

**Supplementary
Submission
No 130a**

**INQUIRY INTO MANAGEMENT OF PUBLIC LAND IN
NEW SOUTH WALES**

Organisation: NSW Aboriginal Land Council

Name: Ms Clare McHugh

Date received: 19/10/2012



NEW SOUTH WALES ABORIGINAL LAND COUNCIL

ABN 82 726 507 500

The Director
General Purpose Standing Committee No. 5
Parliament House
Macquarie St
Sydney NSW 2000

Via email: gpscno5@parliament.nsw.gov.au

Dear Director,

Re: Management of Public Land in New South Wales Inquiry

Thank you for providing the New South Wales Aboriginal Land Council (**NSWALC**) with an opportunity to make a supplementary submission to the Management of Public Land in NSW Inquiry. The access, use, and management of public lands, including National Parks have been consistently highlighted as a priority for the Land Council network and Aboriginal communities. In addition, the benefits of Aboriginal people's engagement in land and natural resource management are broad ranging and include social, cultural, economic and environmental.¹

NSWALC wishes to provide the Committee with additional information regarding mechanisms currently in place that provide Aboriginal peoples in NSW opportunities to be involved in the management of public lands, particularly as they relate to the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**).

Currently, the involvement of Aboriginal people in the management of public lands varies significantly, depending on the type of land, the area, which department or agency is responsible, and the goodwill of regional/local government officers. Our key concern is that, while there are several mechanisms that Aboriginal people may be able to pursue to achieve greater access, management and ownership of public lands their use and implementation can be ad-hoc, inconsistent, under-resourced, and face a lack of awareness within government and the broader public.

It is important to note that in NSW there are two different legislative systems that relate to Aboriginal peoples rights in land - land rights (under the ALRA) and native title (under the *Native Title Act 1993 (Cth)*). While both systems are about recognising and providing for Aboriginal peoples' rights, the two systems operate under two different laws and differ in the rights they address.

NSWALC notes that NTSCORP Limited (**NTSCORP**) have provided a submission that outlines the mechanisms available for Traditional Owners who are registered native title claimants or native title holders to be involved in the management of public lands. It is worth noting that NSWALC and NTSCORP have been working together under the terms of a Memorandum of Understanding between the two organisations which was signed in October 2009.

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As such, in NSW there are clearly defined Aboriginal peak organisations which have traditional and/ or statutory responsibilities to represent the Aboriginal community.

These organisations are:

- NSWALC and Local Aboriginal Land Councils (**LALCs**),
- Registered native title claimants and native title holders, which can be contacted through the National Native Title Tribunal or NTSCORP, and
- Aboriginal Owners, as listed on the Register of Aboriginal Owners, established under the *Aboriginal Land Rights Act* and held by the Registrar of the ALRA.

As outlined in our previous submission, Aboriginal Land Councils are able to claim certain Crown Land that is not lawfully used or occupied, not needed or likely to be needed for an essential public purposes or residential purposes and is not the subject of a registered native title claim or determination.ⁱⁱ Land that is privately owned cannot be claimed.

In addition to the formal ownership provisions available under the Land Rights system, Aboriginal people are currently involved in the management of public lands in NSW in a range of other ways. This includes through employment, agreements with agencies and departments such as memoranda of understanding, Aboriginal ownership arrangements through the Federal Government Indigenous Protected Areas (**IPA**) programⁱⁱⁱ, native title agreements and the participation of Aboriginal people in advisory committees and boards.

In terms of general access issues, as outlined above this varies depending on the type of land and which Government agency has responsibility for managing the land. For example, NSWALC has received advice that decisions by government officers about whether fees will be waived for Aboriginal Elders seeking to access a park with groups of Aboriginal young people for cultural purposes varies even within the same region, depending on which government officer is making the decision.

This appears to be partly as a result of the lack of information within the Aboriginal community about the necessary paperwork required to gain access to public lands for these purposes, but also a result of a lack of awareness by some government staff about the rights of Aboriginal peoples and provisions available in legislation such as the ALRA, *National Parks and Wildlife Act* and *National Parks and Wildlife Regulations*.

The development of a strategy which protects and promotes the access of Aboriginal people to Crown Land has the potential to deliver significant benefits to the Aboriginal community. NSWALC maintains that the most effective way to improve Aboriginal access to Crown Land is to prioritise the determination of land claims that have been lodged under the ALRA and the transfer of land granted under that Act.

There are currently around 26,000 Aboriginal land claims waiting to be processed by the Department of Primary Industries.^{iv} The NSW Minister administering the *Crown Lands Act*, currently the Minister for Trade and Investment and Minister for Primary Industries, decides whether land is claimable Crown land under the ALRA – if the land is claimable Crown land, it must be granted to an Aboriginal Land Council. Delays in processing those claims means they can take up to ten years to be determined.

The need for expeditious resolution of land claims under the *Aboriginal Land Rights Act* should be emphasised in any strategy to improve Aboriginal access to land, or support economic development within Aboriginal communities.

A successful determination of a land claim generally delivers **freehold title to land** which includes rights to certain minerals in the freehold land. This freehold can be dealt with via sale, lease, etc and the owner of the freehold land (the Aboriginal Land Council) has the same rights as other freehold owners, subject to compliance with the ALRA. It is important to reiterate that Aboriginal Land Councils hold land for the social, cultural and economic benefit of Aboriginal peoples. NSWALC reiterates that the principles espoused in the United Nations *Declaration on the Rights of Indigenous Peoples* must be recognised, including that:

Indigenous people have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.^v

Aboriginal Land Councils are also entitled to make agreements with other land owners or persons in control of land to **access land for hunting, fishing and gathering**, and have rights to apply for access permits.^{vi}

Aboriginal Land Councils also have **consultation rights** in relation to Aboriginal culture and heritage, and have functions to protect and promote Aboriginal culture heritage.

Aboriginal Owned parks with lease-back arrangements

Existing laws also provide for Aboriginal people to own lands that can be managed as parks. The ALRA provides that Aboriginal Land Councils can be granted Crown land with conditions, such as where it is identified that land may be required for conservation purposes. Furthermore, under the *National Parks and Wildlife Act*, land which is considered to be culturally significant to the Aboriginal community can be handed back to Registered Aboriginal Owners: a lease back agreement is negotiated between the Aboriginal owners and the NSW Government. Lands handed back are eventually jointly managed by the Aboriginal owners and the NSW Government and are run as a national park (or other form of reserve).

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

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

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

It is also worth noting that section 34 of the *Crown Lands Act* gives the Minister a broad power to deal with Crown Land. This is another mechanism by which Crown land that otherwise might not be claimable under the ALRA or native title could be transferred to Aboriginal Peoples.

Again, I thank you for the opportunity to provide additional comment to the Inquiry. I trust that genuine consideration will be given to our comments and that a response to the issues we have raised will be forthcoming.

If you have any questions regarding this letter, please do not hesitate to contact the Policy and Research Unit on 02 9689 4444.

Yours sincerely,

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

Date: 18/10/12

ⁱ Janet Hunt, 2010, Social Benefits of Aboriginal Peoples engagement in natural resource management' Working Paper 60, Centre for Aboriginal and Economic Policy Research, Australian National University, available at: <http://caep.r.anu.edu.au/Publications/WP/2009WP60.php> and Janet Hunt, 2012, 'Looking after Country: Two case studies of socioeconomic benefits for Aboriginal people', Working Paper 75, Centre for Aboriginal and Economic Policy Research, Australian National University, available at: <http://caep.r.anu.edu.au/Publications/WP/2010WP75.php>

ⁱⁱ Section 36 of the *Aboriginal Land Rights Act* outlines the criteria for claimable Crown land.

ⁱⁱⁱ There are currently 8 Indigenous Protected Areas in NSW

^{iv} Approximately 36,000 land claims have been lodged since 1983 under the ALRA. Of these approximately 2,473 successful land claims have been granted to Aboriginal Land Councils.

^v UNDIRP, Article 32

^{vi} Sections 47 and 48, ALRA

^{vii} Sections 170-172, ALRA