



New South Wales Aboriginal Land Council submission to the Caring for our Country review – May 2011

The NSW Aboriginal Land Council (NSWALC) is the peak body representing Aboriginal peoples in NSW and with over 20,000 members, is the largest Aboriginal member based organisation in Australia.

NSWALC is a self-funded statutory corporation under the *Aboriginal Land Rights Act 1983 (NSW)*, and has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples in NSW. NSWALC also provides support to the network of 119 autonomous Local Aboriginal Land Councils (**LALCs**) across the state. LALCs have similar statutory objectives to NSWALC in regards to their own local communities.

Aboriginal peoples in NSW, and particularly the network of Aboriginal Land Council's that represent them (both LALCs and NSWALC) are key stakeholders in relation to natural resource and biodiversity management; they are significant landowners and managers of lands with high biodiversity value, and at a local level are holders of specific Traditional Ecological Knowledge accumulated over millennia.



Summary

This submission provides comments and suggestions in regards to the key questions posed within the Caring for our Country (CFOC) Discussion Paper, and specifically in relation to Discussion Point 4, Engaging Indigenous Australians. The submission was developed in discussion with NTSCORP, the native title representative body in NSW and the ACT, under the terms of a Memorandum of Understanding which was signed in October 2009.

The comments and suggestions provided in this submission are made predominantly from a NSW perspective and are based on the challenges Aboriginal peoples in NSW face in regards to the CFOC initiative. These include:

- The limited acknowledgment of Aboriginal rights and connections to Country;
- The limited opportunity to genuinely incorporate Traditional Ecological Knowledge into land, natural resource and biodiversity initiatives as well as the Government's non-ratification of the Nagoya Protocol; and
- The lack of sustained funding for Aboriginal organisations to undertake caring for Country activities, including Working on Country initiatives.

A final comment is made on the appropriateness of Indigenous specific targets throughout the CFOC and recommendations are provided to assist with the current review's improvement of CFOC as it relates to Aboriginal peoples and communities in NSW.

Acknowledgment of rights and connections to Country

NSWALC supports practical measures taken by Government that seek to implement the United Nations Declaration on the Rights of Indigenous Peoples, which was endorsed by the Australian Government on 3 April 2009. These include mechanisms to support Aboriginal peoples' management of lands, waters and natural resources.

The following excerpts from the United Nations Declaration on the Rights of Indigenous Peoples identify the inherent rights of Aboriginal peoples in relation to Country, lands, waters, natural resources and Traditional Ecological Knowledge. These excerpts have been provided to assist with the incorporation of these rights into practical measures within the framework provided by CFOC.

Article 25 – Connections to Country

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 29 – Caring for Country and the Environment

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.



Article 31 – Cultural Heritage and Traditional Ecological Knowledge

1. *Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*
2. *In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.*

As the Traditional Custodians of all lands, waters and natural resources in mainland Australia, Aboriginal peoples have inherent rights over these lands, waters and natural resources. The continuing occupation of land and sustainable use of land, water and natural resources were, prior to dispossession, typified by active and sustainable management of Country. Land, water and all natural resources were owned and managed for the spiritual, cultural, environmental and social benefit of generation after generation. It is essential for CFOC to provide true recognition of the unique status of Aboriginal peoples in Australia in all aspects of land and natural resource management.

Incorporation of Traditional Ecological Knowledge

CFOC must acknowledge and promote the involvement of Aboriginal peoples in the development, design and implementation of CFOC initiatives and measures, as a means to achieving overall biodiversity objectives.

The importance of Traditional Ecological Knowledges in sustainable land management practices has been well documented and recognised.

Before farming, pastoral activity and urban development, the landscape and waters were managed by Aboriginal and Torres Strait Islander peoples in such a way that Australia had some of the richest bio-diversity in the world. Even where soils were thin and rainfall restricted, a huge variety of flora and fauna flourished. But much of this diversity is being lost. Recognising Aboriginal and Torres Strait Islander people's knowledge of the natural environment and incorporating that knowledge into the way we manage Australia's natural resources today can help to sustain the country as well as the cultures and traditions of Aboriginal and Torres Strait Islander peoples.¹

Research undertaken by the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University, has similarly highlighted the importance of Aboriginal peoples caring for their Country in contemporary circumstances specifically as a means of addressing key threats to biodiversity. The CAEPR study also outlined a series of key principles in relation to Aboriginal peoples and biodiversity management, which NSWALC encourages the Government to incorporate into the CFOC. These include:

- Supporting Indigenous peoples sustainable use of biodiversity;
- Facilitating Aboriginal involvement in comprehensive biodiversity conservation planning; and

¹ Council for Aboriginal Reconciliation, 2000. Roadmap for Reconciliation: *Recognising Aboriginal and Torres Strait Islander Rights*, Chapter 2: Land, Culture and Heritage, p. 5, http://www.austlii.edu.au/orgs/car/recognising_rights/pg5.htm.



- The appropriate use of Indigenous Ecological Knowledge².

CFOC must specifically support and promote the inclusion of Aboriginal peoples' Traditional Ecological Knowledge and perspectives into the development and practice of biodiversity and natural resource management programs. In the NSW context, the participation of LALCs, Native Title groups and other Aboriginal community organisations must be actively sought for this purpose.

CFOC must also recognise that from an Aboriginal perspective, distinctions cannot be drawn between natural resource management and the maintenance of culture and protection of cultural heritage. As discussed in Baker *et al*, "Country can only be properly managed through complete integration not only of the physical aspects of the environment, but also of the social and economic opportunities"³.

It is essential that CFOC recognise that Aboriginal peoples "have a holistic perspective about 'country' embodying land and landforms, water and marine resources; the species supported by the land and sea; and natural heritage sites"⁴. While the protection of culture and heritage is a key component of CFOC's approach to natural resource management, CFOC should not fragment or separate culture and heritage issues from natural resource management.

It is also relevant to note that Article 8 (j) of the Convention on Biological Diversity (CBD) already commits Australia to "respect, preserve and maintain knowledge, innovations and practices of Indigenous ... communities ... for the conservation and sustainable use of biological diversity".

Convention of Biological Diversity; the Nagoya Protocol

While NSWALC encourages the incorporation of Traditional Ecological Knowledge into land, resource and biodiversity management and commends initiatives that seek to do so, such measures must also provide for the preservation of this knowledge and of the associated inherent rights of Aboriginal peoples'.

In this regard, the Nagoya Protocol to the Convention on Biological Diversity (the **Protocol**) must be mentioned. The Protocol creates a framework applying to the use of traditional knowledge associated with genetic resources and the benefits arising from such utilisation. The Protocol requires parties to recognise and protect the inherent rights and interests of Indigenous peoples to their Traditional Ecological Knowledge and ensures policies and the Governmental use of such knowledge is based on principles of free, prior and informed consent.

NSWALC recommends that the principles espoused in the Protocol should be incorporated fully into the CFOC, including affirmation of the inherent rights of Indigenous peoples over biological resources and over the Traditional Ecological Knowledge associated with these resources.

Furthermore, NSWALC urges the Australian Government to ratify this Protocol for the general benefit of our nation's biodiversity and environment. A failure to ratify the Protocol would significantly undermine Australia's commitment to the CBD. In practical terms a failure to incorporate the principles of the Protocol, particularly in respect to the recognition and acknowledgement of Indigenous rights in Traditional Ecological Knowledge, may have implications for the sharing of such vital knowledge, which would in turn significantly undermine the efforts of CFOC.

² Altman et al, 2009. *Submission to the Review of the National Biodiversity Strategy: Indigenous people's involvement in conserving Australia's biodiversity*, Centre for Aboriginal Economic Policy Research, CAEPR Topical Issue No. 08/2009

³ Baker, Davies and Young (eds), 2001. *Working on Country: Contemporary Indigenous Management of Australia's Lands and Coastal Regions*, Oxford University Press, p.19.

⁴ Hunt, Altman and May, 2009. 'Social benefit of Aboriginal engagement in natural resource management, report for the National Resource Advisory Council, NSW', *CAEPR Working Paper No.60*, CAEPR, ANU Canberra.



Allocation of funding

Capacity constraints, brought about by limited funding, present one of the most significant impediments to natural resource management activities and outcomes within Aboriginal communities in NSW. The relatively limited and short term allocation of funding to Aboriginal organisations under the CFOC has thwarted the potential for Aboriginal natural resource management initiatives in NSW.

In NSW all base level funding for the CFOC (\$24,664,744 in 2010/11) is allocated to Catchment Management Authorities (CMAs). There are 13 statutory CMAs in NSW, some with Aboriginal Reference Groups (which it should be noted are not statutorily required) and some with broad commitments to 'Indigenous engagement and participation'. It is as difficult to ascertain how representative the Aboriginal Reference Groups in existence are, as it is to ascertain exactly how much funding will be allocated by the CMAs from their base level funding to Aboriginal organisations and groups.

This is not the case in the Northern Territory where all base level funding allocations for 2010/11 (\$1,143,460 over 1 year) have been directed to 'developing partnerships with Indigenous communities ensuring the use of Indigenous traditional knowledge and engagement with land managers in Ecological Management Understanding'⁵. This funding provides grants directly to Aboriginal communities to undertake natural resource management activities.

It is essential that the CFOC's commitment to partnership with Aboriginal communities in the Northern Territory is widened to include a commitment to partner with Aboriginal peoples and organisations in **all** states and territories.

NSW has the largest population of Aboriginal peoples in Australia. In light of this demographic reality, the well recognised linkages between social and economic outcomes for Aboriginal peoples and caring and for Country and the Government's 'holistic' commitment to closing the gaps in Indigenous disadvantage, CFOC should provide a greater level of base level funding directly to Aboriginal organisations and communities in NSW. The CFOC should not remain reliant upon the good will of third parties to administer funds to Aboriginal organisations and communities to undertake natural resource management activities.

It is acknowledged that some of the base level funding that CMAs receive through CFOC is distributed to Aboriginal organisations to undertake natural resource management activities. However, it is often the case that the funds that are distributed are for short term projects only. Such allocations do little to build longer-term capacity to undertake sustainable land management. It must be understood that this has significant implications for the sustainability of any achievements brought about by the CFOC.

The CFOC must provide for long term, base level funding to be awarded directly to Aboriginal organisations; funding enough to cover staffing, management, administration and infrastructure costs, so that capacity may be built to sustainably undertake natural resource management activities into the future.

The community action grant program administered by CFOC provides annually "more than \$3.7 million for 220 non-Landcare projects to conserve, protect and enhance our environment"⁶ while a further \$4.2 million is provided for landcare projects. Grants range from \$5000 to \$20,000 for activities that take action to conserve and protect the natural environment. In the 2010/11 funding

⁵ Source: <http://www.nrm.gov.au/business-plan/funded/10/bp-success-nt.html>

⁶ Caring for our Country website: <http://www.nrm.gov.au/cag/cag-projects/2010-11/index.html>



period \$870,979 of the \$3.7 million was distributed to organisations within NSW. Despite the Aboriginal Land Council Networks significant landholdings (88,000 ha) and vast natural resource management potential only three LALCs (Karuah, Gugin Gudduba and Eden LALCs) within NSW received funding from the pool of \$3.7 million which totalled \$58,100. It is also noted that of the \$4.2 million allocated to landcare projects, \$1,417,040 was allocated to projects in NSW and only one LALC (Bateman's Bay LALC) received funding (totaling \$18,900) from this pool.

In line with the CFOC's engaging Indigenous Australians priority for investment, CFOC should ensure that funds from the community action grants are targeted towards Aboriginal organisations in NSW.

The current 18 month time limit on activities under the community action grants should also seek to be more adaptive and flexible to ensure that it meets the needs of LALCs and other Aboriginal organisations. More sustained support (particularly with application processes) and investment in human capital should be undertaken within the grant program.

It is essential to the success of natural resource management activities that government provides adequate support for Aboriginal community driven projects. This support should recognise the importance of community driven projects which are informed and driven by local cultural knowledge and the needs of the local community. Given the Aboriginal Land Council Networks significant landholdings and as yet untapped natural resource management potential, as well as the transparent, accountable and fully audited governance arrangements that the Network has in place, the CFOC should seek to fund LALCs and other Aboriginal organisations in designing and implementing natural resource management programs that are culturally appropriate.

Working on Country program

The Working on Country program (**WoC**) is an Indigenous-specific program situated underneath the broad CFOC initiative which has the potential to provide more specific and targeted approaches to Indigenous peoples' engagement in natural resource management. WoC is a nation-wide program that focuses on natural resource management activities on Indigenous owned land.

The WoC stream funded by CFOC (administered by the Department of Sustainability, Environment, Water, Population and Communities) has a funding commitment of over \$90 million until 2013. This funding is aimed at providing 300 Indigenous specific positions for natural resource management activities (such as ranger positions) as well as project funding for between one and four years. In 2010 funds which had originally been allocated to the Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**) were appropriated directly to the Department of Sustainability, Environment, Water, Population and Communities to fund Working on Country Northern Territory (**WoCNT**) (with a further \$63 million committed until 2013).

The WoC program should be commended for the support it has provided specifically to the Indigenous Protected Area (**IPA**) program in the Northern Territory. WoC and WoCNT provide significant funding to employ Indigenous rangers in the Northern Territory who work on land with high biodiversity values.

However, the vast majority of the WoC funded projects are based within the Northern Territory. It is important for the WoC program to recognise that, as a national program, support should be more widely provided to Aboriginal-owned land in other states and territories.

As previously stated, the Aboriginal Land Council Network has significant landholdings with vast natural resource management potential. A priority of the WoC program should be to support LALCs to undertake natural resource management activities on their land (through funding for employment, management and administration costs) within the programs allocated \$90 million.



Appropriateness of Indigenous-specific targets

In line with the whole of government approach to Closing the Gap, and the value Aboriginal peoples can add to natural resource management practices, it is essential for CFOC to recognise that all targets should refer to, and promote Aboriginal participation in CFOC. CFOC should not only aim to deliver environmental outcomes, but in line with Closing the Gap commitments, it should be responsive to the broader social, cultural and socio economic indicators for Aboriginal peoples and communities.

Land continues to provide a spiritual, cultural and socio-economic focus for Aboriginal people and many Aboriginal people and LALCs in NSW have in-depth ecological knowledge of their land, developed and practiced over millennia that can benefit natural resource management. Aboriginal participation in NSW in natural resource management should not be seen in isolation and limited to the Indigenous-specific target within CFOC. Participation and engagement must be incorporated into all aspects of CFOC.

Recommendations

To best achieve its objectives, the CFOC must genuinely engage with Aboriginal peoples and must seek to overcome the social, cultural and economic barriers experienced by Aboriginal peoples in respect to participation in natural resource management activities. The following recommendations are made in the context of barriers experienced by Aboriginal peoples in NSW:

1. The CFOC must provide a true recognition of the unique status of Aboriginal peoples and their inherent rights and connections to lands, waters and natural resources.
2. The CFOC must promote the involvement of Aboriginal peoples in the development, design and implementation of CFOC initiatives and measures at all levels.
3. The CFOC must acknowledge the inherent rights Aboriginal peoples have in regards to Traditional Ecological Knowledge.
4. The Australian Government must be encouraged to ratify the Nagoya Protocol to the Convention on Biological Diversity.
5. The CFOC must provide long term base level funding directly to LALCs and other Aboriginal organisations to undertake natural resource management and culture and heritage activities.
6. In line with the CFOC's engaging Indigenous Australians priority for investment, CFOC should ensure that funds from the community action grants are targeted towards Aboriginal organisations in NSW and specifically LALCs.
7. A priority of the WoC program should be to support LALCs within its allocated \$90 million to undertake natural resource management activities on LALC land. This funding is essential in fulfilling the whole of government approach to Closing the Gap.
8. The CFOC should provide a clear outline to Aboriginal organisations and Local Aboriginal Land Councils in NSW on how CFOC works with state and local level natural resource management and culture and heritage initiatives and the *Aboriginal Land Rights Act (NSW) 1983*.



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Photos courtesy of Sarah Puckeridge

