

**Discussion
paper
response -
Submission
No 43**

INQUIRY INTO ECONOMIC DEVELOPMENT IN ABORIGINAL COMMUNITIES

Organisation: NSW Aboriginal Land Council

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***Submission in response to the Discussion Paper on Economic Development in
Aboriginal Communities***

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Key Recommendations

1. Legislative and policy measures should embed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and founded on the core principles of autonomy, participation, engagement and consultation.
2. Building capacity of existing Aboriginal organisations and governance structures including Local Aboriginal Land Council should be a key foundation of any Government strategies relating to Aboriginal economic development. Aboriginal Land Councils must be supported to achieve improved economic development outcomes for Aboriginal communities.
3. Genuine and meaningful engagement with Aboriginal peoples and peak Aboriginal organisations is essential in the development of future plans and strategies regarding Aboriginal peoples economic development.
4. Investment in human capital through training and education must be a key platform for Government initiatives to support Aboriginal economic development.
5. Rigorous accountability mechanisms for services funded by government and transparent evaluation of initiatives should be established in consultation with Aboriginal peoples and peak Aboriginal organisations.
6. Aboriginal service providers to deliver programs to Aboriginal communities should be prioritised.
7. Government initiatives and programs should be flexible, have a long-term vision and enable and empower Aboriginal communities.

OVERVIEW

The NSW Aboriginal Land Council (NSWALC) is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. NSWALC is committed to ensuring a better future for all Aboriginal people by working for the return of culturally significant and economically viable land and pursuing cultural, social and economic independence for Aboriginal peoples in NSW.

NSWALC is a self-funded statutory corporation under the *Aboriginal Land Rights Act 1983 (NSW)* (ALRA), and has a legislated objective to improve, protect and foster the best interests of all Aboriginal

peoples in NSW. NSWALC also provides support to the network of 120 autonomous Local Aboriginal Land Councils (LALCs) across the state. LALCs have similar statutory objectives to NSWALC in regards to their own local communities.

The NSW Parliament established a network of Aboriginal Land Councils to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and recognition of the ongoing disadvantage suffered by Aboriginal communities. It was an assertion by Government that land rights for Aboriginal peoples is the most fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time laying the basis for a self-reliant and more secure economic future for our continent's Aboriginal custodians¹.

The Aboriginal land rights network has unique, first-hand knowledge of the challenges facing Aboriginal peoples and the governance structures within the Aboriginal land rights system in NSW are designed to achieve the highest degree of representation and participation for Aboriginal people.

Any strategies and initiatives designed to support and promote Aboriginal peoples economic development must be developed and implemented in partnership with Aboriginal peoples and Aboriginal organisations. Specific strategies should be developed to support the Aboriginal land rights network as a key vehicle for economic development, and build on the positive work and outcomes the Aboriginal Land Council system has achieved.

Chapter 1: The need to drive reform

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

As is well recognised, the need to 'close the gap' in employment outcomes for Aboriginal peoples requires overcoming multiple barriers in the areas of education, health, justice, and industry. This requires a concerted whole of government effort particularly in regional and remote NSW where there are increasing pressures on all areas of service provision. A whole of government approach, developed in partnership with Aboriginal peoples, and based on a genuine commitment to action, investment and capacity building, must be the foundation of any approach. Such an approach should commit to investing in Aboriginal people developing solutions, build on the successes and take on board lessons learnt.

Recognising that governments are not necessarily positioned to effectively provide social outcomes when working in isolation or on their own initiative, a community development approach that focuses on community collaboration is needed. This focus along with local capacity building, local decision-making and local and culturally appropriate program and service delivery, promotes success in addressing community needs and supporting sustainable community development.² The Government needs to support existing community governance structures, including Local Aboriginal Land Councils, and community centred efforts to design and deliver programs.

¹ Preamble of the Aboriginal Land Rights Act 1983 statement by Minister Walker 24 March 1983: Office of the Registrar of the ALRA <http://www.oralra.nsw.gov.au/alrareviewpreamble.html> accessed on 30/09/2015

² Danielle Campbell, Paul Wunungmurra and Helen Nyomba, 2007, 'Starting where the people are: Lessons from community development from a remote Aboriginal Australian setting', *Community Development Journal* 42(2) at 151. & Lovell, Niel. and Henderson, Fiona. 2000, "Come together: Increasing popular involvement in local decision-making", *International Journal of Market Research*, Spring-Summer, Vol.42 No.2, p.157, Accessed 15th August 2011.

Government should facilitate and provide resources to support strategies to be developed and delivered by, and in partnership with, Aboriginal communities and Aboriginal controlled organisations. Whole of government approaches can be important to address particular elements of improving economic outcomes for Aboriginal peoples in a multi-faceted, coordinated, accountable and targeted way. Fundamentally, however Government must ensure approaches are designed to genuinely empower Aboriginal people and Aboriginal organisations. Such approaches must respond to the critical issues identified by Aboriginal peoples to address the ongoing shortfalls and failures in government policy measures and methods.

Provisions must be made for Aboriginal communities to self-determine what programs are needed and allow Aboriginal peoples to respond to their own needs and aspirations. In line with international standards and best practice models, NSWALC recommends that the Aboriginal community controlled sector should be supported so that it is appropriately funded to support training, mentoring and professional development of Aboriginal peoples. This has the potential to contribute to the number of skilled Aboriginal workers and increasing confidence to work in mainstream industries.

Supporting Aboriginal community controlled organisations to identify key issues and develop and implement local approaches tailored to the actual needs of the community, is essential in creating social and economic change in Aboriginal communities that can lead to improved employment outcomes. Service delivery by Aboriginal community controlled organisations is responsive and cost effective in addressing local priorities, culturally secure and appropriate, better value for government investment as services are better targeted and are based on local knowledge, flexible and integrated and are a major source of education and training for Aboriginal peoples as well as providing valuable employment opportunities

We note two special reports of the NSW Ombudsman released in 2016 and 2011³, both highlight in numbers the investment imbalance, [State Government spend per Aboriginal person on labour and employment services (\$78) compared to public order and safety (\$3,817)⁴]. Government must address this inequity in spending if there is to be a genuine commitment to economic development and participation as well as improved social and emotional wellbeing of Aboriginal peoples.

These reports also support the need for government to implement rigorous accountability mechanisms for services funded by government and the evaluation of initiatives which has been criticised as sometimes leading to 'inefficiency and waste, as well as a lack of tangible outcomes for Aboriginal communities⁵. Strong accountability measures and an outcomes focussed approach are equally important to rectify the issues highlighted in these reports. Government must work *with* Aboriginal communities and organisations based on the *needs and priorities determined by each community* to achieve tangible outcomes.

³ NSW Ombudsman Special Report to Parliament 2016 '*Fostering Economic Development for Aboriginal people in NSW*' op. cit. p.3. https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0019/34138/Fostering-economic-development-for-Aboriginal-people-in-NSW_May-2016.pdf and the NSW Ombudsman Special Report to Parliament 2011 '*Addressing Aboriginal disadvantage: the need to do things differently*' op. cit p.48. https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0012/3342/SR_Aboriginal-disadvantage-report.pdf

⁴ NSW Ombudsman Special Report to Parliament 2016 '*Fostering Economic Development for Aboriginal people in NSW*' op. cit. p.3. https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0019/34138/Fostering-economic-development-for-Aboriginal-people-in-NSW_May-2016.pdf

⁵ NSW Ombudsman Special Report to Parliament 2011 '*Addressing Aboriginal disadvantage: the need to do things differently*' op. cit pp.3-6. https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0012/3342/SR_Aboriginal-disadvantage-report.pdf

Investment in human capital must be a key element of future economic development strategies to empower Aboriginal people. As noted in our previous submission to the Inquiry⁶ a whole of government approach needs to be founded on the core principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) including autonomy, participation, engagement and consultation.

Furthermore, the 2010 Strategic Review on Indigenous Expenditure noted that ‘a key challenge...lies not so much in further policy development as in effective implementation and delivery.’⁷ It is noted in numerous reviews into service delivery and employment outcomes for Aboriginal communities, that there are gaps between policy intent and policy execution, with many examples of well-intentioned policies that have not produced projected results due to serious errors in implementation and delivery. A well-resourced, Aboriginal community controlled approach is needed to realise improvements in the implementation and delivery of services.

For governments to realise the economic potential to NSW of supporting Aboriginal peoples economic development, shifting away from a system of based disadvantage⁸ and deficit is critical. The language and framing of current and future strategies is just as important as the strategy itself. Starting from a foundation that places Aboriginal people and communities as an asset to the future development of the NSW economy rather than an issue to be dealt with is essential.

NSWALC is a strong advocate for practical measures to deliver sustainable socio-economic improvements to the circumstances of Aboriginal peoples and their ability to participate in the economy. There are a number of immediate practical measures which could be implemented across the whole of government to start to address the economic gap. In addition to the approaches noted above, this includes minimising the use of short-term funding cycles for Aboriginal service providers and employment contracts for Aboriginal peoples and ensuring longer term funding and employment contracts. The flow on effect from short-term approaches includes a lack of job security which ultimately inhibits an individual’s ability to enter the housing market, secure loans or prepare long term prospects for their families.

In addition, the Aboriginal population of NSW is relatively young in comparison to the wider population⁹. Investment in human capital, particularly in the younger generations, by way of appropriate education and training is a key element to ensure the future economic development and empowerment of Aboriginal peoples in NSW. This benefit, according to Deloitte Access Economics modelling estimates an improvement of \$7.4 billion to the NSW economy if the gap in employment outcomes was overcome¹⁰. For this to be realised however a long-term vision beyond the term of government which invests in programs, services and support to allow people to participate in the economy is needed.

⁶ NSWALC Submission to Inquiry into Economic Development in Aboriginal Communities
<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Summary/53649/0020%20NSW%20Aboriginal%20Land%20Council.pdf>

⁷ Australian Government, February 2010, *Strategic Review of Indigenous Expenditure*, Commonwealth of Australia, p.11.

⁸ NSWALC Submission to Inquiry into Economic Development in Aboriginal Communities
<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Summary/53649/0020%20NSW%20Aboriginal%20Land%20Council.pdf>

⁹ Biddle. N, The Aboriginal Population of NSW: Analysis of the 2011 Census, Figure 1. p. 11
http://www.alc.org.au/media/86737/The%20Aboriginal%20population%20of%20NSW_Analysis%20of%20the%202011%20Census.pdf

¹⁰ Deloitte Access Economics, 2014, *Economic benefits of closing the gap in Indigenous employment*, Report for Reconciliation Australia.

2. ***What are the options for the governance of Aboriginal affairs in New South Wales given the complexities, history, stakeholders, the need for accountability and transparency, and the need to engage the private sector?***
3. ***What can the NSW Government do to improve coordination in the area of economic development in Aboriginal communities?***

As noted above, there is a need for holistic and coordinated approaches to Aboriginal affairs, clear roles and responsibilities, clear lines of communication and accountability, a genuine commitment to long-term targets, and reporting across multiple agencies.

Government should support and resource Aboriginal controlled organisations to undertake key functions in design, governance, implementation and accountability of economic development approaches. Government should work with, support and resource peak Aboriginal organisations in Aboriginal affairs to ensure the development and implantation of robust governance mechanisms. The Coalition of Aboriginal Peak Organisations (**CAPO**) would play a key role in directing and driving the development and implementation of holistic economic development strategies for Aboriginal peoples in NSW. Further consultation is needed with Aboriginal peoples and Aboriginal organisations in the development and design of such an approach.

To ensure that there is appropriate accountability at the state-level, key roles for an Aboriginal governance and oversight body such as CAPO would include the regular review and evaluation of the overall implementation of the Governments' Aboriginal affairs strategy in conjunction with heads of government departments and agencies that have responsibility for implementing policies and programs relating to Aboriginal peoples. To fulfil this role, CAPO must work closely with the NSW Ombudsman's Office and must be provided with appropriate reporting on the implementation of the Government's Aboriginal affairs strategy. It is important that respectful, transparent and honest relationships are fostered with the CAPO.

Streamlined arrangements have the potential to contribute to 'clearer lines of accountability, responsibility and communication, and eventually result in improved resource efficiency.'¹¹ In terms of which Government Department or agency should have the lead responsibility, these are matters for further consideration and discussion after consultation with peak Aboriginal organisations has occurred to determine the strategies and priorities. The coordinating Government agency should have the appropriate skills, resources and authority to implement measures according to community determined priorities. It is also necessary to develop and maintain relationships and practices which embed continual collaboration with peak Aboriginal organisations is important to achieving outcomes on the ground.

In terms of involvement of the private sector, organisations such as universities could have important advisory and research roles in a new governance model. However, any strategies or approaches should be developed in partnership with Aboriginal peoples in the first instance.

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

Strategies to support Aboriginal peoples and Aboriginal organisations to develop economic opportunities based on promoting Aboriginal culture and heritage and protecting natural resource should be further explored and supported. There are key opportunities relating to tourism, arts, museums, keeping places, theatre, and natural resource management. Aboriginal cultural tourism is a rapidly growing industry in NSW which Government can support through strategies such as

¹¹ The Allen Consulting Group, *NSW Government Aboriginal Employment and Economic development Programs; review of programs and broader considerations*, December 2011, p. vii

promotion, approved supplier endorsement, and assistance with protection of intellectual property rights associated with cultural enterprise.

We note that proposals have been put forward that Government should fund non-Aboriginal community organisations to undertake a range of economic development functions. While the positive work of a range of organisations is noted, NSWALC strongly submits that Aboriginal community controlled organisations should be funded and resourced as a priority in line with the UNDRIP.

Article 21

- 1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.*
- 2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.*

Article 32

- 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
- 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*
- 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

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

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

Partnerships between Aboriginal peoples and communities and the private sector have become an increasingly important mechanism for improving community and individual wellbeing and standards of living. This has been repeatedly highlighted by national and international research. The Allen Consulting Group report and the Jawun Indigenous Corporate Partnerships paper, *Learnings and Insights, 10 Years On*, both view community and corporate collaboration as an important component in securing better economic development outcomes for Aboriginal peoples. However, these relationships must be led by Aboriginal peoples and Aboriginal organisations, and promote economic empowerment of Aboriginal peoples.

Industry Based Agreements (IBAs) are a key initiative of the NSW Governments Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE) initiative, however have existed in other forms with former State Governments. Since the establishment of OCHRE in 2013, three IBAs have been established; NSW Minerals Council, Master Builders Association of NSW, Civil Contractors Federation

of NSW. However, given there have only been three IBAs to date, it is timely to review the realisation and outcomes of IBAs¹².

Tangible outcomes for Aboriginal communities must be the measure for initiatives such as IBAs. Government support, in the form of funding or other financial incentives to promote IBAs, needs to be balanced with other measures such as directly supporting training and employment outcomes for Aboriginal peoples. IBAs must have strong, clear and measurable targets that strengthen the aspirations of Aboriginal peoples and their communities, ongoing evaluation of commitments over the course of the agreement and acquitted to the intended purpose of ensuring Aboriginal employment outcomes.

It is suggested in the most recent NSW Ombudsmen Report 2016¹³, that IBAs be closely aligned with the objectives of relevant Local Decision Making (LDM) Regional Alliance Accords. While initiatives must be determined by local priorities it is noted that Regional Alliances are in their very early stages, and only one out of the six has progressed from 'Establishment and Start-Up'. While it is recognised that the NSW Government's current Aboriginal affairs plan includes 'Local Decision Making', it is important that this approach is properly evaluated before further strategies are developed based on LDMs. The benefits or otherwise of the LDM approach, particularly in terms of the tangible outcomes they provide to Aboriginal communities should be reviewed in consultation with Aboriginal communities. The failures and lesson learnt from similar previous models including Two Ways Together must be re-examined to ensure the past mistakes are not repeated.

NSWALC recommends that throughout the development of new economic development strategies that discussion is had regarding promoting and supporting corporate partnerships, including secondee and mentoring programs, and a clear strategy is developed regarding how the government plans to support such programs.

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

It was identified in the Auditor General's Report 'Two Ways Together – NSW Aboriginal Affairs Plan Performance Audit that¹⁴ targets, indicators and measures were set at various times, performance measures changed and complexity of governance and reporting processes contributed to a lack of accountability for results against changing targets.

Place based approaches are founded in the importance of place, geographical and social, to a persons overall wellbeing. For Aboriginal people, the interconnectedness of country (place), culture, family and social networks are fundamental to wellbeing.

¹² The NSW 2016/17 budget papers provide that only one IBA has been established with an industry association, with the forecast establishment of two IBAs in 2015/16, reducing to one.

¹³ NSW Ombudsman Special Report to Parliament 2016 'Fostering Economic Development for Aboriginal people in NSW' p.33. https://www.ombo.nsw.gov.au/data/assets/pdf_file/0019/34138/Fostering-economic-development-for-Aboriginal-people-in-NSW-May-2016.pdf

¹⁴ NSW Auditor-General's Report, 2011, Performance Audit, Two Ways Together – NSW Aboriginal Affairs Plan, p.17
http://www.audit.nsw.gov.au/ArticleDocuments/143/213_Two_Way_Together_Aboriginal_Affairs.pdf.aspx?Embed=Y

There are currently 120 LALCs across NSW. Development of place-based approaches must be undertaken in partnership with LALCs and should build on and support the established work, governance structures and initiatives of the land rights network.

The NSW Government should commit to build upon existing structures for Aboriginal peoples in NSW by developing strategies which recognise the role of Aboriginal Land Councils in delivering economic development opportunities in NSW, and seek to support Aboriginal Land Councils achieve better economic development outcomes for Aboriginal communities.

Chapter 4: Building capacity of individuals

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

It is noted that four Opportunity Hubs have been established in NSW over the last two years. Discussion and consultations regarding their effectiveness of Opportunity Hubs should be undertaken with local Aboriginal communities.

In general, promoting the existing Aboriginal community controlled sector and existing Aboriginal organisations should be supported. It is important to consider Opportunity Hubs in this context to ensure that the capacity of other Aboriginal organisations who specialise in this space has not been diminished, how supporting and strengthening existing frameworks may be achieved, and how pathways to education, training and employment for young Aboriginal people can be promoted across the whole of NSW.

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

Investment in human capital is vital to long term economic development in any community. In the past, while the importance of education and training has been promoted, there has sometimes been a lack of targeted and meaningful training. New approaches must move away from 'Training for training sake', particularly in regional areas, often find themselves in without it resulting in employment.

To ensure proper pathways to employment are successful, an industry analysis should be carried out to identify job placements available in specific industries to be targeted. Linking with business to provide a clear pathway to employment is also important.

Investment in educational institutions such as TAFE are important to ensure that there are sufficient placements and resources to support Aboriginal students. The NSW Governments cuts to TAFE NSW has had a significant negative impact on Aboriginal people with an increase in fees being attributed to decreased enrolments¹⁵. TAFE has a significant role in the development of skilled workforce, particularly in regional and remote communities. Their geographical reach is unmatched and, as they are local institutions, are invested in the development of their communities and maintaining local industries. Given the potential benefit to the NSW economy noted above, there needs to be guaranteed access to education for Aboriginal people, including through TAFE and universities.

¹⁵ NSW Budget Estimates 2016-17, 06. Industry Skills and Regional Development Cluster, Chapter 6. P.19
[http://www.budget.nsw.gov.au/_data/assets/pdf_file/0019/128440/6. Industry, Skills and Regional Development Cluster.pdf](http://www.budget.nsw.gov.au/_data/assets/pdf_file/0019/128440/6.Industry_Skills_and_Regional_Development_Cluster.pdf)

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

Community-specific culture can only come from community leaders and organisations deemed legitimate in the eyes of that community. A network of local Aboriginal Education Consultative Groups exist for the purpose of engaging and collaborating with school management on Aboriginal education initiatives. Likewise, Local Aboriginal Land Councils have a legislated function for the protection of culture and heritage within their boundaries.

In seeking to better incorporate community-specific culture into the education curriculum, specific advice of the NSW Aboriginal Education Consultative Group (NSW AECG) should be sought and meaningful long-term engagement with the local representative organisations and their peak bodies is essential.

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

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

If the NSW Government were to commit to developing and delivering programs that target Aboriginal girls and young women in schools and vocational education and training, the program design and implementation should be in true partnership with local Aboriginal communities and their chosen lead organisation. The NSW Government should undertake an evaluation of current programs which are successful in this space.

Aboriginal Elders have a significant role in mentoring and advising Aboriginal youth in local communities. Elders are an invaluable resource and provide cultural expertise and should be specifically engaged in consultations regarding the development of strategies to support young Aboriginal women.

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

As noted above, analysis of current and emerging industries should be matched to training opportunities particularly in regional areas. It is vital that Government do not duplicate services or negatively impact on services providers who are successfully delivering outcomes.

Furthermore, Government should ensure strong targets for public sector employment, retention and professional development opportunities for Aboriginal people. Government should also encourage Local Councils to have strong employment targets for Aboriginal peoples as well as strategies for inclusion in a representative capacity for local government.

Internship and cadetship programs where students study part-time and work part-time are also positive models that should be further explored. Participating students are exposed to the workplace and industry, and are better informed when choosing employment pathways post-study.

We note that the employment of Aboriginal people at the Maules Creek mine and the development of a Reconciliation Action Plan is included in the discussion paper as a case study. It is noted that the Maules Creek mine has been a highly controversial project that has involved destruction of Aboriginal culture and heritage. In line with principles outlined in the UNDRIP (excerpts above) relating to rights

to employment and improvement of economic conditions, and rights to just and fair redress for activities impacting on traditional lands, providing for Aboriginal peoples economic and social rights would be considered a minimum standard.

Chapter 5: Building the capacity of Aboriginal organisations

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

In NSWALCs experience, current funding available through Government does not facilitate effective capacity building across NSW. Capacity building and development should be tailored to support specific individual and organisational needs. NSWALC has developed an economic development policy and is finalising a capacity development plan for LALCs which involves face-to-face training, connecting and sharing, advice and mentoring through all stages of business.

Strengthening Capacity of LALCs, as local organisations with statutory functions, should be resourced by Government, but driven by Aboriginal peoples. There is an opportunity for the NSW Government to build on the investment made by NSWALC to promote economic development of LALCs.

The governance structures of the Land Rights Network are strong. LALCs are accountable and well-functioning organisations who provide a range of services, community development opportunities, and economic development opportunities, often within very small operating budgets. NSWALC strongly supports capacity building for Land Councils, and building on existing effective structures and programs.

As noted in the submission by The Law Society of NSW Indigenous Issues Committee¹⁶ *'the Aboriginal land council network provides a unique vehicle for the facilitation of economic development', 'has the advantages of being representative and inclusive'* and on the issue of accountability and transparency; are regulated by the ALRA and NSWALC policy, must be consistent with the Community Land & Business Plan approved by members, are accountable to its members and to the public under the ALRA, *Ombudsman Act 1974* (NSW), the *Independent Commission Against Corruption Act 1988* (NSW) and the some provisions of the *Government Information (Public Access) Act 2009* (NSW).

10. What is your view on whether the compliance requirements in Aboriginal Land Rights Act 1983 are unduly burdensome on Local Aboriginal Land Councils?

In principal NSWALC is supportive of amendments which support LALCs in achieving their social and economic functions under the ALRA without undue burden. In undertaking review of the ALRA, the NSWALC consults extensively with LALCs to gain the views and opinions of the land rights network.

Would the compliance requirements applicable to corporations under the Corporations Act 2001 be more appropriate for Local Aboriginal Land Councils?

It is important to clarify that there are compliance requirements for LALCs under the ALRA and, compliance requirements for LALCs who establish entities. Prior to the *Aboriginal Land Rights Amendment Act 2014* (Amendment Act) LALCs had the ability to establish entities under the Corporations Act 2001. Following the Amendment Act, new subsections 52 (5A) and (5B) were

¹⁶ The Law Society of NSW, Indigenous Issues Committee Submission to Inquiry into Economic Development in Aboriginal Communities
<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Summary/48278/0013%20Law%20society%20of%20New%20South%20Wales.pdf>

inserted into the ALRA, which as explicitly acknowledged in the explanatory note, represented a restriction on the power that LALCs already had to establish corporations. NSWALC strongly opposed the inclusion of these provisions in the Amendment Act and continues to hold the view that this should be repealed.

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

As highlighted above capacity strengthening of LALCs, as local organisations with statutory functions, should be resourced by Government, but driven by Aboriginal peoples. There is an opportunity for the NSW Government to match the investment by NSWALC.

In terms of specific training and services, the ability to access expert business advice would be invaluable for LALC Boards and CEOs.

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

There are mechanisms within the ALRA, including section 184 and Regulations, for managing potential conflicts of interest as well procedures with Office of the Registrar ALRA and the NSW Civil and Administrative Tribunal (**NCAT**).

As noted in the submission by The Law Society of NSW Indigenous Issues Committee¹⁷ the Aboriginal Land Rights Network ‘has the advantages of being representative and inclusive’ and on the issue of accountability and transparency.

Membership to a LALC is open to all Aboriginal people in NSW and ultimately the accountability is to the members of that LALC. Potential conflicts of interest are managed in accordance with the relevant laws as well as policies and procedures of NSWALC and LALCs.

13. What action can the NSW Government take to improve the business and financial capacity of Local Aboriginal Land Councils and other Aboriginal corporations?

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

As mentioned throughout this submission, specific actions that can be taken by the NSW Government to improve the business and financial capacity of LALCs which include:

- Sufficiently resource the determination and/or negotiation of outstanding Aboriginal land claims.
- Sufficiently resource the surveying of approved land claims returning land with unlimited title
- Prioritise Local Aboriginal Land Councils in the divestment of Crown Lands
- Addressing legacy issues related to the return of reserves and missions
- Collaboration and meaningful consultation in beginning stages of setting LEP, Regional Plans and SEPPs and other planning decisions

¹⁷ The Law Society of NSW, Indigenous Issues Committee Submission to Inquiry into Economic Development in Aboriginal Communities
<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Summary/48278/0013%20Law%20society%20of%20New%20South%20Wales.pdf>

- Remove the legislated requirement to set-up corporations under the CATSI to enable economic development opportunities
- Match the NSWALC investment in economic and capacity development of Local Aboriginal Land Councils

15. Should enterprise assistance centres for Aboriginal-owned business be established?

The NSW Ombudsman's report noted in its findings that 'in many of the Aboriginal communities in remote and rural NSW that we have visited, we have observed low levels of Aboriginal involvement in small businesses.'¹⁸ NSWALC recommends that, as a part of the NSW Government's goal of improving Aboriginal employment outcomes, that a strategy is developed to support the building of small scale Aboriginal enterprises particularly in remote and regional NSW.

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

It is important that organisations work together, not in silos. Involving the Office of the Small Business Commissioner should also be explored. Face-face engagement with Aboriginal people should be encouraged. Furthermore, develop a dedicated capacity development program tailored to individual needs is essential. This capacity development should covers all stages of business from start-up to growth.

Chapter 6: Land and Water

- 17. What actions should the NSW Government take to address the backlog of land claims yet to be assessed?**
- 18. What actions should the NSW Government take to address the backlog of land claims that have been assessed but where the land has not yet transferred to Local Aboriginal Land Councils?**
- 19. What actions could the NSW Government (or others) take to provide the necessary support to Local Aboriginal Land Councils holding 'limited title' land to realise its economic potential?**

NSWALC has recently provided a comprehensive submission in response to the Crown Land Inquiry.¹⁹ This submission outlines that the return of Crown Land to Aboriginal peoples represents the most significant opportunity to deliver social, cultural and economic benefits to Aboriginal peoples and the whole community of NSW for generations to come. Ensuring resources are allocated to realise the full potential of the ALRA is needed.

With regard to the issue of land claims being transferred to Aboriginal Land Councils with limited title, the discussion paper notes the evidence provided that in some circumstances limited title is not a significant issue, for example when land is used for cultural or historic purposes or when joint ventures are undertaken to absorb survey costs.

¹⁸ NSW Ombudsman, October 2011, *Addressing Aboriginal disadvantage: the need to do things differently*. A special report to Parliament under s 31 of the *Ombudsman Act 1974*, p.56.

¹⁹ NSWALC submission, Crown Lands Inquiry
<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-submission-details.aspx?pk=%2055780>

NSWALC reiterates that transferring land with limited title is contrary to the statutory intention of the ALRA, and results in cost-shifting a responsibility of the State Government to LALCs which are already resource and capacity strained.

A LALC may choose to accept transfer of land with limited title in certain circumstances, however this should not be the normalised approach. An Aboriginal Land Council which wishes to use land for cultural or historic purposes may later wish to deal with land in a different way, depending on the decisions of their membership. Such Aboriginal Land Councils would then be significantly disadvantaged, holding limited title land.

NSWALC also reiterates comments made in our original submission that transfer of limited title land only exacerbates already unequal power relationships between LALCs and potential joint venture partners. The majority of LALCs operate in a resource and capacity-strained environment. It is against the intention of the ALRA for their ability to deal with land to be dependent on negotiations with external third parties.

Support provided to LALCs holding limited title centres around other capacity-development initiatives discussed throughout this submission, which bolster Aboriginal Land Council's internal capacity to manage their land portfolios and negotiate with third parties.

20. Do the issues raised with respect to zoning of land transferred to Aboriginal land councils warrant a change to current planning processes?

If so, what options are available to address the issue(s) identified?

NSWALC's position with regard to the urgent need to change current planning processes has been outlined in detail in a number of previous submission to NSW Government, which can be provided to the Committee.²⁰

NSWALC submits that planning processes need to be improved in order to facilitate both the objectives of the ALRA and the economic development of LALCs as well as local and regional economies. Current planning processes, particularly inadequate provisions requiring consultation with Aboriginal landowners, may also contribute to the sometimes strained relationships between local councils and LALCs, which hinder the basis of fruitful working relationships between these organisations.

Improving planning processes is a priority issue for both the NSW Government and NSWALC. NSWALC is working closely with the NSW Department of Planning and Environment and a number of other agencies in order to develop and implement effective solutions to this issue.

Central to addressing these issues is taking a multi-pronged approach which recognise the entrenched nature of these barriers. This involves:

- **Law, policy and regulation changes:** Amending planning processes to ensure that local government and planning authorities take into account the statutory functions of LALCs and the presence of land claims when planning instruments are being drafted;
- **Administrative and technical changes:** Ensuring that planners and local government are able to access up-to-date information regarding determined and pending land claims for the purpose of drafting planning instruments;

²⁰ NSWALC's previous submission in response to planning law reform including: the Standing Committee on State Development's Inquiry into Regional Planning Processes (2016), the NSW Planning Law Reform Issues Paper (2012), the Planning Green Paper (2012) and the Planning White Paper (2013).

- **Capacity-building and education:** To improve the awareness and understanding of local government and planning authorities regarding the ALRA and the statutory responsibilities of LALCs, as well as the capacity of LALCs to engage in planning processes.

We understand that the NSW Government have undertaken some initial steps to develop solutions which will require a combination of short and medium-to-long-term implementation as well as resourcing and capacity building. However, further commitments are needed. Improvements to the planning system will have flow on effects not only for Aboriginal economic development but for regional economies in general. If LALCs are able to more easily facilitate economic development from their landholdings, they will be able to contribute greatly to their local and regional economies.

Should the NSW Government consider the introduction of a State Environmental Planning Policy (SEPP) that would apply to land owned by Aboriginal land councils, and if so what considerations and provisions should it include?

NSWALC supports any provisions and mechanisms that will assist Aboriginal landowners to deal with the barriers facing them with regard to the development and utilization of their lands. However, we do not believe that there is one simple solution to this multi-faceted issue, and a SEPP is not a “one size fits all” approach.

NSWALC has previously outlined our position on whether the NSW Government should consider the introduction of a State Environmental Planning Policy (SEPP) to apply to Aboriginal-owned lands which the Committee may wish to note.²¹

As we have outlined above, we see improved consultation with and communication between LALCs, local councils and planning authorities as central to addressing these issues. The foundation of this work will involve targeted and long-term investment in LALCs to assist in building capacity to engage in complex planning processes. Building capacity of local councils and planning authorities in understanding the context within which LALCs operate (in terms of their statutory responsibilities and cultural and social motivators) and ensuring local councils are equipped to support LALCs. .

A SEPP may be useful in some circumstances where Aboriginal land owners are facing difficulties in working constructively with local councils to resolve planning disputes. Yet the process of developing legal instruments without also investing in broader education and cross-cultural communication risks creating further division in these communities. As such, alternative options and mechanisms should be further explored.

21. What are the potential benefits and disadvantages of the proposal that Local Aboriginal Land Councils partner with local government to identify and realise economic growth from land owned by land councils?

LALCs are autonomous organisations who make decisions according to their membership and local contexts. In some circumstances, partnerships with local government may be appropriate and beneficial, whereas in others, they may not.

NSWALC see a range of potential opportunities arising from improved working relationships and communication between Aboriginal Land Councils and local government, ranging from shared

²¹ For example, see the evidence provided at the Standing Committee into State Development – Regional Planning processes – pages 26-27

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryEventTranscript/Transcript/8345/Transcript%20-%202011%20%20March%20-%20CORRECTED.pdf>).

initiatives to increase public awareness about local Aboriginal communities', cross-promotion of programs as well as joint ventures in economic development. However, LALCs must be empowered to be the primary decision-makers in order to fulfil their social, cultural and economic obligations to their memberships.

There are, of course, other productive outcomes that can be achieved through closer relations between LALCs and councils, for example, it can also lead to further participation of Aboriginal Australians in local government, and it can create further leadership opportunities. It can also create a better understanding of sensitivities around culture and heritage issues in particular regions.

There is an opportunity for reciprocal learning. Understanding that both organisations have a job to do and a community which they service.

Like the general population, Aboriginal people in rural and metropolitan NSW contribute to the local economy. Establishing working relationships with local government and LALCs will foster relationships with Aboriginal people and the wider community and provide a foundation for building socially inclusive communities.

22. What should the NSW Government do to support partnerships between Local Aboriginal Land Councils and other organisations, whether they are local government or private enterprises, to realise economic growth from land owned by land councils?

How can Aboriginal communities leverage economic opportunities from their cultural connection to water? What actions can the NSW Government take to facilitate this?

There are a number of ways that Aboriginal communities may be able to leverage economic opportunities from their cultural connection to water. This will depend on the circumstances of the community and vary greatly between regions, dependent on local environments, availability of resources and cultural contexts. However, broadly this may include the development of horticulture and aquaculture, including niche bush tucker products, as well as providing environmental flows for cultural tourism or place-based recreational opportunities.

The NSW Government needs to urgently acknowledge the rights of the Aboriginal community to cultural flows, which include allocations of water for cultural, social, environmental and economic purposes, and legislate for them immediately.

NSWALC has actively called for redress to this issue as a priority in NSW for a number of years, and we have provided a number of detailed submissions to the NSW Government and other stakeholders. These submissions can be provided upon request. (See, for example, NSWALC's submission to the Murray Darling Basin Authority: Proposed Basin Plan (2012), as well as NSWALC's work participating as a member of the National Water Commission's First Peoples Water Engagement Council.)

Currently in NSW, Aboriginal peoples do not have any legal right to access water for economic purposes. This remains the most significant barrier to Aboriginal communities leveraging economic opportunities from their cultural connection to water. NSWALC calls on the NSW Government to immediately recognise the rights of Aboriginal peoples to cultural and economic flows, consistent with international treaties to which Australia is a signatory, including the *United Nations Declaration of the Rights of Indigenous Peoples*.

We also note that an Aboriginal Fishing Trust fund has been recently established by Government under the *Fisheries Management Act 1994*. While we understand this Fund is still in early stages but could

be used as a key vehicle to drive investment in Aboriginal owned enterprises in the fishing sector including commercial enterprises, charter enterprises and tourism enterprises. However, the Trust fund must be properly and sustainably resourced by Government.

The NSW Government should also make available funding to NSWALC and LALCs to engage with experts to explore possible economic development opportunities.