



## NEW SOUTH WALES ABORIGINAL LAND COUNCIL, AUSTRALIA

### QUESTIONNAIRE

#### Introduction

This submission has been prepared by the NSW Aboriginal Land Council (**NSWALC**) in response to the questionnaire addressed to Indigenous Peoples Organisations in the lead up to the 15<sup>th</sup> Session of the United Nations Permanent Forum on Indigenous Issues (**UNPFII**) special theme “*Indigenous peoples: conflict, peace and resolution*”.

#### 1. Name of Organisation & Country where it is based

NSWALC is based in the Australian State of New South Wales (**NSW**).

#### 2. What are the main objectives and goals of your organization?

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

As a community body, the governance structures within the Land Rights system in NSW are designed to achieve the highest degree of representation and participation for Aboriginal people through the election of nine NSWALC Councillors and LALC Boards every 4 years.

The *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) was enacted in recognition of, and in an attempt to remedy, the ongoing effects of the dispossession of Aboriginal peoples in NSW. The ALRA significantly acknowledges and recognises the prior ownership of NSW by Aboriginal peoples. Principles of self determination and compensation are embodied in the ALRA.

The objects and purposes of the ALRA, and the claim process are also significant in light of Australia's obligations under the United Nations Declaration on the Rights of Indigenous Peoples which Australia ratified in April 2009.

#### 3. Which Indigenous groups does your organisation represent and what is the total number of Indigenous peoples within this group?

The Australian State of New South Wales (**NSW**) has the highest Aboriginal population of any Australian State or Territory. At last census in 2011, this was recorded as **202,674** representing just over 32% of the total Aboriginal population of Australia.

This population is served by a two-tiered network of membership-based, democratically operated and non-governmental Aboriginal Land Councils, established by the *Aboriginal Land Rights Act 1983*

(NSW). Under this two-tiered Aboriginal-controlled system, 120 autonomous Local Aboriginal Land Councils (LALCs) serve their local communities and have a legislated responsibility to protect and foster the best interests of Aboriginal peoples in their boundary area.

NSWALC as the State's peak representative body, is the largest member-based organisation in Australia with over **23,000 members** has a legislated responsibility to protect and foster the interests and aspirations of all Local Aboriginal Land Council members and those of the entire Aboriginal community of NSW. Currently membership

**4. Has your Organisation participated in any sessions of the Permanent Forum on Indigenous Issues? If yes, please indicate the year(s)**

The NSWALC participated in each of the following sessions:

**Ninth Session of the UNPFII, 19 – 30 April, New York (2010):** Special theme: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples".

**Tenth Session of the UNPFII, 16 – 27 May, New York (2011):** Review year- Follow-up to the recommendations of the Permanent Forum

**Eleventh Session of the UNPFII, 7 May – 18 May, New York (2012):** Special theme: *Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests* (Articles 28 and 37 of the Declaration).

**Twelfth Session of the UNPFII, 20 – 31 May, New York (2013):** Review year: Follow-up to the recommendations of the Permanent Forum

**Thirteenth Session of the UNPFII, 12 – 23 May, New York (2014):** Special theme: *Principles of good governance consistent with the United Nations Declaration on the Rights of Indigenous Peoples* (articles 3 to 6 and 46)

**Fourteenth Session of the UNPFII, 20 April – 1 May, New York (2015):** Review year – Follow up to the recommendations of the Permanent Forum. Written submission '*Human Rights – Implementation of the United Nations Declaration on the Rights of Indigenous Peoples*'

**5. In what ways does the Permanent Forum Indigenous Issues support Indigenous peoples in your organisation?**

As a statutory body with an objective to foster and promote the best interests of the Aboriginal people of NSW, human rights advocacy is a core priority for NSWALC and its operations. Engagement with the Permanent Forum on Indigenous Issues has enhanced NSWALCs capacity to contribute to the promotion and development of a human rights framework in Australia as it applies to Aboriginal peoples and in our dealings with government and the wider community to improve outcomes for Aboriginal peoples.

## 6. Information relevant to special theme of 15<sup>th</sup> Session in 2016 “*Indigenous Peoples: conflict, peace and resolution*”

**Conflict:** Aboriginal peoples in Australia have experienced significant dispossession, including the long struggle to retain language, ceremony, traditional knowledge, and the land which is the foundation to Aboriginal peoples’ culture.

Since the Dreaming and for forty thousand years, Aboriginal peoples have owned and occupied the land of Australia. This continuing occupation was, prior to dispossession, typified by active and sustainable management of Country, land, water. All natural resources were owned and managed for the spiritual, cultural, environmental, social and economic benefits of Aboriginal peoples for generation after generation. The forced dispossession of Aboriginal peoples’ from their lands brought enduring injustices for Aboriginal peoples and communities which remain evident today.

In the Australian context, concept of terra nullius resulted in decades of conflict and discriminatory practices that continue to shape the relationship between Aboriginal peoples in Australia and the dominant legal system. The concept of terra nullius was used in an attempt to legitimise British sovereignty over Australia. It was firmly established within the colonial legal system that, as a consequence of British acquisition of Australia, Aboriginal people retained no legal rights to land or jurisdiction.

Settler ideologies have relied upon the beliefs of the superiority of British settlers and the inferiority of Aboriginal peoples. The myth of terra nullius assumed that Aboriginal peoples were of a lower order of ‘civilisation’. There was no requirement to recognise pre-existing Aboriginal laws, land and other possessions, nor to seek consent or provide compensation for Aboriginal dispossession. The ongoing marginalisation and subjugation of Aboriginal peoples were given legal sanction and the most basic rights of citizenship and political inclusion for Aboriginal peoples in the new Australian nation was denied. The ideology of *terra nullius* was central in maintaining European settlers as dominant and Aboriginal peoples as subordinate in Australia. Until 1992, (the Mabo case) the concept of terra nullius was relied upon by the Australian Government to justify the colonisation of Australia and actions perpetuated against Aboriginal and Torres Strait Islander peoples since colonisation in 1788.

**Resolution:** In contemporary Australia the legacy of the legal fiction of terra nullius lives on. In Australia today, Aboriginal peoples’ have epidemically low levels of freehold ownership of land and complicated and watered down native title rights as well as health and education outcomes that are significantly below non-Indigenous counterparts. Australia remains the only Western democracy not bound by a National Bill of Rights or similar legislative protections and express protection for human rights under the Australian Constitution is limited.

In Australia, human rights considerations are not at the forefront when policies and programs that affect Aboriginal and Torres Strait Islander peoples’ are developed. The outcome has often been policy that is ill-considered or unsuitable to the specific cultural circumstances and needs of Aboriginal and Torres Strait Islander peoples’, and policies that have been formulated without the consent and participation of Aboriginal peoples.

There remains limited recourse where government policy itself results in breaches of Aboriginal peoples’ human rights. Aboriginal peoples’ are particularly vulnerable to discrimination that is instigated directly through legislation. Where a policy does not observe human rights, the lack of

general protection of human rights in Australia's legal system leaves Aboriginal peoples' without recourse or remedy through the court system. Legal proceedings tend to focus on whether laws have been validly made, within the (very broad) powers of the Australian Constitution, rather than whether they involve breaches of human rights. With no Charter of Rights or other human rights legislation that enables Courts to issue statements of compatibility, there is very limited scrutiny of the human rights implications of legislation.

- 7. In the outcome document of the World Conference on Indigenous Peoples (A/RES/69/2), member States committed themselves to 'taking, in consultation and cooperation with Indigenous peoples, appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of the Declaration...' (paragraph 7) on the Rights of Indigenous Peoples and that the action plan be developed in consultation with Member States, Indigenous Peoples and the Inter-Agency Support Group on Indigenous Issues.**

**In relation to the outcome document of the World Conference on Indigenous Peoples, please outline the following:**

- (i) Has your organisation been involved in any state-led measures to implement the UN Declaration on the Rights of Indigenous Peoples? Please provide details on the level of participation.**

NSWALC has made submissions to the Australian and NSW Government in relation to the Constitutional Recognition, Culture and Heritage Reform and the review on Crown Lands however has not been included in state-led measures to implement the UN Declaration on the Rights of Indigenous Peoples.

NSWALC participation in the World Conference on Indigenous Peoples;

**Preparatory meeting for Pacific Indigenous Peoples on the World Conference on Indigenous Peoples, 19-21 March, Sydney (2013):** The NSWALC co-hosted one of seven regional preparatory meeting for Pacific Indigenous Peoples on the WCIP 14, held between the 19-21 March, in Sydney Australia.

**Global Preparatory meeting for Indigenous Peoples on the World Conference on Indigenous Peoples, 8 – 12 June, Alta, Norway, (2013):** The NSWALC formed part of the delegation to represent NSWALC and Australia at the Alta preparatory meeting hosted by the Sami Parliament, held in Alta, Norway, in June 2013.

- (ii) What are the major successes as well as the remaining obstacles for the implementation of the UN Declaration on the Rights of Indigenous Peoples for the people that your organisation represents.**

Whilst the Australian government has announced support for the UN Declaration on the Rights of Indigenous Peoples it has not embedded the principles of the Declaration in domestic legislation nationally. In establishing the Australian Human Rights Framework, it was a decision of the Australian Government to not include a national Human Rights Act or Charter as there

was concern that such an Act would create division and suspicion the community. As such protection against racial discrimination is limited to state and territory based statutory legislation and developments in Indigenous policy continue to undermine and impede Indigenous peoples rights to their lands, territories and resources, maintenance of culture, recognition of their distinct identities, self-government and self-determination and to be asked for their free, prior and informed consent in decisions that affect them.

The fragility of the statutory protections and a Constitution which contains what is known as the 'race power' which allows the Australian Government to make laws *'for the peace, order and good government of the Commonwealth with respect to ... the people of any race for whom it is deemed necessary to make special laws'*. In practice, this power allowed for the suspension of the Racial Discrimination Act to enforce the *Northern Territory Emergency Response Act 2007* (NTER Act).

The position of the Australian government towards Indigenous rights and the Declaration is reflected in the implementation of discriminatory laws and policies, such as income management, paperless arrests, continue to disproportionately affect Indigenous peoples in Australia.

To date, Australia has not ratified the ILO 169.

**(iii) Is your organisation involved in the collection and dissemination of disaggregated data or culturally relevant data on Indigenous peoples.**

The Australian Bureau of Statistics (ABS) Census of Population and Housing conducted every 5 years, is the largest statistical collection which provides information on a wide range of social and economic matters and data key characteristics of the Australian population. Following this national data collection, last conducted in 2011, further analysis of data is undertaken by NSWALC to inform policy.

NSWALCs analysis of the 2011 Census is available online and in hard copy. It describes the NSW Aboriginal population, education, employment, distribution of income and housing and is further broken down across the NSWALC regions.

**8. How does your organisation implement the UN Declaration on the Rights of Indigenous Peoples at the community level?**

The NSWALC has a statutory objective to support and advocate on behalf of all Aboriginal peoples across NSW. This includes a commitment to economic and social independence for Aboriginal peoples, guided by principles of self-determination, community development, economic self-reliance, and strong governance and leadership. This is demonstrated through the key priorities within NSWALC's Strategic Plan being, Securing & Managing Our Land, Improving our Governance & Sustainability, Driving Our Economic Development, Supporting Our People, and Protecting & Promoting Our Culture, Heritage & the Environment.

The NSWALC Economic Development Policy is a practical measure to implement the strategic priorities of NSWALC to build on the capacity of LALCs to achieve economic independence and well-being as appropriately determined by the communities they represent.

In advocating the international standard of the Declaration locally, NSWALC continues to incorporate the language and guiding principles into policy and procedures, submissions to government on advancing the interests of Aboriginal people and resources.

**9. Does your organisation provide regular or ad hoc capacity building programs on Indigenous peoples rights for staff and members of the community, or planned capacity building activities in this area?**

So far, two staff members who have had carriage of the International Engagement and Human Rights portfolios within NSWALC have undertaken the Diplomacy Training Program (DTP). The DTP, run through the University of NSW, is an independent NGO which seeks to advance human rights and empower civil society in the Asia-Pacific region through quality education and training, and building of skills and capacity in non-government organisations and for individual human rights defenders and community advocates.

Across NSWALCs network of 120 LALCs, ongoing governance Training, is provided to all elected Board members of LALCs which supports communities to develop the skills, knowledge and resources that enable them to better manage their own affairs.

As part of NSWALCs commitment to the Aboriginal people of NSW, and to fulfil its legislative commitments to provide community benefits to members of LALCs and the wider Aboriginal community, NSWALC operates a number of community benefit schemes being; Funeral Assistance Grants, annual Scholarship for tertiary studies, and Community Development Grants which aims to spread wealth across the LALC network and increase resources for less advantaged LALCs.

**10. Does the United Nations support your organisations work on Indigenous peoples issues?**

In 2011, the UN Special Rapporteur on the Rights of Indigenous Peoples acknowledged the NSWALC model as **an example of good practice** 'in securing land rights and developing Aboriginal lands to provide greater economic and social opportunities for Indigenous peoples.'<sup>1</sup> The Special Rapporteur highlighted the work of independent bodies such as NSWALC as essential to progressing the standards set forth in the United Nations Declaration on the Rights of Indigenous Peoples (**the Declaration**) and in moving forward to a future in which Indigenous Peoples are in control of their development and participating as equal partners in the development process.

**11. Please provide information of conferences and other meetings organised or supported by NSWALC for 2016 and 2017.**

NSWALC intends to send a delegation to United Nations fora in 2016 however the details are yet to be confirmed.

---

<sup>1</sup> Anaya, J (2011) 'Keynote Speech at the 2011 New South Wales Aboriginal Land Council State Wide Conference'. <http://unsr.jamesanaya.org/statements/keynote-speech-at-the-2011-new-south-wales-aboriginal-land-council-conference>