



A. General information and background on your organization/institution

1. Please provide the name of your organization/entity and where it is based. Please also provide details on the objectives and goals of your organization.

The New South Wales Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples in the Australian state of New South Wales (**NSW**) and, with over 23,000 members, is the largest Aboriginal member based organisation in Australia. NSWALC is a self-funded statutory corporation under the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**) with a legislative objective to improve, protect and foster the best interests of all Aboriginal peoples in NSW.

NSWALC is committed to ensuring a better future for Aboriginal people by working for the return of culturally significant and economically viable land, pursuing cultural, social and economic independence for Aboriginal peoples and being politically proactive and voicing the position of Aboriginal people on issues that affect them.

The Constitution, Objects and Functions of NSWALC are set out in Part 7 of the ALRA.

These give NSWALC the mandate to provide for the furthering of land rights for Aboriginal people in NSW, in conjunction with a network of Local Aboriginal Land Councils (**LALCs**) through:

- Land acquisition either by land claim or purchase
- Establishment of commercial enterprises and community benefit schemes to create a sustainable economic base for Aboriginal communities
- Maintenance and enhancement of Aboriginal culture, identity and heritage (including the management of traditional sites and cultural materials within NSW).

NSWALC also acts as an advisor to, and negotiates with, governments and other stakeholders, advocating for the rights of Aboriginal peoples in NSW and for Aboriginal land rights.

2. Which Indigenous peoples/communities does your organization represent and/or work with?

NSWALC is the peak representative body in Aboriginal Affairs within the Australian state of NSW. NSWALC aims to protect the interests and further the aspirations of both members of LALCs and broader Aboriginal communities within the state of NSW. As a state wide organisation, NSWALC works directly and in-directly with various Nation, clan and language groups across the state of NSW.

The Aboriginal Land Council network is two tiered, comprising the peak body, NSWALC, and 120 LALCs, which are governed by elected Boards. LALCs are empowered to serve all Aboriginal peoples in their boundary areas (both members and non-members alike).

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At the 2018 session, the Permanent Forum will focus on "Indigenous peoples' collective rights to lands, territories and resources".

3. Are there laws and policies and/or administrative measures in your country to recognize the rights of indigenous peoples to own, use, control, and manage lands, territories, and resources? If so, please provide details.

In 1983, the ALRA was enacted this is the primary piece of legislation within NSW that allows Aboriginal peoples, via their LALCs to own, use, control and manage lands, territories and resources. The ALRA is a compensatory legislative regime which recognises that land is of spiritual, social, cultural and economic importance to Aboriginal peoples across the state. The core intent of the ALRA is to ameliorate the ongoing effects of dispossession by returning land to Aboriginal ownership. The land claim process that returns land to Aboriginal Land Councils is the cornerstone and primary mechanism through which Aboriginal peoples can realise economic and social justice outcomes.

The purpose of the ALRA is as follows:

- to provide land rights for Aboriginal persons in New South Wales,
- to provide for representative Aboriginal Land Councils in New South Wales,
- to vest land in those Councils,
- 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,
- to provide for the provision of community benefit schemes by or on behalf of those Councils.

Further, a NSWALC Statutory Investment Fund was established under the ALRA. For fifteen years - from 1 January 1984 to 31 December 1998 - the ALRA 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 Aboriginal peoples in 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. Since 1998, NSWALC and the Aboriginal Land Council network have been self-supporting.

Under the ALRA, the land claim process involves:

- A LALC or NSWALC on behalf of a LALC, making a claim over Crown Land that is not needed for an essential public purpose and is not lawfully used or occupied,
- The claim is then lodged with the Registrar of the ALRA and referred to the Crown Lands Minister/s for investigation and determination.
- Once the Ministers administering the *Crown Lands Act 1983* are satisfied that either whole or part of the land is claimable or not, the land is either granted or refused.
- Granted land is then transferred to the Land Council as freehold title.

It is worth noting that as the ALRA is intended as a compensatory mechanism, LALCs are not required to establish cultural association with lands when making land claims.

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4. Are there any efforts or initiatives to (i) demarcate and/or map communal lands; (ii) registration of land titles (individual and collective); and (iii) adjudication of claims for collective rights to lands, territories and resources? If so, please provide details.

Aboriginal peoples' interests in land are multifaceted and include, but are not limited to, the use and management of land for culture and heritage purposes as well as providing economic development opportunities for Aboriginal peoples. There are two fundamental ways in which the ALRA facilitates the rights of Aboriginal peoples to own, control and manage lands, territories and resources; the first is via land claims and the other is via Aboriginal Land Agreements.

Under Section 36 of the ALRA, claimable Crown land is land that, among other criteria, is "not lawfully used or occupied", nor needed for residential or any other "essential public purpose". Lands that fall within the definition of claimable Crown land must be granted to the claimant Aboriginal Land Council. It is also important to note that successful claims result in 'freehold title' meaning that LALCs can develop and/or sell lands as decided by their members and approval from NSWALC. However, LALCs are still required to comply with all other relevant legislation including nature conservation, zoning compliance, development applications and cultural heritage assessments in any development or sale.

In 2015, the ALRA was amended to provide for the strategic negotiation of land (Aboriginal Land Agreements) (ALAs). ALAs allow for the strategic settlement of multiple land claims, negotiation of government land and for flexibility in providing the social, cultural and economic outcomes intended by the ALRA. ALAs also provide for the joint management of land, if deemed appropriate by relevant LALCs.

Aboriginal Land Agreements may include but are not limited to, the following:

- financial or other consideration,
- exchange, transfer or lease of land,
- conditions or restrictions on the use of any land to which the agreement relates,
- joint access to and management of land (including a lease of a type referred to in section 36A),
- undertakings by an Aboriginal Land Council or the Crown Lands Minister with regard to the lease,
- transfer, management or use of any land,
- the duration of the agreement, and
- the resolution of disputes arising under the agreement.

It is important to note that Aboriginal Land Agreements are in addition to the existing Aboriginal land claims process under the ALRA. Land claims continue to be processed on an individual basis. Instead, Aboriginal Land Agreements are a new mechanism based on negotiations that have the potential to allow for the settlement of multiple Aboriginal land claims.

5. Please provide information on any projects or programmes to ensure the free, prior and informed consent of indigenous peoples in relation to development projects and/or extractive activities?

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Under the ALRA, Section 113 provides NSWALC with the authority to prepare and implement policies that relate to business matters such as land dealings, investment and provision of training to members of staff and board members. This section also requires that policies are publicly available and reviewed every 5 years, ensuring policies are relevant and reflect current best practice.

Additionally, Section 114 of the ALRA requires that before NSWALC adopts a policy, it must refer the policy to each LALC for comment and consider any submissions made by any LALC within 30 days of the referral of the policy. It is only then that the Minister can provide approval of the final policy.

Section 114 ensures that the free, prior and informed consent of the 120 autonomous LALC is obtained. Whilst this is the formal process outlined under the ALRA, informally, NSWALC also welcomes feedback and engagement from LALCS throughout the policy development cycle and seeks to foster these relationships where and when appropriate. It is apparent that as the intended audience for NSWALC policies, LALCs have a vested interest in ensuring that policies are responsive to their day to day operating environment and future aspirations.

The above provisions for consultation with the 120 LALCS ensure that self-governance principles are not only adhered to but implemented in tangible ways with real opportunities to guide the direction of the land rights network.

Launched in late 2014, the NSWALC Economic Development Policy, outlines the broad strategies and initiatives that NSWALC will pursue over a five year period to drive economic development towards wealth creation and wellbeing for Aboriginal people in NSW. Amongst other priorities the Economic Development Policy focuses on NSWALC business enterprise. Under the Economic Development policy, NSWALC will undertake an exploration of opportunities in the minerals and energy sector.

6. Do you have any examples of good practices that may be useful for resolving issues of ownership and control over natural resources? If so, please provide details. Please also include information on any specific programmes targeting indigenous women.

The ALRA is a strong example of a good practice for resolving issues of ownership and control over natural resources between States and Indigenous peoples. As detailed below, many aspects of the land right network align with the rights contained within the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

To demonstrate, the enactment of the ALRA and the establishment of NSWALC and the autonomous 120 LALCs is in keeping with article 28 of the UNDRIP that states 'Indigenous peoples have the right to redress, by means that include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent'.

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The practical application of the ALRA is also in line with Article 3 of the UNDRIP which identifies the right of Indigenous peoples to self-determination. The land rights network is guided by the expertise of an all Aboriginal board that is democratically elected. This is self-determination in action.

Further, the requirements for consultation and information sharing with in the development of policy ensure that the free, prior and informed consent of the land rights network is respected and facilitated throughout the policy development cycle.

Lastly, please note that whilst NSWALC is currently unaware of any programs that specifically target Aboriginal women in relation to natural resources, NSWALC is undertaking exploratory work in this area. NSWALC intends to firstly identify the present levels of engagement of Aboriginal women within the land rights network and then, potentially establish appropriate engagement methods to increase the involvement and successful engagement of Aboriginal women within the land rights network.

C.UN Declaration on the Rights of Indigenous Peoples

7. Has your organization been involved in any legislative, policy and/or administrative measures taken by the Government to implement the UN Declaration on the Rights of Indigenous Peoples? Please provide details.

In NSW there remains no formal negotiated settlement or framework to underpin the relationship between Aboriginal and Torres Strait Islander peoples and the NSW Government. Successive governments have not adequately considered issues of negotiated settlements with Aboriginal peoples, Treaty making or sovereignty.

Despite this, in October 2017, NSWALC called on the NSW Parliament to progress Treaty between the Government and the First Nations people of NSW.

It is important to note that whilst NSWALC is not prescribing a process for Treaty or Treaties, NSWALC is undertaking preparatory work on the basis of the following principles:

- The process must be a genuine partnership between the Government, Parliament and Aboriginal peoples.
- The process and any outcome must be bi-partisan (supported by both major political parties), so that it may endure.
- The process will need time to gain the support of Aboriginal communities.

NSWALC also recognises that the rights contained in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provide a framework to guide both the development and content of any potential Treaty/ies.

D. World Conference on Indigenous Peoples

In 2014, at the World Conference on Indigenous Peoples (A/RES/69/2), Member States committed to taking, in consultation and cooperation with indigenous peoples, a number of measures to achieve the ends of the Declaration.

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8. Have any steps been taken to develop a national action plan or strategy on indigenous peoples? Please also include information on any capacity building to strengthen awareness and action to implement the UN Declaration on the Rights of Indigenous Peoples.

As of December 2017, NSWALC is unaware of any steps taken by the Australian Government to develop a national action plan or strategy on indigenous peoples.

However, NSWALC increasingly recognises the need for monitoring and implementation of domestic projects, activities and public awareness campaigns. It is envisaged that the UNDRIP will underpin several projects of the NSWALC beginning with our call for a state based Treaty or Treaties with the NSW Government.

The UN developed a System wide action plan to support Member States to achieve the UN Declaration on the Rights of Indigenous Peoples (SWAP-Indigenous Peoples E/C.19/2016/5).

9. Please provide information on the involvement of your organization/peoples with UN offices at the country level including on:

a. Any projects, activities, dialogues and/or public awareness campaigns;

b. Preparation of country programmes and UN Development Assistance Frameworks (UNDAF).

The NSW Aboriginal Land Council has not engaged with UN offices at the country level on any projects, activities, dialogues and/or public awareness campaigns.

The NSW Aboriginal Land Council has not engaged with UN offices at the country level on the preparation of country programmes and UN Development Assistance Frameworks (UNDAF).

E. 2030 Agenda for Sustainable Development–Global Goals

There are 17 Global Goals that cover a number of important issues including ending extreme poverty, ensuring all children receive a good education, achieving equal opportunities for all, and promoting a clean and healthy planet. The Permanent Forum has emphasized that the recognition, protection and promotion of indigenous peoples' rights to lands, territories and resources will make a significant contribution to achieving the Sustainable Development Goals.

10. Has your organization been involved in the implementation, review and follow-up to the 2030 Agenda? If so, please provide details.

The NSW Aboriginal Land Council has not been involved in the implementation, review or follow up to the 2030 Agenda.