

# Passing of the CONSTITUTION BILL in Parliament



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1. Premier Kristina Keneally introduces an historic bill into the NSW Parliament to formally recognise the First Nations in the NSW Constitution.
2. NSWALC Chairwoman Bev Manton addresses the NSW Parliament on the importance of the Bill.
3. The Parliamentary public gallery was full of observers to witness the introduction of the Bill.
4. Opposition Leader Barry O'Farrell speaks in support of the Bill.
5. Ms Manton and former MP, Maurie Keane, one of the MP's responsible for the introduction of the Aboriginal Land Rights Act, on the steps of Parliament House before the introduction of the Bill.
6. Young Aboriginal dancers lined the steps of Parliament House as part of the ceremony held to mark the introduction of the legislation.
7. Aboriginal elder Max Eulo performs a smoking ceremony at Parliament to mark the introduction of the Bill.

## REVIEW OF OPERATIONS

We now turn to a review of operations and achievements within the NSWALC and across the network during the reporting period, and look at planned activities in the new financial year.

To reflect the new structure we begin with a review of operations from all Units in what is now the Strategic Division.

### Legal Services Unit

The NSWALC Legal Services Unit reported another busy year.

The Unit continued to provide strategic legal advice to the Council, the Chief Executive Officer and managers on a wide range of issues relating to the ALRA and to other commercial and policy matters.

As anticipated in the previous reporting period, the Unit worked closely with the Commercial Unit to develop and implement processes for assessing land dealing applications.

It also provided advice to the Council, executive staff and LALCs about the nature and extent of their respective obligations under new sections 42D and 42G of the Act.

It continued to manage the land claims appeals process in the Land and Environment Court and the Court of Appeal.

It is the Unit's preference, where possible, to advise on all matters internally, to save costs and build in-house expertise, subject to capacity constraints

The number of matters, however, still requires the briefing out of appeals.

The Unit maintains a close working relationship with its external legal advisors to ensure the effective management of costs and to ensure skills transfer can still occur.

Legal services were also provided to Local Aboriginal Land Councils through the Zone Offices where specific advice had been requested on matters which the NSWALC considered to be of particular importance to the LALC Network as a whole.

The Unit anticipates an ongoing role in these types of activities and processes during the next reporting period, leading to an enhanced internal capacity to add value and reduce external costs to the NSWALC.

### Land Rights Unit

Given the crucial importance of land rights in the NSWALC's operations, we begin this section with a review of the operations of the Land Rights Unit during this reporting period.

The Unit continued to assist Local Aboriginal Land Councils lodge land claims throughout the year.

The NSWALC does so because many LALCs do not have access to the administrative resources, or the funding, to do so.

This includes researching, lodging and appealing land claims if their refusal is considered to have been unfair.

Before discussing the status of land claims at the end of this reporting period it is instructive to further consider how, and when, lands claims can be lodged, what can be claimed, and why these processes hold such intrinsic importance to Aboriginal people across New South Wales.

### Land Claims

The granting of land remains the sole form of compensation for dispossession available to Aboriginal people under the Aboriginal Land Rights Act, 1983.

The land claim process is set out in Section 36 of the Aboriginal Land Rights Act.

LALCs and the NSWALC can claim land under the ALRA.

The land that can be claimed is called 'claimable crown land'.

Claimable crown land is defined as:

- Land able to be lawfully sold or leased, or is reserved or dedicated for any purpose
- Land that is not lawfully used or occupied.
- Lands which are not, in the opinion of the Minister, needed or likely to be needed for

- residential land or an essential public purpose
- Not subject to a native title claim or a native title determination

The NSWALC expressed its frustration in this space last year about the slow pace of the land claims determination process and the hostile attitude of the State Labor Government in that process.

Minor improvements were facilitated by former Labor Premier, Nathan Rees and while there has been some improvement in the working relationship with officers of the Department of Primary Industries and Energy, which is now responsible for investigating claims, the process slowed even further with a change of State Government in March.

There are now two Ministers with responsibility for determining land claims.

The Minister for Primary Industries, Ms Katrina Hodgkinson, and the Minister for Regional Infrastructure and Services, Andrew Stoner, share responsibility for administering the Crown Lands Act. They have the power to decide whether to grant or refuse a land claim.

The Minister(s) can refuse a claim if the land is not 'claimable crown land'.

This involves the Minister(s) looking at the status of the land at the time the claim was made and making a decision about whether the land fits the definition of claimable crown land.

For example, it may be decided the land was needed for an essential public purpose, such as a hospital, or that the land was lawfully used or occupied by a person who had a grazing licence.

Alternatively, it may be decided the land is claimable and a claim granted.

LALCs and NSWALC are notified when a decision is made to either to grant or refuse to grant the land.

All refusals are assessed by the LSU.

Where an appeal is warranted, it is made to the Land and Environment Court.

Unfortunately, no claims had been determined

between the change of Government in March, and the end of this reporting period.

It was expected the new Government would take some time to put its ministerial and administrative arrangements in place after being out of power for 16 years.

The NSWALC was optimistic the new Government would seek to develop a co-operative relationship with the NSWALC in its approach to land rights.

In the meantime, the NSWALC continued to work with the Department of Primary Industry to ensure improvements in the land claims process and to seek a resolution of all issues in a timely and professional manner.

The practice by the previous Government of issuing limited title following successful land claims was a significant on-going concern as the reporting period ended.

Despite all of the above the NSWALC and Local Aboriginal Land Councils continued to exercise their legal rights by lodging land claims throughout the reporting period.

## New Land Claims

A total of 8,912 land claims were lodged by Aboriginal Land Councils during this reporting period.

The NSWALC lodged a total of 8,122. This represented 91% of those lodged.

LALCs lodged 790 land claims.

They were:

- |              |     |
|--------------|-----|
| • Gandangara | 15  |
| • La Perouse | 279 |
| • Walgett    | 494 |
| • Moree      | 2   |

All land claims by the NSWALC are usually made on behalf of LALCs.

Any land successfully obtained through this process is transferred to LALCs.

## Claims Granted and Refused

The Land Rights Unit is notified of all land claims grants and refusals.

A total of 14 claims were granted, in part, or in full, during the reporting period.

This compared with the granting of 69 land claims in the 2009/2010 financial year.

A total of 288 land claims were refused during the reporting period.

This was a substantial decrease from the 1153 refused claims in the previous reporting period.

## Claims Withdrawn

A total of 97 Land claims were withdrawn in the reporting period.

All but four were withdrawn following advice from DPI that they covered freehold land.

The Unit constantly seeks to ensure tenure information about land subject to claim is accurate but information is sometimes dated.

While LRU and the LSU continue to work with the DPI to improve our access to inexpensive, accurate and up to date information about the status of crown land, progress has been frustratingly slow

## Land Claims Overview

Official figures provided by the Land Claims Investigation Unit of the Department of Primary Industries provide an overview of the number of land claims lodged from the commencement of the ALRA in 1983 until June 30, 2010.

These figures show:

- A total of 35,839 land claims have been lodged since the *Aboriginal Land Rights Act* commenced in 1984
- 10,355 land claims have been determined
- 2,410 of those have been successful, in part, or in full.
- 6,840 had been refused.

The 35,000th land claim was lodged with the Registrar's Office on 23 February 2011.

## Outstanding Claims

More than 26,000 land claims awaited determination as this reporting period ended.

The majority of these—25,263 were lodged between 2005 and 30 June 2011.

More than 284 were lodged before the 2000/2001 financial year as outlined below.

- |           |            |
|-----------|------------|
| • 1984/85 | 3 claims   |
| • 1988/89 | 1 claim    |
| • 1990/91 | 1 claim    |
| • 1993/94 | 12 claims  |
| • 1994/95 | 16 claims  |
| • 1995/96 | 98 claims  |
| • 1996/97 | 23 claims  |
| • 1997/98 | 7 claims   |
| • 1998/99 | 13 claims  |
| • 1999/00 | 110 claims |

The oldest outstanding land claim was lodged on 29 September 1984, with five claims lodged between 1983/84 and 1992/93 yet to be determined.

These are the last of the 166 oldest claims which the former Labor Government promised to finalise by the end of 2010.

## Inspections, Appeals and Settlements

The Legal Services Unit continued to fulfil its core function of managing the legal process for land claims, particularly appeals to the Land and Environment Court and the Court of Appeal.

This work is vital to the viability and continued growth of the land base for Aboriginal people in NSW.

## Land Claim File Inspections and Appeals

The Unit continued to review DPI files on refused land claims.

The purpose of these reviews was to decide if they should be appealed to the Land and Environment Court.

The review of the DPI files has enabled the NSWALC to make strategic and informed decisions about appeals.

The NSWALC provides support to the land rights network by managing and funding such appeals and by working closely with LALCs to obtain instructions for the conduct of appeals, including settlement.

Its success rate continues to be high – over 50% of the appeals were won in Court or settled.

Of the 288 files inspected, the NSWALC appealed 31 land claim refusals in the reporting period.

The Land and Environment Court upheld two appeals in favour of LALCs, with one appeal discontinued.

The other appeals were either settled in favour of LALCs or remained on foot at the end of this reporting period.

Nine appeals from the previous reporting period also remained on foot.

A total of 40 appeals were before the Land and Environment Court at the end of the financial year.

A highlight of the reporting period was the successful appeal of the Tongarra Gap land claim by the Illawarra LALC.

First lodged in 1986, this claim was refused in 2006.

That decision was successfully appealed in the Land and Environment Court in June 2008.

The Minister took that decision to the Court of Appeal which upheld the appeal and ordered the matter be reconsidered by the Land and Environment Court.

In July 2010, the Land and Environment Court determined in favour of ILALC.

The Minister appealed again to the Court of Appeal in April 2011.

In a unanimous decision the Court dismissed the appeal on May 24, 2011, and awarded costs against the Government.

The decision of the Land and Environment Court in July 2010 to grant the land was upheld.

This matter has illustrated the value of persistence and commitment to land, particularly on the part of the Illawarra LALC members.

They maintained their commitment to their claim for a quarter of a century.

It is also a demonstration of the success of the NSWALC review and appeal policies.

## Land Claim Settlements

There was an increase in the number of land claim settlements in this reporting period, along with an increase in the proportion of matters settled.

The NSWALC welcomed this change in the Government's approach on settlements and continued to work with LALCs and the Government to develop mutually acceptable resolutions to outstanding litigation.

Some settlements do not result in all of the land originally claimed being granted.

For example, some LALCs have agreed to the granting of easements or to the exclusion of some land in a claim.

NSWALC has acknowledged the legitimate concerns of LALCs in agreeing to something less than they sought, particularly where claims have been outstanding for decades.

On the other hand, the grants of land that are made as a result of settlement are clearly preferable to an unsuccessful appeal.

Given the cost of a fully contested appeal is approximately \$100,000 (including counsel's fees), the settlement of claims represents a substantial saving to the network while returning land to Aboriginal people.

Since July 2010, the NSWALC successfully settled 17 appeals initially refused by the Minister.

These settlements resulted in substantial tracts of land being vested in Local Aboriginal Land Councils.

These included Moree, Armidale, Dareton, Mindaribba, Merrimans, Grafton Ngerrie, Dubbo, Narrabri, Bogal and Red Chief.

In at least one case, the Minister agreed to pay half of NSWALC's legal costs. This is unusual.

Parties normally fund their own costs.

Settlement discussions in other cases continued as this reporting period ended.

As mentioned earlier, the NSWALC had approximately 40 claims on appeal before the Land and Environment Court as this reporting period ended.

All were being managed by the LSU, some in conjunction with external lawyers and some in-house.

These appeals cover a wide range of cases, from refusals on the grounds of essential public purposes, to lawful use and occupation and residential lands. More appeals were likely to be filed in the new reporting period.

The NSWALC has established important points of law in terms of lawful use and occupation of Crown land, and in relation to the level and type of evidence required to properly establish that land is needed, or likely to be needed as residential lands, or for an essential public purpose.

Success in legal proceedings, including the settlement of claims, is largely a result of the policy of file review and critical assessment of the information revealed during that process.

The Unit anticipates the principles established by this case law, and by settlements achieved to date, will assist in reducing the volume, delay and cost of litigation in this area and pave the way for more negotiated outcomes in the future.

## Costs Awarded

In the reporting year, award of legal costs to the NSWALC were made either by the Court or by consent in the following matters:

- Court of Appeal (Tongarra Gap appeal) – the NSWALC was paid \$91,000
- Land and Environment Court (Armidale LALC appeal) – the NSWALC was paid \$27,500 to cover costs as part of the settlement

## Limited Title

Since the enactment of the ALRA in 1983 the State Government has always issued unlimited freehold title to land granted through claim or appeal.

As noted in this space last year the State Labor Government began issuing limited titles for granted land in November 2009 without any prior consultation with the NSWALC or LALCs.

The NSWALC expressed its opposition to the decision of the Government during the last reporting period and continued to express its opposition to this practice during the past financial year.

The practice continued despite this.

Of the 152 certificates of title issued in the reporting period, 66 were limited. The NSWALC considers this to be a cost shifting exercise by the State Government.

It transfers the responsibility for conducting and paying for land surveys from the Government to LALCs.

The impact of limited title is minimal while the land is not being used but LALCs are increasingly seeking to develop land.

As soon as they commence this process, they have to pay the survey costs.

While the NSWALC has welcomed advice from DPI that an additional \$3 million had been allocated to surveying relevant land, the rate at which land is being surveyed remains slow. The NSWALC continues to explore resolution of this issue.

In the settlement of appeals, the NSWALC has sought and been granted orders compelling the government to survey land before it is transferred.

## Compulsory Acquisition

The Unit worked with the Land Rights Unit throughout the reporting period to review forty three Compulsory Acquisition Notices from Government and Utilities issued under the *Land Acquisition (Just Terms Compensation) Act 1991*.

A total of fifteen of these Notices sought to compulsorily acquire land, and interests in land, already the subject of an Aboriginal land claim.

There is no legislative requirement for a LALC or the NSWALC to be notified of a compulsory acquisition, or to prevent the compulsory acquisition proceeding.

Compulsory acquisition of land which is vested in an Aboriginal Land Council is prohibited under section 42 of the *Aboriginal Land Rights Act 1983*, except where an Act of Parliament is passed to permit this to occur.

However, nothing protects land under claim from being compulsorily acquired between the lodging of a claim and its determination.

As outlined earlier, this can often take many years.

The Legal Services Unit receives Planned Acquisition Notices as a matter of courtesy, but there is no certainty it receives all of them.

The general approach, one largely supported by Government officials, is that the NSWALC will work with a LALC to seek the agreement of all parties to extend the time for objection from 120 days to twelve months to allow a claim to be determined.

Where appropriate, a LALC may agree to the withdrawal of part of a claim subject of a PAN.

This preserves some part of the claim area.

In instances where a claim would clearly not succeed the NSWALC recommends the claim be withdrawn.

This is, however, a decision for affected LALCs.

The NSWALC's view is that all land claims should be determined before any proposed compulsory acquisition proceeds.

## Land Claims Strategy

The Legal Services Unit worked with the Media and Marketing Unit during the reporting period to develop a land claims strategy to address ongoing problems with the Government's assessment of claims, the transfer of granted land, the lack of free

title searches, its inability to negotiate prior to an appeal being lodged and the transfers of limited title.

The strategy, which was endorsed by Council, sought to increase pressure on the Government and its officials to meaningfully engage with the NSWALC on these issues.

A formal complaint was also lodged with the State Ombudsman.

The Ombudsman's Office sought to begin a process of conciliation in December 2010 between Government officials and the NSWALC.

Since then, NSWALC officers have met with Government officials approximately every 6 weeks, to seek to resolve a range of issues including evidence in relation to use and occupation of licensed land, limited title, compulsory acquisition notices, settlements and appeals.

The meetings have assisted in building relationships and co-operation on attendant issues and were expected to continue in the next reporting period.

## Miscellaneous Amendments Group

The Legal Services Unit worked closely with Aboriginal Affairs NSW and the Registrar of the ALRA during the reporting period on further possible amendments to the ALRA consistent with the recommendations of the 2007 Task Force review and to improve the workability of the Act.

This work was conducted through a process known as the Miscellaneous Amendments Group (MAG).

The group was convened by the Registrar at the request of the Minister of Aboriginal Affairs, Mr. Paul Lynch, before the change of Government in March.

While the work had not resulted in any amendments being introduced in State Parliament during this reporting period, the NSWALC remains committed to this process.

Minister Dominello was briefed by the NSWALC upon assuming office late in this reporting period about the importance of this process.

The NSWALC looked forward to his support of a continuation of this process ahead of another full review of the Act during the next reporting period.

## AHO Head Leasing

The Remote Indigenous Housing National Partnership Agreement (RIHNPA), signed by the Council of Australian Governments under its 'Closing the Gap' targets is being implemented by the NSW Aboriginal Housing Office.

It is doing so through a 'Build and Grow' policy.

The AHO is seeking to enter into head leases with LALCs for up to 10 years (5 years with an option to renew for a further 5).

The effect of a head lease is the transfer of a significant interest in LALC land and assets in return for the management of housing stock and tenancy agreements, and, perhaps, most importantly, the allocation of funding to clear a backlog of maintenance on LALC owned houses.

The NSWALC worked closely with the AHO during the reporting period to develop a head lease that is both fair and reasonable to all parties and provides a secure framework to improve the housing of Aboriginal people in NSW.

In particular, the NSWALC has urged the AHO to ensure LALC members are well informed before making any decisions on proposed lease arrangements.

The NSWALC has produced a Fact Sheet and has provided assistance to LALCs through Zone Offices and the Program Management Unit to enable them to comply with the provisions of the ALRA.

Any decision to enter into a Head Lease is classified as a dealing in land under the ALRA.

This requires the approval of the NSWALC under section 42G.

The NSWALC is not involved in any advocacy or endorsement of proposed leasing arrangements.

This is a decision for LALC members to assess in accordance with their particular circumstances.

## Woods v Gandangara

The Land and Environment Court handed down a judgment on March 23, 2011 in the case of *Woods v Gandangara LALC; Thatcher v Gandangara LALC* [2011] NSWLEC 42.

This case raised concerns amongst LALCs across the network about the proper procedure to take to ensure tenants in breach of their tenancy agreements were evicted lawfully, both under residential tenancy laws and the ALRA.

Of most relevance was whether notices of termination were dealings with land under s52E of the ALRA for which a members' resolution was required, or whether this function could be delegated.

The Unit answered numerous queries from LALCs on this matter during the reporting period and also distributed an online network message to provide guidance on interpreting the outcome of the case.

It also reviewed a number of draft LALC members' resolutions to seek to ensure best legal practice was followed and drafted suggested resolution templates to the network to assist LALCs with such a process.

The decision in this case also prompted a review during the MAG process of the provisions of the Act on members' delegations.

## Carbon Farming Initiative

The Gillard Government introduced a package of legislation on Carbon Farming in the Federal Parliament in March 2011.

The package is designed to promote new economic opportunities for landholders, including Aboriginal landowners, to participate in a new carbon offset scheme to reduce carbon pollution.

The Unit reviewed the provisions of the scheme relating to the possible participation of Aboriginal landholder's.

It had provided initial comments on the draft legislation to the Department of Climate Change and Energy Efficiency in the month before the introduction of the legislation in the parliament.

The provisions on the participation of Aboriginal landholders had changed substantively in the draft legislation tabled in the House of Representatives

The draft legislation raised a number of concerns from a NSW land rights perspective.

These included the proposed exclusion of certain land rights holders from those having an “eligible interest” under the legislation and providing the Crown Lands Minister power in relation to Aboriginal held land in conflict with the *Aboriginal Land Rights Act 1983* (NSW).

The Unit made subsequent submissions on these concerns to Senate and the House of Representatives enquiries on the draft legislation in April.

The Unit received positive feedback on these submissions, which are both available to the public, from the Department of Climate Change and Energy Efficiency.

The Principal Legal Officer, Ms. Skyring, participated in a key stakeholders’ parliamentary roundtable discussion in Canberra in June during which she was able to raise the NSWALC’s concerns with the Minister.

The Unit is hopeful these issues can be addressed in the new reporting period to better protect the rights of NSW land rights holders who wish to participate in the scheme.

### **Koompahtoo Local Aboriginal Land Council**

In the previous reporting period, the Unit noted efforts undertaken to assist the Koompahtoo LALC, at the request of the KLALC administrator, Mr. Terry Lawler, in protecting the LALCs substantial assets following its dissolution

The previous report noted efforts being undertaken to remedy the effect of unauthorised land dealings carried out by KLALC.

This included successful litigation in the High Court of Australia against Sanpine Pty Ltd to set aside a joint venture agreement, as a result of which KLALC was awarded costs of \$215,291.47, and a Supreme Court judgment ordering that

land unlawfully transferred from KLALC to an investment trust be returned to the LALC.

The previous report also noted that in April 2005, the Independent Commission against Corruption (ICAC) released findings of corrupt conduct against eight people, and recommended prosecutions be considered against six of those persons, as a result of its investigation into KLALC.

At the end of the previous reporting period, four prosecutions had been launched.

Two of the prosecutions, against Ms. Debbie Marie Barwick and Mr. Malcolm Smith, ceased when the charges against them were dropped.

During May 2011 further corruption charges against former KLALC members were heard in the Downing Centre Local Court.

The proceedings concerned four charges of corruption, including one against William (Bill) Smith, the former Chairperson of KLALC, and other third parties who were charged with aiding and abetting him.

The charges were dismissed due for lack of evidence.

### **Litigation between Councillor Patricia Laurie and NSWALC**

In the NSWALC’s previous annual report it was noted the Land and Environment Court had found Councillor Patricia Laurie was disqualified from holding office.

Ms Laurie had contested that decision before the Court of Appeal in November 2009 and a decision on that matter was expected during this reporting period.

The Court of Appeal confirmed the disqualification in a decision in August 2010 and ordered a fresh election be held for the position of North Coast regional councillor.

The Attorney-General for NSW sought special leave to appeal to the High Court on the issue of whether a fresh election should be held. That application was dismissed in March 2011.

In the meantime, Mr. Dallas Donnelly had been elected to represent the region in December 2010. As noted earlier, he was unsuccessful in his bid for re-election in August 2011.

#### External Legal Costs

Expenditure on external legal service providers during the reporting period can generally be broken down into the following categories showing LSU budget expenditure shown as a percentage:

- Legal review of land claim refusals 2.75%
- Land claim litigation (appeals where land claims have been refused) 75.08%
- Compulsory acquisitions affecting land claims 0%
- Legal advice relating to the LALC Network 0.09%
- NSWALC general advice 15.00%
- Other NSWALC litigation 6.61%
- Review of Land Rights Act 0.47%

## A STORY OF LALC PERSISTENCE AND COMMITMENT

Aboriginal Land Claim 2673 was filed by Illawarra Local Aboriginal Land Council ('**ILALC**') on 3 March 1986 over two portions of land north of Budderoo National Park forming part of the Illawarra escarpment.

On 1 April 2005 part of the claimed land is reserved as part of the Macquarie Pass State Conservation Area.

On 22 June 2006 the Minister for Lands refused the claim.

The primary basis for the Minister's refusal was that the land was not claimable as it was needed or likely to be needed for the essential public purpose of nature conservation pursuant to section 36(1)(c) of the Aboriginal Land Rights Act 1983 ('ALRA').

On 25 August 2006 ILALC, with the assistance of the NSWALC, filed an appeal against the Minister's decision in the Land and Environment Court (LEC).

On 6 June 2008 Justice Sheahan of the LEC found that the land was claimable and made orders for the land to be transferred to ILALC.

On 1 September 2008 the Minister for Lands appealed against the decision of the LEC to the Court of Appeal.

### **1st Court of Appeal's decision**

On 11 September 2009 the Court of Appeal, in a 2 to 1 decision, upheld the Minister's appeal and ordered that the matter be sent back to the Land and Environment Court to be reconsidered.

Justices Hodgson and McColl found that the LEC had made errors of law and the prior LEC decision should be set aside.

In dissent Justice Basten found that the Minister's appeal should be dismissed.

The majority of the Court of Appeal held that Justice Sheahan's decision was wrong because:

- (i) His Honour asked the wrong question in determining whether the land was likely to be

needed; and

- (ii) His Honour took into account an irrelevant consideration by putting weight on the fact that the claimed land had not been included in Budderoo National Park in 2003.

### **Remittal:**

In accordance with the Court of Appeals decision, the matter was listed in the LEC for reconsideration before Justice Sheahan on 7 and 8 December 2009.

On 15 July 2010 Justice Sheahan again determined that the claimed land was "claimable Crown land" and that the ILALC's appeal should be upheld. He ordered that the land be transferred in fee simple to ILALC.

### **2nd Court of Appeal's decision:**

The Crown again appealed to the Court of Appeal, and the matter was heard by Justices Basten, Whealy and Sackville (Acting) on 14 April 2011.

On 24 May 2011 the Court of Appeal unanimously dismissed the Crown's appeal with costs as the Crown Lands Minister had not established that the primary Judge's decision was affected by an error of law. The Orders made by Justice Sheahan in the LEC on 15 July 2010 were upheld.

## Policy and Research Unit

As noted earlier, the work of the Unit continued to focus during this reporting period on culture and heritage, in line with the priority set by Council and the Land Council network.

Major legal reforms were secured for Aboriginal people in NSW in the last reporting period, including recognition of cultural fishing rights and increased protection for Aboriginal sites under the *National Parks and Wildlife Act 1974 (NSW)*.

The Unit worked during this period to ensure those rights were not diminished as new legislation, regulations, and policies, were developed to support those reforms.

The Unit also continued to assist in Council's advocacy campaign to establish independent Aboriginal heritage legislation and an Aboriginal Heritage Commission for NSW.

The campaign is being conducted under the banner: *'More than Flora and Fauna.'*

It seeks statutory recognition of the rights of Aboriginal people to own and control their culture and heritage – not the State Government or its agencies.

The NSWALC's advocacy campaign led to a commitment from both major political parties during the reporting period for the establishment of separate Aboriginal heritage legislation.

The Policy and Research Unit continued to work closely with Council, the CEO, the Legal and Media and Marketing Units, and partner organisations such as the native title body, NTSCORP Ltd, to ensure these commitments are delivered.

The Unit also worked on a range of constitutional, planning and economic development policy issues.

It also assisted Council prepare submissions and interventions on a range of domestic issues at United Nations forums.

These included:

- The need for greater domestic legislative protections for Aboriginal culture and heritage.

- The need to move beyond the symbolic recognition of Aboriginal peoples in the Australian Constitution;
- The need for Government to provide greater opportunities for Aboriginal peoples to engage in economic and social development opportunities through Aboriginal institutions established, elected and endorsed by Aboriginal peoples.

The reporting period also saw the Unit continue to develop resources and policy advice for the network of Local Aboriginal Land Councils.

These included responses to requests for advice on policy issues from LALCs, regular email notifications to the network on current and upcoming policy changes, and presentations at Regional Forums.

The Unit also expanded on a series of fact sheets, web pages and other information resources following requests from LALCs for information to explain how different laws and policies impact on Aboriginal people's cultural and human rights.

It was also responsible for overseeing the NSWALC approval processes for Community Land and Business Plans developed by Local Aboriginal Land Councils.

The details are outlined below.

## More than Flora and Fauna

The Aboriginal peoples of Australia maintain the oldest living cultures in the world.

The protection of our cultural and spiritual landscapes and materials, including sacred and significant sites, and objects, is vital to maintaining our cultures.

These are not given adequate legal protection in NSW.

The NSWALC has a statutory role, pursuant to section 106(7) of the Aboriginal Land Rights Act 1983 (ALRA), on Aboriginal culture and heritage.

The legislation states NSWALC has a statutory duty to:

- (a) to take action to protect the culture and

heritage of Aboriginal persons in New South Wales, subject to any other law,  
(b) to promote awareness in the community of the culture and heritage of Aboriginal persons in New South Wales.

Local Aboriginal Land Councils have a similar function, as it relates to their area, under section 52 (4) of the ALRA.

However, the NSWALC and LALCs are given no statutory power of protection.

The main law for the protection of Aboriginal culture and heritage in NSW is the National Parks and Wildlife Act, the State's flora and fauna legislation.

This Act provides that all Aboriginal objects are considered, with some exceptions, to be the 'property of the Crown'.

It vests in the Government the power to both protect Aboriginal culture and heritage and to approve its damage or destruction.

In June 2010, the NSW Parliament passed the National Parks and Wildlife Amendment Bill 2010.

The Aboriginal heritage provisions of the *National Parks and Wildlife Amendment Act 2010* and the National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulation 2010 came into effect on 1 October 2010.

They made significant changes to the Aboriginal heritage provisions of the NPW Act, as well as general administrative changes to parks and the management of threatened species.

The power to protect or destroy Aboriginal culture and heritage remained with the Government.

During work on that Bill the NSW Government announced that a Working Party for Broader Reform would be formed for a two year period to consider the establishment of separate Aboriginal heritage legislation in NSW.

It would report to the Minister for the Environment and the Minister for Aboriginal Affairs.

The State Government invited the NSWALC to participate on the Working Party as a result of its research and advocacy work during the legislative amendment process,

The Working Party was formed in November 2010. It comprises representatives from a range of sectors – Aboriginal, Heritage, Government, Minerals and Conservation.

The NSWALC looks forward to working with the new Government in upholding commitments made by both major political parties for stand-alone legislation for Aboriginal culture and heritage in NSW.

The Policy and Research Unit published two major research reports on culture and heritage during the reporting period. They were developed with the assistance of student interns and a consultant, Ms. Eloise Schrierer.

## Our Sites, Our Rights

This research paper provided a summary of key recommendations from past Aboriginal heritage reviews in NSW to inform the current inquiry.

The paper noted that while it would be of interest to those involved in the current reform process it was also hoped the history it contained would have a broader appeal, particularly for the Aboriginal community.

It pointed out five separate reports had resulted from separate inquiries into the management of Aboriginal culture and heritage since 1980.

All had recommended the establishment of an independent Aboriginal Heritage Commission with sufficient and separate funding to manage Aboriginal culture and heritage and to build capacity in Aboriginal communities to manage their culture and heritage.

## Our Culture, Our Heritage

This paper considered the perceived strengths and weaknesses of Aboriginal heritage systems in Victoria, Queensland and South Australia.

It was designed to provoke discussion on whether the NSW Government should look to any of the heritage models in those States as it formed its own stand alone legislation.

Both papers can be downloaded from the Culture and Heritage pages on the NSWALC website at [www.alc.org.au](http://www.alc.org.au)

The NSWALC has formally recognised the work of Aboriginal peoples in NSW in past enquiries into separate Aboriginal heritage legislation in NSW,

It has done so through Council's formal endorsement of the 'Foundation Principles of Aboriginal Cultural Heritage', as outlined in the most recent enquiry and the 1996 draft Green Paper: 'The Future Management of Aboriginal Culture and Heritage in NSW.'

It has also endorsed a range of international instruments, including the UN Declaration on the Rights of Indigenous Peoples, as the basis for broader reform of Aboriginal culture and heritage management in NSW.

The NSWALC will continue to advocate strongly throughout the new reporting period for a new regime, one which seeks the statutory recognition of Aboriginal control and ownership of Aboriginal culture and heritage in NSW.

## Aboriginal Heritage Information Management System

The Unit responded to several requests during the reporting period for advice from LALCs about the operation of the State Government's Aboriginal Heritage Inventory Management System (AHIMS).

The release of information from the system to external organisations, such as local government and developers, was of particular interest.

The Department of Environment, Climate Change and Water (DECCW) administers the NPW Act. Recognised

Aboriginal sites are recorded on AHIMS by DECCW. LALCs, Aboriginal groups and other persons can choose to notify DECCW of the location of Aboriginal sites and can seek protection of particular areas.

The Unit developed and published a Fact Sheet for LALCs outlining how they could access AHIMS through a new online search tool. It also canvassed issues LALCs might wish to consider when asked to endorse the release of information from AHIMS or provide AHIMS services.

The Unit also worked with other agencies, such as the NSW Department of Planning and the NSW Roads and Traffic Authority, to ensure they recognised the functions of LALCs and Traditional Owner Groups in relation to culture and heritage.

## Fishing Rights

NSWALC also continued to advocate for greater fishing rights for the state's Aboriginal fishers during this reporting period.

As reported earlier, the *Fisheries Management Amendment Act 2009*, was passed in the State Parliament in December 2009.

It contained formal recognition that fishing for the Aboriginal community is an imperative part of culture, encompassing spiritual, social and customary significance.

Advocacy by NSWALC and NTSCORP was integral to the development and passage of the legislation.

While the Act now provides for Aboriginal cultural fishing, in both freshwater and saltwater, without a permit or the need to pay a fee (within the definition of Aboriginal cultural fishing) those provisions will not be fully realised until appropriate regulations are in place.

The Government has implemented interim compliance measures to ensure Aboriginal people are not unfairly prosecuted until the regulations are finalised.

It is anticipated they will be put into place during the next reporting period.

## Aboriginal Fishing Advisory Council

The Act also provides for the establishment of an Aboriginal Fishing Advisory Council (AFAC).

This body will play a key role in advising the NSW Government on all Aboriginal fishing matters.

The Minister responsible for administering the Act cannot make recommendations on the regulations without consultation with AFAC.

In recognition of the role played by the NSWALC and NTSCORP during the legislative amendment process both organisations are now represented on the Council.

As reported earlier, the NSWALC lodged a submission in March 2010 with the Inquiry into Recreational Fishing, which was conducted by a State Parliamentary Select Committee and later provided detailed evidence to the public inquiry process.

It sought practical measures to increase Aboriginal fishing rights, with an emphasis on state-declared Marine Parks.

The Select Committee released its final report, *Recreational Fishing in NSW*, in December 2010.

Its report concluded that any regulation developed to support the new Aboriginal cultural fishing provisions under the *Fisheries Management Act* must be practical and allow Aboriginal people to carry out their traditional cultural practices.

Concern raised by the NSWALC, and other Aboriginal groups, with the Committee were also highlighted in the final report.

These included:

- The onerous permit process which has led to communities being unduly restricted from participating in cultural fishing within Marine Parks.
- The need for a clear single policy for all marine parks in NSW to allow Aboriginal cultural fishing free of a permit system, with certain limits.
- The need for greater Aboriginal representation on Marine Park Advisory Committees.

The continued restrictions on Aboriginal fishing rights in Marine Parks will ensure the NSWALC's ongoing advocacy in this area in the 2011-12 financial year.

## Commonwealth Heritage Laws

The NSWALC prepared a detailed submission to the Federal Government's review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) (ATSIHP Act) in 2009.

This Act gives the Federal Minister for the Environment and Heritage the power to make declarations for the protection of Aboriginal objects and areas.

The Federal Government made no formal announcement about the outcome of the Review during this reporting period.

## Planning Laws

State Planning laws and Local Government regulations play a crucial role in land management and heritage protection.

The monitoring of these planning issues, and the provision of advice to LALCs in this area, was a major focus for the Unit.

The Unit provided regular notices and updates to LALCs on Aboriginal heritage issues and when Local Government Councils made announcements in relation to new Local Environmental Plans (LEPs).

It also updated a series of six Planning Fact Sheets to explain relevant laws and policies.

They included step-by-step information on how Aboriginal voices could be heard on major developments proposals under Part 3A of the *Environmental Planning and Assessment Act*; at each stage in the development of Local Environment Plans, and how Local Councils could be encouraged to work with Aboriginal groups to protect culture and heritage.

The Environmental Defenders Office assisted the NSWALC in the development of the Fact Sheets.

The Unit also prepared a comprehensive submission in March 2010, titled *Zoning in on Aboriginal Land and Heritage Protection*, to the NSW Department of Planning.

It recommended better ways to protect Aboriginal heritage at the local level.

The Department had yet to release comprehensive advice on any changes in this area as the reporting period ended.

Policy and Research staff also participated in separate consultations coordinated by the Environmental Defenders Office on reform of the planning system.

These consultations resulted in the publication of a report by the Environmental Defenders Office in August 2010, *Reconnecting the Community with the Planning System*, which made a number of recommendations to the NSW Government.

The NSWALC also made submissions to the NSW Department of Planning and the Productivity Commission on various proposed reforms.

It submitted planning laws should provide clear rights for Aboriginal people to be consulted and involved in decision making processes to provide better protection for their culture and heritage.

The Unit also participated during the reported period as a non-voting member of the Aboriginal Heritage Advisory Panel (AHAP), which provides advice to the Heritage Council.

Unit staff also attended a Local Government Aboriginal Network Conference in September 2010, hosting a stall in conjunction with the Media and Marketing Unit.

It also worked with the Operational Policy Unit to support a NSWALC delegation to a Local Government and Shires Association Conference held in October 2010.

Staff assisted Councillors to develop a number of motions which sought to improve the protection of Aboriginal culture and heritage at the local government level.

## Economic Development

The Unit responded to a number of State and Commonwealth government initiatives and strategies which are intended to provide economic development outcomes for Aboriginal peoples in NSW.

This policy work underpins the NSWALC's own commercial activities and initiatives to generate economic development within the network of Local Aboriginal Land Councils.

In October 2010, the Unit responded to the Economic Development Chapter of the NSW Government's Two Ways Together program.

The NSWALC recommended that:

- a) Any economic development strategies receive appropriate resourcing.
- b) The NSW Government formally commit to work with the NSWALC and the network of Local Aboriginal Land Councils to deliver community based economic development.
- c) Appropriate funding be provided for TAFE positions.
- d) Greater recognition be given to the socio-economic disparity between urban Aboriginal and non-Aboriginal communities.
- e) An industry analysis be conducted to ensure successful pathways to employment are established.
- f) Strategies aimed at engaging Aboriginal people with the Local Government sector be strengthened.
- g) The introduction of mandatory Government procurement policies to increase Aboriginal employment.

In November 2010, the Policy and Research Unit provided a submission on the Commonwealth Government's draft Indigenous Economic Development Strategy.

It recommended:

- a) The Commonwealth Government work with Aboriginal land councils to deliver community based economic development and that it genuinely consult and engage with Aboriginal peoples and communities on policies that affect them.

- b) Measures to alleviate economic disadvantage must not discriminate against Aboriginal peoples, and must not undermine the rights Aboriginal people in the way the government's income management policy now does.
- c) Existing educational structures must be assessed before they can be relied upon to deliver outcomes.
- d) Training and development programs must be linked with geo-specific analysis of industry needs.
- e) Mentoring and other support programs must be considered for the long-term unemployed.
- f) The strategy must address the dual need for creating more mainstream employment for Aboriginal people whilst developing the capacity of Aboriginal communities to support that goal.
- g) Commonwealth Government procurement policies be amended to provide opportunities for Aboriginal owned businesses.

## Water Policy and Reform

In addition to its work on land rights the New South Wales Aboriginal Land Council also seeks to advance the water rights of Aboriginal people in NSW.

In 2008 the Commonwealth Government commenced the most significant water reforms in the nation's history.

It did so through amendments to the Commonwealth's Water Act 2007 with the agreement of State and Territory governments of the Murray Darling Basin.

The reforms are designed to manage all waters in the Murray Darling Basin through a new plan to optimise environmental, social and economic outcomes.

The proposed reforms present a real opportunity to incorporate Aboriginal values and needs into water planning, and in so doing go some way toward redressing the ongoing inequities in water resource distribution.

However, they also pose a significant socio-economic risk to the Murray-Darling Basin, and to the Aboriginal peoples, and communities, resident within it.

The Murray-Darling Basin Authority released a *Guide to the Proposed (Murray Darling) Basin Plan* in October 2010 for community consultation.

In response, the Policy and Research Unit provided a submission to the Murray-Darling Basin Authority in November 2010.

The submission noted the majority of the 119 Local Aboriginal Land Councils in the land rights network in NSW are located within the Murray Darling Basin.

Despite the traditional occupation and ownership of all lands and waters of the Basin area and beyond, the legal entitlements of Aboriginal peoples to their water in NSW remained at just 0.2 per cent of the state's licensed allocations—an under-representation by population.

This had resulted from a decoupling of land and water rights.

The gains in land rights under the statutory mechanisms of the Aboriginal Land Rights Act, 1983 (NSW) had not been met with comparable gains in rights to water.

The submission noted that it was common for the full diversity of Aboriginal peoples' interests in natural resources to be dismissed as merely 'cultural.'

Commendably, the Aboriginal Land Rights Act, recognised that such interests are of "spiritual, social, cultural and economic importance," to Aboriginal peoples.

The submission noted the Guide to the Basin Plan had acknowledged the definition of 'cultural flows' provided by the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and the Northern-Murray Darling Basin Aboriginal Nations (NMBAN)

However, the Guide acknowledged that "critical data gaps" remain in respect to the understanding of Aboriginal water use and values.

The NSWALC submitted that the current lack of data on Aboriginal values and interests in water must not be used to exclude Aboriginal peoples from their rightful entitlements to water.

The submission noted the Commonwealth's Water Act 2007 and Water Regulations 2008 both failed to include the resource rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

The Declaration, which had been endorsed by the Australian Government in April 2009, was a relevant international agreement which could be drawn upon in the preparation of the Murray Darling Basin Plan.

The submission also noted the *Intergovernmental Agreement on a National Water Initiative*, adopted by the Council of Australian Government's in 2004, contained some recognition of Aboriginal peoples inherent right to water.

Despite this, and the increasing recognition of both the ongoing injustices of Aboriginal dispossession, and the importance of Aboriginal knowledge to land and water management, the National Water Commission had admitted little improvement had been made in incorporating Aboriginal values and needs into water planning since the adoption of the National Water Initiative.

The NSWALC submitted the Basin Plan was a real opportunity to incorporate Aboriginal water values and needs into water planning.

In so doing, it was hoped the Basin Plan would go some way to redressing the ongoing inequities of water resource distribution in Australia.

The submission noted a scoping study conducted by the Murray Darling Basin Commission in 2003 had predicted the recognition of native title, "to the extent it eventually occurs at all in the Basin, will be undoubtedly confined to very small parcels of land and to requirements that native title holders be informed or consulted about 'mainstream' natural resource management decisions."

The NSWALC submitted that equitable access to water resource for Aboriginal peoples of the Murray-Darling Basin could not be left to depend on legal recognition of native title.

It also recommended the economic and administrative impediments for accessing Aboriginal Water Allocations must be reconsidered.

It pointed out the Nari Nari Tribal Council's water allocation, the first and only cultural access licence issued in NSW, can cost up to \$10,000 a year. In addition applications must be lodged every three months with representatives of the Council forced to travel from the Hay region to Sydney to lodge the licence.

It recommended adequate funds should be placed in an Aboriginal Water Trust to purchase access to water for the Aboriginal peoples of the Basin area.

It pointed out the NSWALC had proposed an Aboriginal Water Trust be established to provide the financial basis for Aboriginal access to water in the emerging market in 2000.

The NSW Government was considering water reforms at the time which led to the Water Management Act 2000 (NSW).

The NSW Government established the Water Trust in 2000 with a greatly reduced agenda from the one proposed. It provided limited funding had been exhausted by 2009.

However, the submission noted, the underlying principles of the initiative and the mechanisms and objectives of the Trust, as first proposed, remain commendable.

The severe lack of quantitative data on Aboriginal water use, interest and values and the underdevelopment of specific socio-economic assessment methodologies for Aboriginal related water requirements made it difficult to predict the impact the Basin Plan's water reforms would have on Aboriginal peoples and communities of the region.

Serious concerns were held in the Aboriginal communities of the Basin Area about indirect job losses, increased competition for employment, and greater strain being placed on the increasingly scarce provision of public services.

Census data indicated there were approximately 70,000 Aboriginal people living in the Basin region in 2006, comprising 3.3 per cent of the

Basin population and 15 per cent of the national Indigenous population.

It had been conservatively estimated the Aboriginal population of working age would increase by 44 per cent from just over 40-thousand in 2001 to just over 58-thousand in 2016.

An additional six thousand plus jobs would need to be created by 2016 just to maintain the current employment rate in step with the 15,216 employed in 2001.

More than 34-thousand Aboriginal people would need to be employed by 2016 if the Commonwealth Government's 'Closing The Gap' targets were to be met.

The current employment rates for Aboriginal males and females across the Basin area was 40 per cent and 30 per cent. This compared with 70 per cent and 60 per cent for non- Aboriginal males and females.

The NSWALC submitted there was an urgent need for further research into the socio-economic impacts of the proposed Basin Plan reforms for Aboriginal communities.

Government programs and strategies to mitigate the socio-economic impacts of the Basin Plan reforms must include specific measures to target Aboriginal disadvantage and vulnerability.

The NSWALC submission pointed out the network of Local Aboriginal Land Councils across the NSW portion of the Basin Area play a key role in providing employment and facilitating economic development in their communities.

Local Aboriginal Land Councils were required to develop Community Land and Business Plans which included objectives and strategies on investment of their assets and the conduct of business enterprises.

Strategies being developed by Government on mitigation measures should recognise and support the role Local Aboriginal Land Councils play in delivering economic development opportunities to their communities.

In summary, the submission's recommended:

- a) Recognition of the inherent rights Aboriginal peoples have to water.
- b) At least a 5% allocation from each water resource plan to be developed under the Murray-Darling Basin Plan for Aboriginal peoples, for the cultural, spiritual, environmental, social & economic purposes of those peoples' choosing.
- c) Government policies and assistance to overcome economic and administrative impediments that will prevent Aboriginal peoples from accessing such rightful entitlements.
- d) An Aboriginal Water Trust to purchase access to water for Aboriginal peoples of the Murray-Darling Basin.
- e) The incorporation of traditional ecological knowledge at all levels of water management planning across the entire Murray-Darling Basin.
- f) Special measures in Government programs and strategies to mitigate the socio-economic impacts of the Basin Plan reforms that specifically target Aboriginal socio-economic disadvantage and vulnerability.

## Federal Inquiry

In February 2011, the NSWALC provided a submission to the House of Representatives Standing Committee on Regional Australia *Inquiry into the impact of the Murray-Darling Basin Plan in Regional Australia*.

It focused on the socio-economic vulnerability of Aboriginal peoples of the Murray-Darling Basin to the predicted impacts of the proposed reforms, and again advocated for:

- a) Specific and special measures in government programs and strategies to mitigate the socio-economic impacts of the Basin Plan reforms, that address the particular socio-economic disadvantage and vulnerability of Aboriginal peoples.

The Inquiry Report found that "given the proportionally high Aboriginal population in the Basin, and corresponding levels of disadvantage, any structural adjustment packages needed because of job losses...must take into account the

specific needs of Aboriginal peoples". The report also recommended the following:

- a) that the Murray-Darling Basin Authority in developing the Proposed Basin Plan "recognise the social and cultural needs of Aboriginal people"; and
- b) "that the Commonwealth Government develop separate community basin planning that provides [amongst other things] recognition of the specific needs and economic circumstances of Aboriginal communities living in the Basin".

The Murray Darling Basin Authority plans to release the Proposed Basin Plan, and the final Plan, by the end of 2011.

The NSWALC will continue to monitor the progress of these reforms.

It is anticipated the organisation will provide a further written submission to the MDBA once the Proposed Basin Plan is released and may need to lobby the Federal and State government and other parties as, and when required, given the importance of these issues to Aboriginal peoples and communities in the Basin.

The NSWALC is also engaged in a research project with the NSW Office of Water funded by the National Water Commission. The key focus of the project is to obtain credible evidence to demonstrate Aboriginal people have always, and continue to have, a spiritual, cultural and economic association with water.

As noted last year, NSWALC officer, Mr. Phil Duncan, was appointed to the National Water Commission's First Peoples Water Engagement Council.

He was elected Chairperson of the Council in September 2010.

### **Aboriginal Tourism Action Plan for NSW**

The Unit provided a submission to Tourism NSW in November 2010 on its Draft Aboriginal Tourism Action Plan for NSW.

The NSWALC advocated for a genuine commitment of additional State Government funding for initiatives, including strategies of the Aboriginal Tourism Action Plan, to close the gap on Aboriginal disadvantage.

It also promoted the unique position of Local Aboriginal Land Councils to partner with Tourism NSW to deliver beneficial outcomes from the Aboriginal Tourism Action Plan.

The submission also sought a commitment from Tourism NSW to promote the establishment of an Aboriginal Keeping Place and Cultural Centre for NSW.

### **Roads and Traffic Authority: Aboriginal Cultural Heritage Procedures**

The Unit provided written comments during the reporting period on a draft *Procedure for Aboriginal Cultural Heritage Consultation* from the NSW Roads and Traffic Authority.

They were the culmination of lengthy but unsuccessful discussions with the Roads and Traffic Authority on the procedures.

They stressed the importance of the RTA ensuring the early identification of Aboriginal culture and heritage, sites and values, in the life of road projects.

This would ensure minimal impact on invaluable Aboriginal culture and heritage from such projects.

It was also recommended the RTA engage in broad and genuine consultation with Aboriginal peoples, communities and stakeholders, in the initial planning stages of projects

This was preferred over any reliance upon the NSW Government Aboriginal Heritage Information Management System.

### **Two Ways Together**

The Unit also provided policy advice to the Council and the NSW Government on the Two Ways Together Plan (2003-12).

As noted earlier this is the former State Government's key policy for addressing the socio-economic disadvantage experienced by Aboriginal peoples in NSW and is administered by Aboriginal Affairs NSW.

The NSW Government sought to review the TWT Plan in late 2010 given its timeline.

The NSW Government appeared committed to realigning the Plan with the objectives of the Closing the Gap strategy endorsed by the Council of Australian Governments.

The NSW Audit Office released its findings in May 2011 on a performance audit of the TWT Plan.

The Policy and Research Unit will continue to provide policy advice in this area during the new reporting period, particularly when the O'Farrell Government provides its official response to the audit.

### **Biodiversity Banking and Offsets Scheme (BioBanking)**

The Biodiversity Banking and Offsets Scheme (BioBanking) is a way in which Local Aboriginal Land Councils can conserve existing biodiversity and protect threatened animals, plants and ecosystems within their land.

As reported previously the NSWALC signed a grant agreement in 2009 with DECCW, now the Office of the Environment and Heritage, to support the network of Local Aboriginal Land Councils to make informed decisions and build capacity on the NSW BioBanking Scheme and other sustainable land use options.

The Unit conducted considerable research into the scheme during this reporting period.

This included research into the environmental, legal and economic implications of the scheme.

It also produced a number of resources on the subject for Local Aboriginal Land Councils.

This included the development of website content, an information sheet and a comprehensive seven-page guide to the BioBanking Scheme for Aboriginal landowners.

This provides an overview of the BioBanking Scheme, discussion on how the *Aboriginal Land Rights Act 1983 (NSW)* relates to BioBanking legislation, potential risks and benefits of the Scheme, possible taxation implications of the Scheme, and links to further resources and information.

The guide can be downloaded from the NSWALC website.

### **Other Environmental Issues**

The Unit also monitored changes in programs and initiatives and provided responses to a number of inquiries and reviews relating to environmental issues in NSW during the period.

Two substantial submissions were developed in response to the NSW Draft Biodiversity Strategy 2010-2015 and the Caring for our Country review.

These submissions outlined key issues relating to environmental and biodiversity conservation activities.

They included the crucial importance of acknowledging Aboriginal rights and connections to Country, the importance of genuinely incorporating Traditional Ecological Knowledge into land, natural resource and biodiversity initiatives, and the importance of sustained funding for Aboriginal organisations to undertake biodiversity and conservation initiatives.

### **International Engagement**

As reported earlier NSWALC engages in, and supports representation at the international level to progress basic human rights in Australia.

Its principal overseas engagement is with the United Nations.

The Policy and Research Unit prepared a number of interventions for Councillors to present to the United Nations during the reporting period.

It also developed a series of lobbying packages on these submissions and other recent work by the NSWALC which is detailed in the International Advocacy and Engagement Section in this report.

## Constitutional Reform - NSW

The NSWALC sought a commitment from the Local Government sector for Constitutional recognition of Australia's First Peoples at the Annual Conference of the Local Government Association of NSW in 2009.

The Conference adopted a resolution of support.

As a result, the NSW Government announced it would move to provide a recognition of Australia's First Peoples in the preamble to the NSW Constitution.

The Keneally Government introduced the *Constitutional Amendment (Recognition of Aboriginal Peoples) Bill* on 8 September 2010 and released the draft amendments with a call for written submissions.

NSWALC provided a response which encouraged the NSW Government to undertake proper consultation and negotiation with Aboriginal peoples on the proposed reforms and to endorse principles within the United Nations Declaration on the Rights of Indigenous Peoples.

The NSWALC supported the amendment with proposed additional wording to the proposed section 2A(b).

The proposed additional wording read:

*The People and Parliament of New South Wales recognise that Aboriginal people **are the traditional custodians and occupiers of the land in the State of NSW and have a continuing spiritual, social, cultural and economic relationship with their traditional lands and waters and have made a unique and lasting contribution to the identity of New South Wales.***

The Unit developed speech notes for Chairwoman Manton for the special sitting of the NSW Parliament which considered the amendments.

The Bill passed on 21 October 2010 and incorporated the NSWALC's proposed amendments.

The Preamble to the State's Constitution now reads:

- (1) Parliament, on behalf of the people of New South Wales, acknowledges and honours the Aboriginal people as the State's first people and nations.*
- (2) Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:  
(a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and  
(b) have made and continue to make a unique and lasting contribution to the identity of the State.*
- (3) Nothing in this section creates any legal right or liability, or gives rise to or affects any civil cause of action or right to review an administrative action, or affects the interpretation of any Act or law in force in New South Wales.*

Chairperson Manton urged the Government to take the next step on the path towards full recognition of Australia's First Peoples by implementing the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples into law, policy and service provisions for Aboriginal people in NSW.

## AUSTRALIAN CONSTITUTIONAL REFORM

The Australian Government committed in December 2010 to reform of the Australian Constitution at the next federal election to amend the Preamble to recognise Aboriginal and Torres Strait Islander peoples.

The Policy and Research Unit will monitor developments in this area in the new reporting period in line with the NSWALC's position on these issues.

## Community, Land and Business Plans

As reported earlier each Local Aboriginal Land Council must prepare and adopt a Community Land and Business Plan.

The provisions for the plans are set out in Division 6 of Part 5 of the ALRA.

The Act sets out a consultation and approval process to be adopted in developing and implementing the plans and the matters to be covered by them.

They must contain objectives and strategies for:

- The acquisition, management and development of LALC land and other assets;
- The management of community benefits schemes, including social housing schemes;
- The conduct of business enterprises and investment of assets; and
- Aboriginal culture and heritage matters

A LALC CLBP can be for a period not exceeding five years.

The plan must be approved by the members of a LALC and by the NSWALC.

The NSWALC must not approve a plan unless it is satisfied it complies with the ALRA and the Regulations, and is consistent with any applicable policy of the Council.

Once approved, a substantial failure by a LALC to comply with its plan is considered a substantial breach of the requirements of the ALRA.

Such a situation can result in administration.

If a LALC does not have an approved CLBP by the due date stipulated by the Act or the expiry date of its previous plan, the NSWALC may extend the period of time within which the LALC is to prepare and adopt its plan.

At the end of the reporting period the NSWALC had approved 96 plans. Nineteen plans had yet to be approved.

Four Local Aboriginal Land Councils had been granted exemptions.

The NSWALC will be working closely with the LALCs to ensure ongoing compliance with the provisions of the ALRA.

As noted earlier the responsibility for CLBP's within NSWALC transferred from the Policy and Research Unit to the Program Management Unit from July 1, 2011.

## Submissions

Formal submissions represent an important part of the work of the Policy and Research Unit. NSWALC has produced a significant number of high quality research and submissions in 2010-2011.

Following is a comprehensive list of submissions, including a number mentioned earlier in this report:

- Joint NSWALC and NTSCORP submission on the *Draft National Parks and Wildlife Regulation 2010(NSW)*, provided to the then NSW Department of Environment, Climate Change and Water (**DECCW**), in July 2010.
- Submission on the NSW Government draft *Leases and Licences Consultation Policy and Procedures*, provided to DECCW, in September 2010.
- Submissions on the *NSW Closing the Gap Strategy – Culture and Heritage and Economic Development Chapters*, provided to DECCW and Aboriginal Affairs NSW respectively, provided in October 2010.
- Submission to the NSW Parliament Select Committee on Recreational Fishing *Inquiry into Recreational Fishing*, in October 2010.
- Submission on the Guide to the proposed *Murray Darling Basin Plan*, provided to the Murray Darling Basin Authority, in November 2010.
- Submission on the Draft *Aboriginal Tourism Action Plan for NSW*, provided to Tourism NSW in November 2010.
- Submission on the draft *Environmental Planning and Assessment Regulation(NSW)*, provided to NSW Department of Planning, in November 2010.
- Submission to the Commonwealth Government *Indigenous Economic Development Strategy (consultation draft)*, provided to the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, in December 2010.

- Submission on the NSW Government draft *Guides on Aboriginal cultural heritage regulation*, provided to DECCW, in December 2010.
- Submission to the Review of the *Noxious Weeds Act 1993*(NSW), to Industry and Investment NSW, in January 2011.
- Submission on the *NSW Draft Biodiversity Strategy 2010-2015*, provided to DECCW, in February 2011.
- Submission to the Parliament of Australia, House of Representatives Standing Committee on Regional Australia *Inquiry into the impact of the Murray-Darling Basin Plan in Regional Australia*, provided in February 2011.
- Submission to the *Our Cities* consultation, provided to the Commonwealth Department of Infrastructure and Transport, in February 2011.
- Submission on the *Strengthening Community Wellbeing Toolkit*, provided to DECCW, in March 2011.
- Submission on the draft *Guide to National Heritage Listings for Indigenous Communities*, provided to the Commonwealth Department of Sustainability, Environment, Water, Population and Communities, in April 2011.
- Submission to the review of *Caring for our Country*, provided to the Commonwealth Government Land and Coast Team, in May 2011.
- Submission on the draft *Procedure for Aboriginal Cultural Heritage Consultation and Investigation*, provided to the NSW Roads and Traffic Authority in June 2011.

## Educational Resources

The Unit also produced a large number of educational resources during the reporting period.

The range of materials for the LALC network included nine new Fact Sheets on 'Site Protection' with others on Marine Parks, AHIMS and Mining.

All finalised Fact Sheets are available on the NSWALC website.

## Email Bulletin

The Unit also introduced a new bi-monthly 'e-bulletin' or email newsletter during the reporting period. They followed a number of requests from interested members of the broader public for more information about the advocacy and policy work of NSWALC.

The E-bulletin is designed to keep interested parties up to date on current and emerging issues relevant to our network and provides updates on the Unit's activities including submissions, events and publications.

The E-bulletin, first produced in March 2011, is distributed to internal and external stakeholders.

## Partnerships

Following on from the signing of a Memorandum of Understanding between NSWALC and NTSCORP in 2009, NSWALC continued to work with the native title body, on major reforms which impact on Aboriginal people across NSW, including culture and heritage reforms.

The MOU has provided a framework within which both organisations have been able to find common ground to advocate for improved protections for Aboriginal people in NSW.

## Coalition of Aboriginal Peak Organisations

A Memorandum of Understanding was also signed at the NSWALC State-wide conference in April 2011 to form a Coalition of Aboriginal Peak Organisations.

The signatories were: the NSW Aboriginal Land Council, Aboriginal Legal Service (NSW/ACT) Limited, NSW AECG, Aboriginal Health & Medical Research Council of NSW, Link-Up (NSW) and NSW Aboriginal Child, Family & Community Care State Secretariat.

The signing of the MOU signalled a new era of co-operation and understanding between peak Aboriginal organisations in NSW in their dealings with Government.

The Memorandum of Understanding commits each of the six member organisations to support and foster the social, economic and cultural well-being of Aboriginal peoples in NSW.

## Workshops, Events and Meetings

This reporting period also saw the Policy and Research Unit attend a number of Workshops and events.

The staff received invitations to attend a number of the Councillor's Regional Forums to present on Culture and Heritage issues.

The Unit also coordinated the organisation and running of the 2011 NSWALC State Wide Conference.

The Unit's Director, Ms McHugh, presented a Conference session on the broader reform process involved in Aboriginal culture and heritage laws.

The Unit also ran an information stand from which members and other participants were provided information and resources on a variety of policy issues affecting Aboriginal peoples in NSW.

Surveys related to Aboriginal culture and heritage and the NSW BioBanking Scheme were conducted during the conference.

The information and views gathered from participants is being used to help guide the Unit's activities on these issues.

The culture and heritage survey prompted important discussions and highlighted the urgent need for broad reform.

More than 97% of respondents indicated the current laws in NSW are either failing to protect Aboriginal culture and heritage or are only protecting some Aboriginal culture and heritage.

Other events attended by Policy and Research Unit staff included:

- Parks Leadership Conference, Luna Park, 26 Aug 2010
- Local Government Aboriginal Network Conference (LGAN), Parramatta, 14-16 Sept 2010
- 22 July Presentation to Sydney/ Newcastle Forum at Mooney Mooney.
- 24 Aug CLBP and C + H presentation to Moree LALC.

- 9 Sept 2010 Lecture to Masters Social Policy students, Macquarie University, about the history of land rights and land Councils.
- History Council
- National Indigenous Radio
- 2nd Session of the Expert Mechanism on the Rights of Indigenous Peoples, Geneva, July 2010
- Universal Periodic Review, Geneva, February 2011
- 10th Session of the United Nations Permanent Forum on Indigenous Issues, New York, May 2011
- Official Reception at the Australian Permanent Mission to the United Nations, New York, May 2011
- Bushfires in the landscape conference, Nature Conservation Council, 23-24 June 2011

## Media and Marketing

The NSWALC's increased advocacy effort through the Council increased the Unit's workload throughout the reporting period, particularly with the decision to publish the rights-based magazine Tracker.

The Unit dealt with a constant stream of inquiries from Aboriginal and mainstream media on the national, state, local and international political activities of the Council, legislative change, and LALC matters.

It also dealt with a stream of email traffic from the NSWALC website seeking a wide array of information on Aboriginal Affairs issues.

Major activities included:

- Informing Local Aboriginal Land Council Boards, their members and staff, as well as NSWALC staff, on a range of issues by drafting and issuing a series of network messages in consultation with the Chairperson and the Chief Executive Officer.
- The preparation of a range of media statements, speeches, and background briefing and decision papers for Councillors and the Chief Executive Officer on a wide range of issues.
- The development, design and production of Tracker magazine.
- The production of a range of videos.

- The production and distribution of the NSWALC's 2009/10 Annual Report.
- The marketing and media element of the NSWALC State Conference in April 2011.
- The continuing development and promotion of NSWALC's *Books Behind Bars* campaign.
- The upgrade and maintenance of the NSWALC's Intranet and Internet sites.
- The design, production and distribution of a wide range of marketing materials.
- Maintaining a close liaison with relevant stakeholders.

The Unit also assisted the Council and the Chief Executive Officer with a range of strategic public affairs issues throughout the year.

It continued to work closely with the Policy and Research and Legal Services Units on specific key public awareness campaigns.

These included land rights, particularly the slow determination of land claims, and a culture and heritage campaign designed to secure the establishment of a long-promised Aboriginal Heritage Commission.

## New Products

Two major highlights during the reporting period were the development and production of Tracker Magazine and the roll out of the first material from Media and Marketing's Video Production Unit.

While they resulted in a significant increase in the workload of the Unit both are considered essential tools in the NSWALC's advocacy work and the decision of Media and Marketing Director, Mr. Graham, to move the production of the Unit to multi-media platforms, in line with the rapidly changing nature of media in Australia.

## Tracker Magazine

The first edition of Tracker magazine was produced for, and officially launched at, the NSWALC's Statewide Conference in April 2011.

The publication grew out of a request from Councillors in late 2010 for the Media and Marketing Unit to consider the creation of a Council newsletter to solve the problem of providing direct information to LALC members across NSW.

The inability to provide direct, timely and factual information to LALC members has constantly plagued the organisation given the prohibitive cost of direct mail to more than 20,000 members.

Many have no access to the internet.

After much consideration Mr. Graham, and Strategic Initiatives Officer, Mr. Johnstone, took a proposal to Council to eliminate that cost and generate revenue by producing a news magazine which would operate like a normal business and be cost-neutral to the NSW Aboriginal Land Council.

The magazine, to be called Tracker, would be a rights-based monthly magazine, owned and produced by Aboriginal people which would campaign for the interests of Australia's First Peoples.

Tracker would also:

- (a) promote key NSWALC messages to Aboriginal land council members;
- (b) Key messages from LALCs to the land rights network.
- (c) promote key NSWALC messages to other Aboriginal and non-Aboriginal people across NSW, nationally and internationally;
- (d) advocate strongly for the rights and interests of Aboriginal people in NSW, and beyond.

It was proposed each LALC member would receive a free copy of Tracker by direct mail to their home.

In addition, the publication would be available to the general public through commercial sales in news agencies around the nation and by subscription.

It was pointed out the proposed circulation for Tracker would be at least three times larger than its nearest competitor from its first edition, due to the direct mail to LALC members.

The Registrar of the ALRA had agreed to release a confidential membership mailing list to the NSWALC for direct mail purposes, subject to the NSWALC agreeing to use the list strictly for that purpose.

It was proposed Council provide seed funding for the magazine ahead of the generation of revenue from advertising and a subscription base.

Tracker would eventually be operated as a company limited by guarantee.

An editorial charter would be adopted to guide the editorial content of the newspaper.

The publication would seek to:

- Advance the inherent rights of all Aboriginal and Torres Strait Islander peoples through evidence-based, balanced and culturally appropriate journalism.
- Promote the recognition of those rights, particularly as they apply to Aboriginal people as the First Nations of NSW through fair and accurate reporting and opinion.
- Would not subscribe to any given mainstream political viewpoint.
- Would seek to expose the use of mainstream media as anti-rights propaganda or to promote intolerance and conflict.
- Would express its opposition to discrimination of all kinds and seek to combat racism by promoting debate within all sectors of the community.

Council approved the development, production and launch of the magazine at a meeting in February 2011.

It was warmly received by delegates at the NSWALC's State Conference in April 2011, immediately after the NSW State Election.

The edition contained a major feature canvassing the views of Aboriginal leaders in South Australia, Queensland and Tasmania on the need for national land rights legislation and a host of opinion columns from prominent Aboriginal and non-Aboriginal political and legal commentators.

It also contained an analysis of the NSW State Election result from an Aboriginal land rights perspective along with an edited version of Mr O'Farrell's last words to the NSW Parliament on Aboriginal Affairs as Opposition Leader before becoming Premier.

In the absence of any election campaign documents his speech on the Constitution Amendment (Recognition of Aboriginal People) Bill provided a telling insight into his core political values and how he could approach Aboriginal Affairs in Government.

The edition also contained a letter from Premier O'Farrell congratulating the NSWALC on the publication.

A special section, LALC Land, was devoted to stories about the activities of Local Aboriginal Land Councils across the State.

This became a permanent feature in the three subsequent editions published to the end of this reporting period.

These editions promoted voter participation in the NSWALC election and provided detailed coverage on a range of rights issues not found in the mainstream media.

As the reporting period ended a Tracker website was in the final stages of development along with a range of Tracker marketing material. This website was launched in August 2011.

Subscriptions and advertising revenue were beginning to reach early projections.

The magazine was being well received across the LALC network and with the general public.

## Resource Centre

Established in early 2008, the NSWALC Aboriginal Resource Centre has proved to be an increasingly valuable facility.

The Centre, on the ground floor of Head Office, incorporates the Unit's work areas, NSWALC reception facilities, and a steadily growing reference library on Aboriginal Affairs issues.

The Unit produces and distributes a range of marketing materials to the ALC network, Aboriginal communities, and the wider public.

All are produced in-house.

The design and desktop publishing activities continued to produce a significant cost saving to

the organisation during the reporting period. The production and distribution of these materials is co-ordinated through the Resource Centre.

The management and operation of the Books Behind Bars program is also conducted from the Centre.

## Media Releases, Speeches and Network Messages

The Unit drafted a constant stream of media statements, speeches, speaking notes and network messages for members of Council, and the Chief Executive Officer, during the reporting period.

The material provides a valuable insight into the public advocacy work of Council, and individual Councillors, throughout the reporting period.

They focused on the contemporary and historical importance of land rights and the many challenges which lie ahead to build on the gains achieved over the past 28 years.

Key speeches and media statements were drafted for a series of events which ranged from Regional Forums to NSWALC interventions at the United Nations.

A number of Local Aboriginal Land Councils were also assisted with media inquiries and the drafting of public statements.

All media statements, network messages and speeches are normally lodged on the NSWALC website.

They provide a useful historical reference point for those interested in charting the progress and challenges of land rights in NSW.

They also provide an opportunity to mark the passing of Aboriginal elders during the reporting period.

Such was the case with the passing of renowned author, poet and rights campaigner, Doctor Roberta Sykes, in November 2010.

Speaking on behalf of the NSWALC, Chairwoman Manton said Doctor Sykes passing was a sad day for the Aboriginal rights movement.

Doctor Sykes was the first executive secretary of the Aboriginal Tent Embassy in 1972 and also worked as an adviser in Aboriginal health and education.

She became the first black Australian to attend Harvard University in the 1980s, and went on to win awards for a series of autobiographies which, in part, charted her involvement with the protest movement. She was awarded the Australian Human Rights Medal in 1994.

Councillor Ah-See issued a statement the following month expressing the NSWALC's sadness at the passing of land rights and Mindaribba LALC stalwart Rick Griffiths.

The sudden passing of Mr. Griffiths, he said, had sent shock waves through the entire Aboriginal land rights movement of New South Wales, and in particular, the Newcastle region.

Aboriginal NSW had lost a true soldier, he added. "Rick will certainly be missed by the many that regarded him as a brother and a true friend," Councillor Ah See said.

"Rick's work in our region over the years literally has no equal, and his memory will live in the hearts of those he's touched," he added.

"I want to send my deepest condolences to the Griffiths family who've lost a brave Aboriginal warrior."

He pointed out Mr. Griffiths had achieved many advancements and improvements for Aboriginal people in the Newcastle region.

His work in establishing the Aboriginal Home Care Pilot Program, important reform within the Mindaribba LALC and the lasting change he implemented during his time spent at ATSIC were "just a few on a long list of achievements."

"If I could achieve even half of what Rick has over the years, I'd leave black politics a very happy man," he added.

“He was an inspirational speaker, someone I looked up to and respected and I’ll always remember his impassioned and hardline activism.”

The NSWALC also noted the passing in the same month of Mrs. Rose Chown, the founder of the Wiradjuri Wellington Town Common Group.

They were the first Traditional Owners, all women, in mainland Australia to make a claim for Native Title of their Wellington homelands, located at the base of Mount Arthur.

Mrs. Chown fought hard to claim native title.

It covered the Wellington Homelands to ensure a future for the youth that would lead to pride in their culture, identity and connection to country.

She and the community were given the title deeds to Wellington Common, her ancestral home near Macquarie River, thirteen years later.

Councillor Ah-See, a relative of Mrs Chown, said she was a cherished elder of the community.

“She leaves an unrelenting legacy for her people, especially our youth; she’s our equivalent to Mabo, to Perkins, to the Pattens, and the Dixons,” he added.

Network messages were also issued to note the passing of Munro family matriarch, Carmine May Munro. She and husband Lyall Munro Senior fought long and hard for equal rights in the Moree region and in the protection of the Gamilaraay language.

The NSWALC also expressed its deepest sympathy to the Scott and Ingram families following the passing of Sylvie Scott, a Wirajduri woman who became a respected elder and icon in Redfern.

A further message was issued to note the passing of Gamilaroi land rights icon, Uncle Jack Smith who devoted his life to the fight for land rights, particularly on the Central Coast.

Uncle Jack worked relentlessly to ensure the Darkinjung Aboriginal Land Council became one of the most successful in New South Wales.

Chairwoman Manton also paid tribute to world champion boxer Lionel Rose, who passed away in May, 2011.

“Lionel Rose was a great champion. He inspired a lot of Aboriginal people - myself included - at a time when we were barely even considered citizens of this country,” she said.

“He showed a great fighting spirit, the same spirit that has sustained my people for generations,” she added.

“You’ve still got a lot of living left to do at 62, but for Aboriginal people that’s often not the case.

“But I believe Lionel would want us to remember him for his life, not his passing. And it was an amazing life. He was a trail blazer in so many respects.

“Our deepest condolences go to Lionel’s family. He was a very special man and he will be greatly missed by the Aboriginal community of NSW, and beyond.”

## A Vote for Rights

Media statements were issued to state the NSWALC’s position on a range of local, regional, state, national and international issues.

Council issued a public statement in mid-August, 2010 with urging all Aboriginal residents of NSW to cast their vote in the Federal Election.

“By exercising your voting right, you’re refusing to remain silent on the issues that matter most in your community - both in the cities and out bush,” she said.

Ms. Manton noted the NSWALC had written to all the major parties during the election campaign seeking any fresh policy proposals and a working dialogue.

“It’s fair to say, that for the most part, we received very little in return,” she said.

An eight-page National-Liberal Coalition policy document had been received just days before the election.

“It supports the Australian Employment Covenant, blindly backs the philosophies of Cape York man Noel Pearson and continues its bipartisan support for the (NT) intervention and nation-wide income quarantining,” she said.

All of these measures are devoid of any independent evidence to back their effectiveness,” she added.

“Meanwhile, Labor re-committed to recognising Aboriginal people in the Constitution. It also stands by its own contested interpretation of restoring the suspended Racial Discrimination Act unconditionally - and will continue and strengthen key intervention measures such as welfare quarantining if re-elected,” she added.

“For our people both here in NSW and across the country, the best outcome we can hope for is that the Australian Greens emerge holding the balance of power in the Senate.

“The Greens have sought to consult meaningfully with Aboriginal people all over Australia. They have produced the most comprehensive and considered Indigenous policy of any party on Capital Hill.

“They are the only party to oppose the intervention, and provide clear, concise and comprehensive measures and goals outlined in a rights-based policy agenda.

“The Greens want compliance with international agreements and obligations that recognise the rights of Aboriginal people.

“They want equality of access to essential services and development opportunities for our people within a decade.

“They want equality on all major indicators of health, education, training, housing, employment and living standards within a generation.

“These are exactly the outcomes peak organisations, such as the NSWALC, continue to fight for.

“NSWALC urges all Aboriginal and Torres Strait Islander people - and those many non-Indigenous Australians who care about our shared future - to vote for the Greens on Saturday in both the House of Representatives and in the Senate.

“A vote for the Greens is a vote for Aboriginal rights.”

The result of the August 21 election was welcomed in a subsequent media statement.

Independents and the Greens won the balance of power in the House of Representatives and the Senate.

It was a victory for democracy, Ms. Manton said in a statement.

“The situation will ensure the voice of the Independents and the Greens, in both policy and parliamentary procedure, can no longer be marginalised or ignored by the vested interests in both major parties,” she added.

“The interests and aspirations of our people have, to date, suffered a similar fate.

“We believe the makeup of the new Federal Parliament holds the promise of a timely advance in the rights and aspirations of Aboriginal and Torres Strait Islander peoples.

“We would certainly hope that, if nothing else, the voice of the Independents, and others, in the new Parliament will assist in ensuring both major parties stop painting all the voices of the Aboriginal population of Australia, as the Member for Lyne, Rob Oakeshott, has repeatedly said with the ‘one brush of Noel Pearson’.”

“The land rights movement in New South Wales shares his concern and frustration about the inordinate attention given to the Northern Territory and Cape York in the current Closing the Gap strategies and related issues.

“We believe our most populous communities along the Eastern seaboard and their leaders have been, and continue to be, ignored in the policy settings from both major political parties.

“We note Mr. Pearson’s call in *The Australian* today for Mr. Oakeshott to back Tony Abbott to form a minority Coalition Government while describing him as a ‘once in a generation conservative who could lead the way on reconciliation.’

“Mr. Oakeshott’s decision is a matter for him but Mr. Pearson’s experience of Mr. Abbott is certainly not ours.

“He has consistently ignored the work of the land rights movement in NSW, and the well-being of the most populous Aboriginal communities in our state, despite the fact they are in his own backyard.

“This is a matter of public record.”

### Wild Rivers and Rights

The NSWALC later called on the minority Gillard Government and the Federal Opposition to strengthen all land rights and native title laws across Australia on the back of debate on the Queensland Government’s Wild Rivers legislation.

The statement urged them to concentrate on the crucial resource rights and free, prior and informed consent issues which had been raised by debate in Federal Parliament on Opposition Leader Abbott’s Private Members Bill to overturn the Queensland legislation.

“The Federal Native Title regime, and state land rights laws, should all recognise the resource rights of Aboriginal land owners and the need for Government’s and industry to gain free, prior and informed consent on proposed developments from Aboriginal owners,” Ms. Manton said.

“If this was the case, there would be no need for the Commonwealth Parliament to be considering overturning State laws as Mr. Abbott’s Private Members Bill now seeks to do,” she added.

Ms. Manton pointed out that members of Cape York Land Council had met with the NSWALC to seek its support for the Abbott Bill.

NSWALC had closely examined the Wild Rivers (Environmental Management) Bill 2010 and the report of the Inquiry into it by the Senate Legal and Constitutional Affairs Committee.

“It is obvious from the public and parliamentary debate the Wild Rivers issue, and a Abbott Bill, excite great passion on both sides of the argument and great suspicion about the political motives of Mr. Abbott,” Ms. Manton said

“Many Aboriginal people, particularly in Mr. Abbott’s home state of New South Wales, are entitled to be surprised and suspicious that the leader of the Liberal Party, which sought significant reductions in the rights of our people under the Native Title Act while in Government, is now proposing legislation which expands the resource rights of native title holders,” she added.

“They are also entitled to be surprised and suspicious that he, and the Federal Opposition, publicly invoke the principles enshrined in the Universal Declaration on the Rights of Indigenous Peoples in seeking support for the passage of the Bill, particularly the rights to free, prior and informed consent and our right to own, use, develop and control our lands.

“However, NSWALC welcomes the Liberal Party’s commitment to increasing the resource rights of Aboriginal people and its support for the principles enshrined in the UN Declaration.

“We are conscious of the Cape York Land Council’s full support of the Abbott Bill and utter opposition to the Queensland Government’s Wild Rivers Act.

“Equally we are conscious that organisations, such as the Carpentaria Land Council Aboriginal Corporation, are opposed to the Abbott Bill and fully support the Queensland state legislation.

“NSWALC welcomes the fact that both organisations have made it clear they respect the opinions of the other and seek only to speak for those living on their country.

“This is NSWALC’s position. We do not seek to speak for the people of Cape York or those in the lower gulf region.

“However, we believe it is important that all parliamentarians take a close look at the principles underlying the debate the Abbott Bill has triggered in the Federal Parliament.

“From an Aboriginal perspective, the importance of the principles of resource rights and free, prior and informed consent contained in the Federal Opposition’s Bill cannot be underestimated.

“Legislative provisions for free, prior and informed consent only now exist under the Aboriginal Land Rights (Northern Territory) Act.

“The Wild Rivers Bill only seeks to extend such provisions to Cape York.

“NSWALC believes the same provisions could be written into amendments to the Native Title Act, and relevant State land rights law, to confer such legal recognition and entitlements to Aboriginal and Torres Strait Islander people across the nation.

“The Senate Committee majority report found that objections to the Queensland laws based on non-compliance with Article 19 of the UN Declaration (free, prior and informed consent) were not ‘well founded’ because the UN DRIP is not binding in Australian law.

“The Australian Government endorsed the UN Declaration back in April 2009.

“This raises an obvious question: Why would the Government endorse these principles unless it is prepared to implement them into our domestic legislation and administrative procedures?

“The Abbott Bill has triggered the need for the Federal and State Parliaments to address the need for all native title and land rights laws to be reviewed to ensure Aboriginal people control economic development on their land through resource rights and the need for the UN Declaration to be reflected in domestic laws.

“If you accept the Federal Opposition’s sincerity in pursuing the principles enshrined in its Private Members Bill, and its support for the UN Declaration, then a bi-partisan climate has surely been created to now look at strengthening our rights across the nation.

“This is where debate on this Bill should now go and Ms. Gillard and Mr. Abbott are perfectly positioned to lead such a debate.”

## Act On Findings

The NSWALC also called for the Federal Government to accelerate the process of rejecting or accepting findings made by the United Nations Human Rights Council’s periodic review.

Chairwoman Manton pointed out the Gillard Government had indicated they would take up to six months to make a decision on the review, despite having extended notice of the ongoing, well-known issues.

The review evaluates outstanding issues on the rights of Aboriginal and Torres Strait Islander Peoples and makes recommendations for future action.

Some of these included the full reinstatement of the Racial Discrimination Act in the NT, and the implementation of the UN Declaration on the Rights of Indigenous Peoples into Australian law.

Chairwoman Manton said the NSWALC would like to see a more “genuine response” to the recommendations in the review.

“Some of these touched on some very important issues facing Australia’s first peoples such as incarceration rates, economic disadvantage and a Reparations Tribunal for the Stolen Generations,” she added

“If these issues, and Australia’s standing internationally, are of such scant concern to the Gillard administration, they should have decency to be up-front with Aboriginal people and say as much,” she added.

“Our rights as human beings, and as the First Peoples of this country, need to be supported and strengthened. They should not be taken lightly as ‘impractical’ or lacking in urgency.

“Time and time again governments have preached the notion that symbolism and practical measures can exist side-by-side.

“Perhaps it’s time to put that concept into practice.

“Without getting Australia’s human rights issues back on track first, the underlying issues facing Aboriginal disadvantage will continue to exist.”

## Supporting the Committee System

NSWALC also called for the establishment of a Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs in the new term of Federal Parliament following the Federal Election.

There was a clear need for the establishment of the Committee to build on the recommendations of the Senate Select Committee on Regional and Remote Communities, and others, from the 42nd Parliament.

The statement pointed out a recommendation for the Joint Standing Committee, which would comprise MP’s from both the House of Representatives and the Senate, was contained in the fifth and final report of the Senate Select Committee on Regional and Remote Indigenous Communities.

This was publicly released in September 2010.

The all-party Committee’s report said the crisis facing Aboriginal and Torres Strait Islander Australians in health, education, living standards and justice “are of such significance they warrant formation of such a Committee to ensure the coordinated attention of the new Parliament as a whole.”

The Committee further recommended a Senate Select Committee on Aboriginal and Torres Strait Islander Affairs be established in the new (43rd) Parliament until such a Joint Standing Committee be established. This Committee would be dissolved upon the establishment of a Joint Standing Committee.

The NSWALC supported both recommendations.

The Senate Select Committee’s final report demonstrated a clear need for improved Parliamentary scrutiny on a wide range of issues affecting Aboriginal and Torres Strait Islander Australians.

It recommended five inquiries be referred to Committees in the new parliament.

They were:

- The potential for justice reinvestment in regional and remote Indigenous communities.
- The effectiveness of government programs in providing housing in regional and remote Indigenous communities
- The extent of Foetal Alcohol Spectrum Disorder and ramifications of government policy.
- Barriers to Aboriginal and Torres Strait Islander education; and
- Aboriginal and Torres Strait Islander employment programs including business development and microfinance solutions.

The NSWALC believed all had relevance to the ongoing development of evidence-based policy and programs for Aboriginal people in New South Wales, particularly in education, employment and justice.

The NSWALC agreed with the Committee, for instance, that the Indigenous incarceration rate remained a national disgrace two decades on from the Royal Commission into Aboriginal Deaths In Custody. There needed to be greater use of non-custodial sentences incorporating programs aimed at rehabilitation.

The Committee's first four reports, tabled between September 2008 and May 2010, made a total of 36 recommendations.

The reports, submissions received by the Committee, and the record of its public hearings represent a substantial body of evidence from hundreds of people living and working in regional and remote Indigenous communities.

The NSWALC said this represented a unique and substantial body of evidence from people involved in the day to day life of communities that statistics and reports alone could not provide to assist those working to improve the well-being of Aboriginal and Torres Strait Islander people.

The NSWALC shared the Committee's concern that the Federal Government had “so far failed to provide a response to all its recommendations.”

## Recognition of First Peoples

As noted earlier in this report there was some good news out of the NSW Parliament in the same month when legislation was passed to formally recognise Aboriginal Australians as the state's first peoples. In her address to a special sitting of the parliament, Ms. Manton said the symbolic constitutional gesture was well overdue.

In a public statement the following day she expressed the hope "it was the first of many symbolic and practical steps in a positive and industrious new dialogue."

"As significant as it is, we mustn't be satisfied that yesterday's event was the destination. The building of bridges between black and white Australians is an ongoing journey," she added.

"My people have taken a huge step forward in the recognition of their rights as the first and true owners of the State of NSW, but the work ahead of us all remains immense.

"I want to also commend parliament for affording this important step its due bipartisan support.

"Indeed, Opposition leader Barry O'Farrell's address to parliament was spoken not only from a position of understanding, but with clear empathy and respect for Aboriginal people. This is encouraging."

## NSW Person of the Year

A public statement was issued in November, 2010 to congratulate human rights lawyer, advocate and author Larissa Behrendt on being named NSW Australian of the Year 2011.

Ms. Behrendt, a proud Eualeyai and Kamillaroi woman, was "a passionate and articulate advocate for our people," Ms. Manton said.

"A Professor of Law and Indigenous Studies at the University of Technology, she has worked closely with the New South Wales Aboriginal Land Council to advance our right to self-determination through ongoing constitutional change," she added.

"This is, perhaps, best illustrated by her work for NSWALC on a draft Charter of Aboriginal Rights which was presented to the land rights network at our State conference last year.

"She has been particularly outspoken in recent years about the denial of rights inherent in the so-called emergency intervention in the Northern Territory.

"It is well known in political circles that her fearless public advocacy in this regard, and her work on a Charter of Aboriginal Rights, cost her an appointment as Australia's Aboriginal and Torres Strait Islander Social Justice Commissioner when Tom Calma's five year term ended last year.

"She was clearly the stand out candidate.

"There is no doubt she was considered too controversial an appointment by a Federal Labor Government which has continued the Howard Government's intervention in the face of mounting evidence it is doing more harm than good."

## Deaths in Custody

The NSWALC also used a media statement in April, 2011 to mark the 20th anniversary of the release of the report of the Royal Commission into Aboriginal Deaths in Custody

It presented an opportunity to draw attention to the alarmingly high rate of Aboriginal incarceration and the fact the majority of the Royal Commission's recommendations had not been implemented.

"Aboriginal people are 14 times more likely to be incarcerated and represent nearly 30 percent of our prison population, despite representing less than 3 per cent of our total population," Chairwoman Manton said.

"That's simply not acceptable," she added.

"As a nation we must re-focus on this important issue. Specifically, the high rates of Aboriginal deaths in custody," she said.

"It's a harrowing statistic that 269 Aboriginal deaths in custody have occurred since the report was released back in 1991."