to substitute for broad based consultation with Indigenous communities.

Indeed, the research paper does not state a preference for a particular model for a National Indigenous Representative Body—it merely identifies the many and varied issues that need to be considered in the formulation of the new body.

Mr Calma said the paper raised challenges for both the Federal Government and for Indigenous people.

For the government it would be of critical importance that “you articulate what you are not prepared to support in a new National Indigenous Representative Body....”

He encouraged the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, to “articulate what the government sees as the major benefits of a national representative body and accordingly, what role the government hopes it will fulfil.”

Commissioner Calma was quick to point out that he was “not suggesting the government should be prescriptive and close off debates that may need to be had....”

“....But ultimately,” he continued, “we need to minimise the differences between what the Indigenous community expects of its representative body and what government is prepared to support.”

He warns that if we did not “close this gap,” between the expectations of government and the Indigenous community, then a new body may face the same credibility difficulties that have beset previous representative bodies.”

This will “limit the ability for the representative body to have influence with government.”

This would “limit the representative body’s ability to be an effective agent for change for the Indigenous community.”

This warning has not been heeded by the Federal Government.

Minister Macklin has sidestepped the challenge to “close this gap,” in her sole media statement in response to the public release of the HREOC paper.

She noted the paper provided important background and “raises some critical issues for Aboriginal and Torres Strait Islanders to consider about the role, composition and structure of the body.”

The Minister made no mention of the critical issues the paper raised for Government.

She merely repeated her previous public statements that the proposed body would “not another ATSIC.”

The Minister emphasised this point by expressing agreement with the HREOC paper that “service delivery is a responsibility for all levels of government, not for this new body.”

The Minister said the body would have urban, regional and remote representation, would have a clearly defined role, and would not replicate existing structures.

She failed to provide any further detail on each of these complex issues and simply thanked HREOC for "a very helpful contribution for beginning the consultation process..."

The Minister's public silence on these matters is compounded by the lack of any Government endorsed public discussion paper on the proposed National Indigenous Representative Body and any proposed regional representative structures.

The last of the "regional consultations," will be held only eighteen days before the cut off for written submissions on September 19—nine weeks after the release of the HREOC paper.

The consultation timeframe is completely unrealistic given the complex issues involved.

It runs contrary to all previous consultations on a National Indigenous Representative Body.

The most recent and pertinent example is the Review of the Aboriginal and Torres Strait Islander Commission.

The Review Panel undertook two major rounds of public consultation, the first feeding into the development of a Public Discussion Paper which was published in June 2003.

The second round focused on the issues and options identified in that paper.

Advertisements calling for participation were placed in national newspapers, Koori Mail and National Indigenous Times, and regional newspapers.

Some 8,000 copies of the Public Discussion Paper were mailed out, containing advice on how people could play a part in the process, including registering their views through a consultation 1800 hotline.

A website featured the discussion paper, submissions received, and a feedback mechanism for comments to be received.

In all more than 100 submissions were received and posted on the site which clearly identified the authors.

(None of the submissions posted on the current FAHCSIA site in relation to this consultation process identify who they are from.)

The ATSIC Review Panel members spent three months travelling across the country and met all 35 ATSIC Regional Councils and community representatives.

The Review Panel reported constant criticism at ATSIC Regional Council meetings about the short time available to consult with people. A frequent question, given it was the first independent review of the organisation, was: Why the hurry?

Most expressed concern that the timeframe prevented them from consulting appropriately with their constituents on the options and issues raised by the discussion paper.

The same question could well be asked of the current consultation process.

NSWALC would remind Committee members that the report of the ATSIC Review, which was initiated by the Howard Government (the one million dollar cost of which was charged to ATSIC), recommended its reform, not abolition.

NSWALC would also remind the Committee that ATSIC was a creation of the Federal Parliament, not of Aboriginal and Torres Strait Islander people.

As noted by the Committee in its Interim Report the passage of the original ATSIC Bill through the Federal Parliament began with its referral to a Select Committee. As a result of that inquiry the Minister withdrew the original bill and introduced a revised version in May 1989. The then Liberal-National Party Coalition was still opposed to the bill and more than 90 amendments were made to the bill before it was passed in November 1989.<sup>28</sup>

Most of those amendments concerned accountability provisions.

The original ATSIC Bill was designed to give full expression to the policy of self determination.

That policy withered on the floor of the Federal Parliament with the new body progressively constrained, particularly in a financial sense, in a political compromise between self determination and accountability.

It was a flawed model from the outset.

It is little appreciated that two thirds of the ATSIC budget was quarantined by Government for two major programs, the Community Development Employment Project (CDEP) and the Community Housing and Infrastructure Scheme (CHIP).

Less than \$200million of the Commission's more than \$1 billion in annual funding was available for discretionary, or supplementary, funding on Indigenous-specific programmes.

Aboriginal people have been without a national representative body since the abolition of ATSIC by the Howard Government (supported by the then Labor Opposition) in March 2005.

Initial community soundings taken by NSWALC indicate there is little, or no, appreciation at this time of the Federal Government's proposals in this regard in Aboriginal communities in New South Wales.

Attendance at consultations across the country has been poor despite the majority support for a national body which have been demonstrated, both in the Howard-Government's review of ATSIC and its own internal reviews which were required under section 96 of the ATSIC legislation. This suggests many Aboriginal people are unaware that a consultation process is underway.

There would appear to be no good reason to rush the consultation process given the complex issues involved.

NSWALC is of the view that a representative structure exists through the land rights network in New South Wales. Careful consideration needs to be given to the imposition of a Commonwealth-funded representative structure on top of that.

Our community soundings have indicated that Aboriginal people in New South Wales would prefer to see the Federal Government assist in strengthening the current representative structure in New South Wales as part of its proposals to establish a National Indigenous Representative Body and regional representative structures.

## Northern Territory Intervention

NSWALC would draw the Committee's attention to the welter of information now on the public record in relation to the Federal Government's intervention into the Northern Territory.

We note the Committee has been asked to advise on potential programs/ initiatives in relation to the Northern Territory intervention that may or may not have relevance in terms of their application in New South Wales.

NSWALC's initial reaction to the Howard Government's intervention is set out in some detail in our Annual Report 2006-2007.<sup>29</sup>

In essence Council welcomed Prime Minister John Howard's "sudden realisation" that child sexual abuse was a national emergency after 11 years in power, and a decade of so-called practical reconciliation, while expressing profound concern at the haste in which the so-called emergency intervention was put in place.

Aboriginal people had been telling Mr. Howard about the problems since he first took office and had pledged to work with all Governments on this issue as a priority.

All had been ignored.

New South Wales Aboriginal Land Council made it clear it welcomed any action by any government to remove the scourge of family violence and child abuse in Aboriginal communities.

However, it pointed out that every official report which had been released over the past three decades had identified a crisis, called for urgent action, and recommended that the sustainable solutions required to successfully tackle these problems would only come with the proper resourcing of community controlled violence programs.

These could not be prescribed from Canberra (or Macquarie Street).

This was the central message of the Little Children Are Sacred report, as it had been in all previous reports.

There had been no consultation with the affected communities in the Northern Territory and no recognition in the Howard Government's response of the key recommendations of the Little Children Are Sacred report.

NSWALC urged the development of programs to strengthen families and communities to empower them to confront and deal with the problems.

These had to be coupled with long term strategies and the commitment of resources to address the underlying causes of child abuse, including the gross overcrowding and lack of houses, the lack of education and educational facilities and chronic unemployment.

This could not be done in isolation from the very people who daily suffered the trauma of these problems.

The measures outlined by the Commonwealth appeared punitive and short term in nature.

There was a growing body of early evidence that Mr. Howard's unilateral declaration of intervention, which cut across every key recommendation in the Little Children Are Sacred Report, would exacerbate the problems rather than fix them.

NSWALC would remind Committee members that Mr. Howard was asked at his June 21, 2007 news conference about what costs estimates he had received on his intervention.

He replied:

*It will be in the tens of millions of dollars. It's not huge but there could be some costs in relation to extra police. There'll be costs in relation to medical examinations of children. That is a very expensive task and I'll be asking directly the AMA, which has spoken very strongly about this to encourage doctors—and I believe there will be many doctors in Australia who will be more than ready to help in regard to this....."*

The Australian Medical Association and NAACHO, and others, had been campaigning for years, without success, for the Federal Government to recognise and plug the unmet need in the Indigenous health area.

In 2002, during the Presidency of Dr. Kerry Phelp, the AMA, in consultation with peak Aboriginal organisations, including ATSIC, established its Taskforce on Indigenous Health which consisted of a small group of doctors with knowledge and experience of Aboriginal and Torres Strait Islander health issues.

It was set up to support the President to give Indigenous Health issues prominence.

In 2002 this group initiated the Report Card Series with the aim of increasing awareness of the appalling state of Aboriginal and Torres Strait Islander health and what needed to be done.

The series aimed to provide the general public and politicians with a credible concise source of information.

The 2007 Report Card was released on May 22, 2007—a one month before the announced intervention.

The Report Card called for:

- An additional \$460 million a year in targeted resources, particularly for community controlled primary care.
- Commitment to a target of 2.4 per cent of all health professionals being from Aboriginal and Torres Strait Islander backgrounds by 2012.
- Mainstream services to focus current resources to improve health outcomes for Aboriginal and Torres Strait Islander peoples.

The Aboriginal and Torres Strait Islander Commission had earlier commissioned the Australian Bureau of Statistics to produce a number of national Community Housing and Infrastructure Needs Surveys which identified unmet need of billions of dollars in housing and infrastructure.

A number of agencies had used these surveys to produce evidence based research on environmental health issues with particular emphasis on the Northern Territory.

One of these, the Centre for Aboriginal Economic Policy Research at the Australian National University, which had suffered budget cuts under the Howard Government, had estimated in response to the Howard-Brough intervention that a long term sustainable response to the needs of Aboriginal people in the Northern Territory could cost \$4b (billion) over the next five years.

CAEPR Director John Altman stated publicly that his estimates were “conservative.”

The NT Government revealed soon after that new forecasts showed \$2.3 billion was needed over five years to build 5000 new homes with power and sewerage, updating the estimate of \$1.4 billion used by Professor Altman in his calculations on housing need.

The chronic lack of housing and overcrowding was identified in the Little Children Are Sacred report, and in all previous reports, as a major contributing cause of child sexual abuse.



NSWALC has kept a watching brief on submissions to the Northern Territory Emergency Response Review Board, appointed by the incoming Rudd Government.

We have also noted the submissions being received by the Senate Select Committee on Regional and Remote Indigenous Communities which has been appointed to inquire into, and report upon, the effectiveness of Australian Government policies following the Northern Territory Emergency Response, specifically on the state of health, welfare, education and law and order.

This Senate inquiry is also looking at the impact of state and territory government policies on the well being of regional and remote Indigenous communities.

NSWALC would draw the Legislative Council Committee's attention to the submission lodged with the NTER Review Board on August 22 this year from the Australian Indigenous Doctor' Association.<sup>39</sup>

AIDA is a not-for profit, non government organisation dedicated to the pursuit of leadership, partnership and scholarship in Aboriginal and Torres Strait Islander health, education and workforce.

It is represented on over 30 government and non government health, education and workforce groups, including the newly appointed National Indigenous Health Equality Council, the Aboriginal and Torres Strait Islander Health Workforce Working Group and the Australian Medical Association Taskforce on Indigenous Health.

It has been a key partner in the Close the Gap Steering Committee.

At the time of the announcement of the NTER, AIDA questioned the notion that poverty, dispossession, marginalisation and despair (the root causes of substance misuse and sexual, physical and emotional abuse) could be treated with interventions that further contribute to poverty, dispossession, marginalisation and despair.

It pointed out that health and illness do not exist in a vacuum.

They are intimately connected with access to sanitation, clean water, adequate housing, education, transport, and access to appropriate health facilities.

It was absolutely vital Indigenous health, as well as child abuse issues, be addressed in measured far reaching and sustainable ways.

A number of AIDA members have been engaged in key aspects of the NTER and has been conducting a Health Impact Assessment on the NTER in collaboration with the Centre for Health Equity, Training, Research and Evaluation.

We would urge all Committee members to read this submission.

AIDA supports, in principle, some elements of the NTER, particularly measures which lead to better health, education and social outcomes which have long been called for by Indigenous communities and organisations.

However, it points out, that these measures: for example providing more police in remote communities; providing extra teachers and classrooms, conducting health checks, and establishing school breakfast and lunch programs should be provided as part of ordinary citizenship entitlements.

Its submission acknowledges the NTER has directed some much needed Government attention to, and led to increased public awareness of, the poor status of Indigenous health in Australia. It has also increased awareness of the problem of child abuse.

However, it argues, it is a difficult to assess what is working because of the absence of clear baseline measures.

It also argues there has been a significant downside.

AIDA contends that the NTER has had a considerably negative effect on the health and social and emotional well being of communities, families, and individuals with a hardening of mistrust towards the Australian government.

It has compounded disempowerment and feelings of powerlessness due to:

- The disregard for the principles of self determination.
- The discriminatory nature of the NTER; and
- The negative impact on culture and social structures.

AIDA asserts the blanket approach to income management has led to a further loss of dignity and disempowerment.

NSWALC would also draw the Legislative Council Committee's attention to the recommendations contained in the submission to the Senate Select Committee on Regional and Remote Aboriginal Communities from the Northern Territory Council of Government Schools Organisations Incorporated.

COGSO recommends all future action taken to redress inequities in remote NT Indigenous communities be based on locally responsive, consultative and respectful recommendations of the Little Children Are Sacred Report.<sup>31</sup>

A further submission from the Law Council of Australia, the peak body for the Australian legal profession, raises profound legal concerns with the Federal legislation used to impose the NTER.

The Law Council's primary concern is that the provisions of suspending the operation of the Racial Discrimination Act 1975 (Cth) in respect of the NTER should be repealed.<sup>32</sup>

Its submission points out that the 41<sup>st</sup> Commonwealth Parliament and Indigenous Australians were allowed just five days to consider the three principle NTER bills, which comprised more than 500 pages, and caused amendments to a myriad of Commonwealth and Territory legislative schemes.

This amounted to a "disgracefully inadequate," time for consideration and "amounted to a glaring breach of standards in Parliamentary scrutiny of legislation."

The Law Council submission suggests a range of measures to improve the intervention. It has called for:

- Appropriate consultation with Aboriginal communities in the Northern Territory concerning the key aspects of the intervention.
- The prior, informed consent of Indigenous communities be obtained before embarking on measures which affect them; and
- Where appropriate, Indigenous people be involved in the development of measures designed to assist them.

NSWALC would support all of these measures and would ask all NSW parliamentarians to heed these views in any future consideration of measures to assist Aboriginal people in this State.

We note the Select Committee is due to deliver its first report to the Senate on September 30, 2008.

The Board of Review appointed by the Rudd Government to conduct an independent review of the NTER is also expected to furnish its final report to the Federal Government by September 30.

While much of the public spotlight in recent times has been devoted to debate over the NTER we would also ask the Committee to note that NSWALC has actively sought to engage Local Aboriginal Land Councils and their communities, in responding to the NSW Government's Breaking the Silence report into child abuse in New South Wales.

We would urge all major parties in New South Wales, and elsewhere, to understand the fundamental need to work with communities to produce sustainable solutions, which stamp out the scourge of violence and abuse rather than seek to impose solutions upon them.

## Conclusion

NSWALC has lodged this submission with the Committee in the fervent hope it demonstrates our abiding commitment to principles and practicalities.

The land rights legislation in New South Wales is, in our view, the best model so far devised in Australia. It leads the world.

It is not without its flaws but these are being progressively attended to.

As a result the Act is being strengthened in its ability to deliver real and lasting benefits to Aboriginal people in New South Wales.

We do, however, worry about the cost and responsibility shifting which has been outlined throughout this submission and would ask the Committee to take our submissions in this regard into consideration in deliberations on your final report in November.

We believe there needs to be further fundamental and lasting change and we hope the Committee's further deliberations and final report will assist in moving forward the debate about what needs still to be done to close the gap—or, in our view, to bridge the gulf.

NSWALC is committed to working with all parties in the New South Wales Parliament to this end.

We would ask the Committee to be mindful of all of the key themes which have underlined the social justice aspirations of Aboriginal people across Australia in framing its final report.

They are:

- Self-determination, and the ability and resources to develop our communities on the principal basis of Aboriginal knowledge, customs and aspirations.
- Ongoing recognition of our status as the original owners of this land.
- Full equality of treatment for Aboriginal people, equitable access to Government programs and adequate resources to combat and overcome our disadvantage.
- Compensation for our dispossession

There has been no lack of expression of good intent from all Governments.

Unfortunately, significant results have not followed.

We are committed to assisting in achieving such results and, in so doing, vastly improving the health and well being of our communities.

## Endnotes

- 1 Frank Walker second reading speech, Legislative Assembly, March 1983.
- 2 Sydney Morning Herald, Thursday, 29/11/07: Aboriginal Land claims stuck in a \$1b log jam
- 3 Submission No 53: Jumbunna Indigenous House of Learning
- 4 Submission No 74: Ms Elizabeth Rice
- 5 Two Ways Together Report, June 2005, Para 5.1, pg10
- 6 Standing Committee on Social Issues, Interim Report Para 3.19, Pg 41
- 7 Ibid, Para 3.19
- 8 2008 Budget Statement, Federal Aboriginal Affairs Minister Jenny Macklin
- 9 Ibid
- 10 Ibid
- 11 Submission No 40: Minister for Aboriginal Affairs, the Hon. Paul Lynch, January 2008
- 12 [http://www.aph.gov.au/senate/committee/indig\\_ctte/submissions/sub25.pdf](http://www.aph.gov.au/senate/committee/indig_ctte/submissions/sub25.pdf)
- 13 Ms Kruk, Evidence, Page 46, Interim Report, Standing Committee on Social Issues
- 14 Ms Kruk, evidence, 29 April 2008, pg 3
- 15 Para 3.76 Interim Report, pg 58
- 16 Para 4.55, Interim Report, pg 90
- 17 Para 4.27 Interim Report, pg 85
- 18 Para 6.61 Interim Report, pg 147
- 19 ALRA Review Taskforce: Summary of Issues Paper-Structure, Representation, Governance and Benefits, pg 36
- 20 Ibid, section 11.1.2, pg 36
- 21 [http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC Research-Report-29-Housing-for-livelihoods.pdf](http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC%20Research-Report-29-Housing-for-livelihoods.pdf)
- 22 ALRA Review Taskforce: Summary of Issues Paper-Structure, Representation, Governance and Benefits, pg 8
- 23 NSWALC Situation Report, SGS Economics and Planning, December 2004, pg 74
- 24 Standing Committee on Social Issues, Interim Report, page 77.
- 25 ALRA Review Taskforce: Summary of Issues Paper 1-Land Dealing Provisions of the ALRA 1983, Para 1.2, pg 1
- 26 ABC Online Indigenous News, Friday September 5, 2008
- 27 Para 3.121 Interim Report, pg 70
- 28 Para 3.107, Interim Report, pg 67
- 29 Howard's Intervention-The Thin Edge of the Wedge, pg 99, NSWALC Annual Report 2006-07
- 30 Submission to Northern Territory Emergency Response Review Board, August 22, 2008 [www.aida.org.au/submissions.asp](http://www.aida.org.au/submissions.asp)
- 31 [http://www.aph.gov.au/senate/committee/indig\\_ctte/submissions/sub10.pdf](http://www.aph.gov.au/senate/committee/indig_ctte/submissions/sub10.pdf)
- 32 [http://www.aph.gov.au/senate/committee/indig\\_ctte/submissions/sub33.pdf](http://www.aph.gov.au/senate/committee/indig_ctte/submissions/sub33.pdf)