

# The Aboriginal Land Rights Act Review



## *Background Information for Communities*

*Prepared by the New South Wales Aboriginal Land Rights Act Review Task Force August 2005*



## Background

On 26 May 2004 the Minister for Aboriginal Affairs, the Hon Dr Andrew Refshauge Review announced a wide ranging review of the *Aboriginal Land Rights Act 1983*.

The Review is being done by a Task Force whose members are:

### Ms Jody Broun

Director-General, Department of Aboriginal Affairs

### Mr Murray Chapman

Administrator, New South Wales Aboriginal Land Council (NSWALC)

### Mr Stephen Wright

Registrar, Aboriginal Land Rights Act

The Minister's press release explained that the Task Force is to report on:

- the three tiered structure of the land council system to see if there is a better way of delivering outcomes to Aboriginal people;
- clearer separation of powers between the administrative and elected arms of local land councils, to avoid nepotism and conflicts of interest;



- attracting more qualified people with management and financial skills;
- better and less costly ways to intervene if the affairs of a local land council go wrong (rather than having to appoint administrators and investigators);
- better ways of managing, selling and developing land council assets - especially sale and commercial development of land holdings; and
- clarifying the role of elected representatives.

The Review is expected to be complete by the end of 2005.

## Glossary

ALC	Aboriginal Land Council
ALC land	land owned by an Aboriginal Land Council
ALRA	<i>Aboriginal Land Rights Act 1983</i> (the Act)
ICAC	Independent Commission Against Corruption
LALC	Local Aboriginal Land Council
NSWALC	the New South Wales Aboriginal Land Council
Task Force	the Aboriginal Land Rights Act Review Task Force
ToR	Terms of Reference (of the Aboriginal Land Rights Act Review)



## Terms of Reference

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1. Inquire into and make recommendations as to whether the aims and objectives of the NSW Aboriginal Land Rights Act require expansion or change in light of developments since 1983.
2. Evaluate the material and other benefits achieved for Aboriginal people since the commencement of the Act in 1983 including:
  - whether the Aboriginal Land Rights Act allows benefits available under the Aboriginal Land Rights Act to be delivered efficiently to Aboriginal people of NSW at state, regional and local levels; and
  - whether better outcomes could have been achieved and what alternative arrangements might have facilitated better outcomes.
3. Report on the present resource and asset base of land councils and make recommendations for the efficient and effective use of assets and resources for the benefit of Aboriginal people of NSW, including an inquiry and recommendations into an improved framework for managing, selling and developing land council assets, in particular the sale and commercial development of land council real property.
4. Inquire and make recommendations regarding:
  - a) the development of funding models for the equitable distribution of land council resources; and
  - b) the development of funding models which tend to the better delivery of measurable outcomes for land council members and other stakeholders and which deliver benefits in a transparent and outcome oriented manner.
5. Inquire and make recommendations more generally on the strengths and weaknesses of present legislative and administrative arrangements with a view to improved efficiency and effectiveness of the land council system.
6. Make recommendations for more representative, effective and efficient governance within the NSW Aboriginal Land Rights system.



## Why is the Act being reviewed?

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An earlier review of the Act, which began in 1998, led to amendments that came into effect in 2002. That review looked mainly at governance issues and the functions of land councils at different levels (state, regional and local).

In recent years a number of land councils have been investigated and put under administration. There have been several inquiries, for example by the Independent Commission Against Corruption (ICAC) (1998-99, 2004), the NSW Ombudsman (2002), the NSW Auditor General, and the

NSW Public Accounts Committee (2002). In 2003, an investigator was appointed to the New South Wales Aboriginal Land Council (NSWALC).

The issues raised by these inquiries are the subject of this Review. Two major areas of concern are:

- the standard of governance and the operations and activities of some land councils; and
- serious problems that have arisen when some land councils have tried to sell or develop their land.

## What is the Review process?

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The Task Force meets regularly and is approaching the Review in stages. Discussion papers about several key areas are being prepared (some will be grouped together), including:

- the land dealings provisions of the Act
- the governance and structure of Aboriginal Land Councils (ALCs); and
- ALCs and Aboriginal housing.

The discussion papers will be widely circulated to land councils and communities and where needed, summaries will be available.

### Land dealings

From the beginning of the Act in 1983 until 1990, land owned by Aboriginal land councils (ALCs) could be leased, but not sold. In 1990, the Act was amended to give land councils the power to sell and mortgage their land. The provisions enacted in 1990 did not anticipate the landholdings and kinds of land dealings that ALCs would be involved in in 2005.

Over the past 20 years of land rights, the land claims process and other land acquisitions have created a large and valuable land base. In some areas of New South Wales, the size and value of ALC land assets have attracted pressure for land development and several land councils have begun to be involved in large-scale land development projects. Some major developments have run into serious difficulties. The problems associated with land dealings have shown that the current land dealings provisions of the Act are not adequate for today's circumstances and require significant updating.



## Structure and Governance

At present the Act provides for land councils at three levels: local, regional and state. The Task Force is looking at the functions of the land councils at each level and whether this structure is workable and cost-effective, and provides an appropriate system of representation. Some options for alternative structures will be put out for consultation. The Review will also look at the internal structure of land councils and the role and functions of office-bearers and staff (and whether these should be changed).

The inquiries that have been held have pointed to a number of important issues of governance that need to be improved at all levels, including:

- how can decision-making be made more open and fair
- better financial administration and controls
- accountability
- management
- increased capacity and skills within land councils
- management and control of resources



The Task Force paper on Structure and Governance will also include a discussion of benefits derived from the Aboriginal Landrights Act.

Although there have been important social and cultural benefits from land rights, in general, Aboriginal people in New South Wales are very disadvantaged. The Review will look at:

- what can land rights realistically deliver?
- are land councils trying to do too much or provide services that really should be done by other agencies?
- how can land rights provide benefits without eroding the value of the wealth that has been built up over time?
- how can the Act be changed so that people can draw benefits?

## Aboriginal land councils and housing

As a result of land rights, houses on former missions and reserves were transferred to land council ownership. Many local land councils continue to run housing programs and most of these are running at a loss. Some councils are finding it hard to collect rent, keep their housing stock in good repair, pay rates and so on. The Task Force is looking at how these issues can be resolved and will look at whether land councils should continue to provide or administer community rental housing.



## Feedback to the Review Task Force

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Papers produced by the Task Force will be posted on the Department of Aboriginal Affairs and the NSWALC websites. The Task Force wants to hear from any land council or any person who would like to give their views throughout the review process.

Your comments and submissions can be sent to the Chairperson of the Task Force by post or fax, or by email to the Department of Aboriginal Affairs or to NSWALC.

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