

New South Wales Aboriginal Land Council

14

NSW Auditor-General's Report
Volume Nine 2011

NEW SOUTH WALES
ABORIGINAL LAND COUNCIL

Rural properties
to be transferred
to Local
Aboriginal Land
Councils provided
there is a suitable
business case

Audit Opinion

The audit of the New South Wales Aboriginal Land Council's financial statements for the year ended 30 June 2011 resulted in an unmodified audit opinion within the Independent Auditor's Report.

Operational Snapshot

The New South Wales Aboriginal Land Council (NSWALC) is the largest member-based Aboriginal organisation in the State. The Land Council network operates as a two-tiered structure, with NSWALC as the peak body and 121 Local Aboriginal Land Councils (LALCs). Both NSWALC and the LALCs are governed by elected boards. NSWALC provides an annual allocation of funds to LALCs.

The Council aims to protect the interests and further the aspirations of its members and the broader Aboriginal community. It works for the return of culturally significant and economically viable land, pursuing cultural, social and economic independence for its people and being politically proactive and voicing the position of Aboriginal people on issues that affect them.

NSWALC also acts as an advisor to, and negotiates with, governments and other stakeholders to ensure the preservation of Aboriginal land rights.

It is funded by a Statutory Investment Fund, which was established under the *NSW Aboriginal Land Rights Act 1983* (the Act). The balance of the fund at 30 June 2011 was \$550 million and in 2010–11, NSWALC had expenditure of \$35.4 million.

Key Issues

Rural Properties

Recommendation

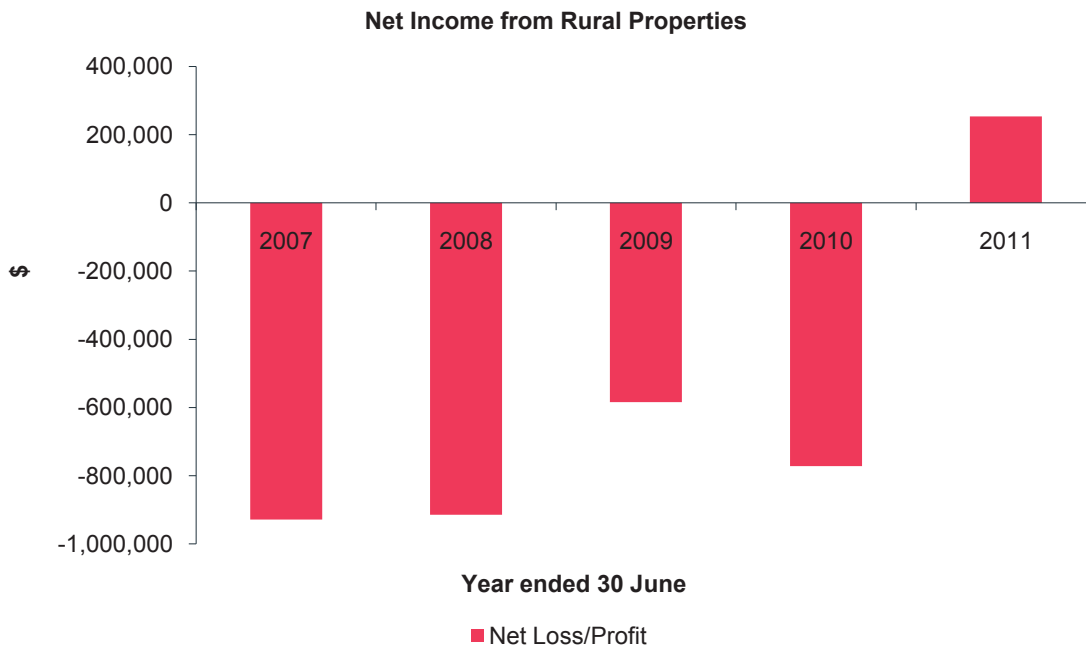
NSWALC should ensure that Local Aboriginal Land Councils have the capability to operate rural properties viably before the properties are transferred to councils.

Four rural properties were transferred to NSWALC when Regional Aboriginal Land Councils were abolished in 1990. They are as follows:

Name of Property	Location	Size (ha)
Appin Station	Menindee	31,704
Barooga-Karrai	Euabalong	9,890
Calooma/Nulty Springs	Bourke	35,609
Kaituna-Uno	Coonamble	5,184
Total		82,387

Source: New South Wales Aboriginal Land Council Annual Report 2011.

The following table shows the combined profitability of these rural properties over the past five years.



Source: Information provided by NSW Aboriginal Land Council (unaudited).

The rural properties made a profit of \$254,000 in 2010–11 (loss of \$772,000 in 2009–10). The profit in 2010–11 was primarily due to the winding down of farming activities which reduced costs significantly. The rural properties were previously managed by Riverina F.A.R.M. Services. In September 2010, NSWALC terminated their services and decided to self manage the properties.

The rural properties incurred substantial losses in past years. In order to mitigate the financial risks associated with farming activities, in March 2011 NSWALC resolved to dispose of them to the LALC in the area in which each property is located. Under the terms of the Act, LALCs are firstly required to prepare a community land and business plan.

It would be appropriate due diligence to ensure that a satisfactory business plan for operating rural properties is prepared by LALCs and taken into consideration by NSWALC before any decision is made on the transferring of land. NSWALC was awaiting receipt of the business plans as at the date of this report.

In the past, a number of LALC's have been placed under administration and some have been wound up. When this has occurred, the residual assets and liabilities of LALCs have been assumed by NSWALC. The decision to transfer rural properties to LALCs, rather than dispose of them, should only be made based on a strong business case. LALCs are funded by NSWALC and therefore if the rural properties again incur losses, this will create an exposure to NSWALC.

Discussion has commenced on the sustainability of the Land Council network

More than 26,000 land claims are still awaiting determination

Local Aboriginal Land Councils Performance

Recommendation

The Council and the Minister for Aboriginal Affairs should implement agreed actions arising from the review on sustainability of the NSW Aboriginal Land Rights Network.

During 2010–11, there were four LALCs under administration. Three of these had continued from the previous reporting period and one new administration was approved by the Minister for Aboriginal Affairs during the year. Only the minister can place a LALC under administration.

Last year, I recommended that NSWALC stop funding, and take steps to dissolve, underperforming LALCs, particularly those under administration. In response to my recommendation, NSWALC recently circulated a discussion paper on the sustainability of the Land Council network, which included a number of recommendations for LALCs. In addition, NSWALC has written to the minister requesting that the Act be amended to clearly define responsibilities and actions.

The discussion paper included the following recommendations:

- a comprehensive review of funding allocations to LALCs be undertaken, including a new need-based funding formula which rewards better performing LALCs
- NSWALC dispose of non-performing NSWALC assets to raise funds
- the network makes State Government aware of, and pay for, the costs of any extra demands it places on the network
- NSWALC encourages the sharing of resources between LALCs and explores a range of incentives that could be offered
- NSWALC provides incentives for voluntary amalgamations between LALCs
- NSWALC only approves benefit schemes that are supported by professionally prepared business plans and/or feasibility studies
- NSWALC links benefits to membership such that it encourages eligible people to join their LALC and become active members.

The Council determined LALCs' 2010–11 funding based on the audit results of LALCs' 2009–10 financial statements. An analysis of the audit results for the five years from 2006 to 2010 is:

Financial Reporting by LALCs for year ended 30 June	2010	2009	2008	2007	2006
Satisfactory	109	108	93	91	90
Unsatisfactory	2	5	10	14	7
Not received	8	8	18	16	24
Total	119	121	121	121	121

For the purpose of financial reporting, each LALC is a separate reporting entity. As I have reported in previous years, some LALCs have failed to comply with the reporting requirements of the *Aboriginal Land Rights Act 1983* (the Act).

The table shows that 8.4 per cent of LALC's financial reports for 2009–10 (10.7 per cent in 2008–09) were unsatisfactory or not received, progressively improving over the five year period from 25.6 per cent in 2005–06. The eight LALCs for which no financial statements were received include five LALCs which are not operating.

Outstanding Land Claims

A total of 35,839 land claims have been lodged since the inception of the Act. Over 9,000 claims have been processed and received determination. More than 26,000 land claims are still awaiting determination by the New South Wales Government and the courts. The majority of these were lodged between 2005 and 30 June 2011. Of these, 284 claims were lodged before 30 June 2000.

The following table shows the claims outstanding for more than 10 years.

Year Claim Lodged	No. of Claims
1984/85	3
1988/89	1
1990/91	1
1993/94	12
1994/95	16
1995/96	98
1996/97	23
1997/98	7
1998/99	13
1999/00	110
Total	284

Source: New South Wales Aboriginal Land Council Annual Report 2011.

Last year in the comment for the Land and Property Management Authority, I recommended the Authority reduce the time taken to process Aboriginal Land Claims and transfer legal title to successful claimants. I also recommended that legal title over land granted to successful Aboriginal land claimants be issued as soon as practicable. This year the functions of the Authority have been transferred to the Department of Trade and Investment, Regional Infrastructure and Services as part of the government administrative restructure. I will again refer to this issue as part of the comment on that department.

There are a substantial number of old unprocessed land claims. NSWALC is working with the New South Wales Government to reach a resolution on outstanding claims. Land may be compulsorily acquired by the government under the *Land Acquisition (Just Terms Compensation) Act 1991*. Currently, there is no legislative requirement for a LALC or NSWALC to be notified of a planned compulsory acquisition. Land subject to a claim can be compulsorily acquired between the lodging of the claim and its final determination by the court.

Performance Information

Statutory Investment Fund

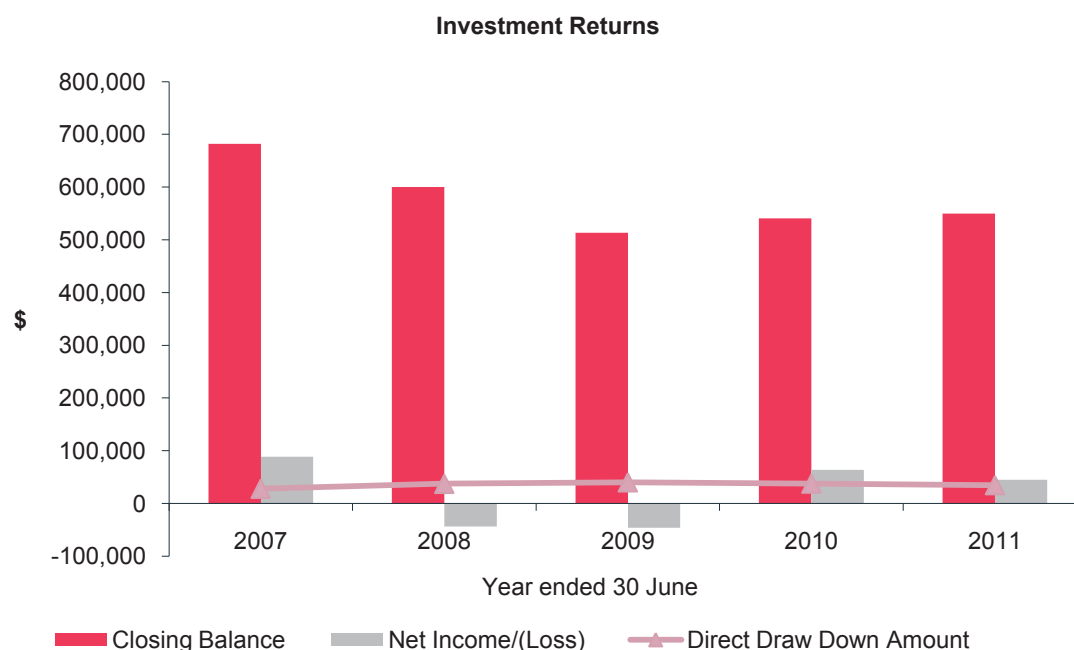
One of the major challenges to NSWALC's sustainability continues to be the volatile financial market which had a significant impact on its equity in recent years. Under Section 150 of the Act, NSWALC is required to maintain the value of the NSWALC Account (net assets), which includes the Statutory Investment Fund, above the benchmark of \$485 million. The balance of net assets at 30 June 2011 was \$598 million.

NSWALC needs to earn sufficient returns from its investments to meet escalating costs and maintain its equity for its future sustainability. In order to achieve this it has a Strategic Investment Policy and has implemented a 'Spending Rule' to monitor the escalating cost in relation to its earnings.

The NSW
 Aboriginal Land
 Council's
 investment
 portfolio received
 a return of 8.26
 per cent in
 2010-11
 (12.07 per cent in
 2009-10)

The investment portfolio achieved a return of 8.26 per cent in 2010–11 (12.07 per cent). Following the global financial crisis and associated investment losses, NSWALC revised its strategic asset allocation in 2010–11. The new allocation increases the share of funds in overseas equities and Australian inflation linked bonds.

The following chart shows the investment balance and investment returns over the past five years.



Net investment income or loss comprises interest income, dividend income, realised gains and losses and fair value gains and losses. The following table shows the composition:

Year Ended 30 June	2011 \$'000	2010 \$'000	2009 \$'000	2008 \$'000	2007 \$'000
Interest income	1,570	2,474	3,080	3,410	965
Dividend income	13,285	36,101	40,425	43,543	65,767
Realised gains	19,851	8,760	--	--	--
Change in fair value	10,328	16,271	(89,591)	(90,934)	21,349
Total Investment Income/(loss)	45,034	63,606	(46,086)	(43,981)	88,081

When considering the investment performance, it must be noted that NSWALC draws down on its investments each year to meet operational requirements. In 2010–11, NSWALC drew down \$36.5 million (\$37.8 million).

Other Information

Ministerial Review of the Aboriginal Land Rights Act 1983

Under the section 252A of the Act, the minister is required to review the Act at the end of every five year period to determine whether the policy objectives of the Act remain valid. The Act was last reviewed in 2006 and is due for review in December 2011.

Purchase of Ordinary Shares in Social Enterprise Finance Australia Limited (SEFA)

In July 2011, NSWALC purchased \$1.0 million of ordinary shares in SEFA. SEFA was established in May 2011 to provide finance to social enterprises on commercial terms together with targeted business advice and support. In August 2011, SEFA received seed funding of \$10 million from the Department of Education, Employment and Workplace Relations Social Enterprise Development and Investment Fund. SEFA had capital of \$20 million at the date of this report.

Aboriginal-specific businesses often have real trouble obtaining the necessary financial and business support to get their enterprises up and running. It is anticipated that NSWALC's investment in SEFA will contribute to a sustainable economic base for Aboriginal communities.

Walgett and Subdivision Program

The Walgett program delivered repairs and maintenance to 70 houses owned by the Walgett Local Aboriginal Land Council. The program was funded by the Australian Government and was completed in 2010-11.

The Subdivision program is a jointly funded project with the Australian Government for the surveying and subdivision of former Aboriginal reserves in New South Wales.

The following table summarises the current status of the programs funding:

	Walgett	Subdivision
Total grant received at 30 June	\$4,830,000	\$3,000,000
Total amount spent at 30 June	\$4,853,530	\$355,728
Starting date	26 June 2008	26 June 2008
Expected completion date	30 June 2012	30 June 2014

Water and sewerage services

In partnership with the New South Wales Government, NSWALC maintained its commitment to deliver better water and sewerage services to Aboriginal communities across the State. Together they will invest more than \$200 million over the next 25 years to improve these services. The roll out of the program began in 2008-09 and the following table shows capital expenditure over the last three years:

Year ended 30 June	2011	2010	2009
Capital Expenditure	\$1,732,765	\$1,002,000	\$243,118

Endowment Fund

In 2007-08, NSWALC established a \$30.0 million Education Endowment Fund (the Fund), which aims to provide ongoing support for Aboriginal people's studies. Scholarships are available for primary schools, secondary schools, universities, vocational and TAFE courses. The intention is that the interest earned on the fund, which is invested, will be sufficient to cover the cost of the scholarship program.

The fund is administered by Charities Aid Foundation (CAF). CAF is responsible for the application process, all associated due diligence and legal compliance. Scholarship payments for the years 2008–11 are presented in the following table:

Year ended 30 June	2011	2010	2009	2008
No. of applications received	2,205	441	256	201
No. of applications approved	1,141	312	124	119
Total Payments (\$)	1,334,000	182,000	1,201,000	--

The demand for scholarships increased substantially in 2010-11. As demand exceeded the budget, all approved applications were funded at a reduced individual amount.

Grants Paid

In addition to the annual allocation of funds to LALCs, NSWALC provided major grants of \$1.4 million (\$207,665) and minor grants of \$788,893 (\$736,830) to community organisations and individuals. The grants are listed below:

Major Grants (more than \$5,000)

Payee	Purpose	Year ended 30 June 2011 \$	Year ended 30 June 2010 \$
University of Newcastle	Education Scholarship Grant	58,050	31,365
Riverina Crane Services Pty Ltd	Grant for Wagga Wagga LALC to help comply with <i>Environment Planning and Assessment Act 1979</i>	--	19,950
Arts Mid North Coast	Sponsorship for Dinner with Elders	--	10,000
CAF AUSTRALIA	Education Scholarship Grant	1,276,320	101,000
Presbyterian Ladies College	Education Scholarship Grant	--	5,350
Tamworth Local Aboriginal Land Council	Funding for Northern Regional Partnership Agreement Negotiation	50,000	--
Australian Indigenous Leadership Centre	Education Scholarship Grant	--	40,000
Tribal Warrior Association Incorporated	Funding for the Chicka Story Book	13,636	--
Gadigal Information Services Aboriginal Corporation	Sponsorship for the Yabun Festival 2011	10,000	--
Saltwater Freshwater Arts Alliance	Saltwater Freshwater Festival Sponsorship	10,000	--
NSW Aboriginal Golf Incorporated	Sponsorship for NSW Aboriginal Golf Championships	10,000	--
Total Major Grants		1,428,006	207,665

Minor Grants (\$5,000 or less)

Year ended 30 June Category	2011 Number	2011 \$	2010 Number	2010 \$
Discretionary	47	56,037	2	6,000
Funeral	432	732,856	444	726,980
Total	479	788,893	447	732,980

Indigenous Money Mentor Program

During 2010–11, the Council introduced the Indigenous Money Mentor Program together with National Australia Bank. It provides a range of no interest and low interest loans and financial management services to the Aboriginal communities and enterprises.

Tracker Magazine

During 2010–11, the Council launched the first monthly magazine 'Tracker' which provides information regarding land claims and other initiatives to members of LALCs across New South Wales.

Financial Information

Abridged Statement of Comprehensive Income

Year ended 30 June	2011 \$'000	2010 \$'000
Investment income	34,705	47,335
Other income	6,454	16,031
Operating Revenue	41,159	63,366
Employee expenses	12,746	11,643
Funding of local Aboriginal Land Councils	13,957	13,690
Net increment on investment revaluation	(10,328)	(16,271)
Other expenses	19,070	19,786
Operating Expenses	35,445	28,848
Surplus	5,714	34,518
Other Comprehensive Income		
Net assets transferred from dissolved Local		
Aboriginal Land Councils	--	5,856
Net increment on revaluation of assets	--	236
Other comprehensive gain/(loss)	5	(241)
Total Other Comprehensive Income	5	5,851
Total Comprehensive Income	5,719	40,369

See detailed analysis of investment income under Statutory Investment Fund previously.

Other income of \$6.4 million (\$16.0 million) includes Australian Government grants of \$1.3 million (\$4.3 million), Income from Rural Properties of \$2.0 million (\$2.2 million) and other miscellaneous income of \$3.02 million (\$9.4 million).

Other income decreased substantially in the current year. In 2009-10, an impairment provision of \$6.7 million relating to a LALC receivable was reversed as the amounts were recovered. This resulted in an unusually high balance in that year. There was no similar issue in the current year.

Other expenses include \$2.2 million (\$945,000) scholarship grants and \$2.7 million (\$4.8 million) program expenses. The program expense relates to Walgett and Subdivision project.

Abridged Statement of Financial Position

At 30 June	2011 \$'000	2010 \$'000
Current assets	559,340	551,822
Non-current assets	47,140	49,599
Total Assets	606,480	601,421
Current liabilities	7,972	8,648
Non-current liabilities	324	309
Total Liabilities	8,296	8,957
Net Assets	598,184	592,464

Current assets increased by \$7.5 million due to an increase in value of investment portfolios. Non-current assets decreased by \$1.4 million due to an increased impairment provision for receivables from LALCs.

Current liabilities decreased by \$1.7 million as deferred grants were recognised in income.

Council Activities

The Council was constituted under the *Aboriginal Land Rights Act 1983*, which was amended in 2007 to substantially increase the scope and range of responsibilities and functions of the Council. The Council comprises nine members, each elected by voting members of the LALCs within the nine regions of New South Wales.

For further information on the Council, refer to www.alc.org.au.