



Getting into the Act

2012 Review of the Aboriginal Land Rights Act (NSW)

NETWORK CONSULTATIONS
OUTCOMES REPORT

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Introduction

Review of the *Aboriginal Land Rights Act 1983 (NSW)*

In December 2011, the NSW Minister for Aboriginal Affairs announced the periodic review of the *Aboriginal Land Rights Act 1983* (“ALRA”) that is required by section 252A of the legislation.

The review, that must be undertaken every five years, is required to determine whether the policy objectives of the ALRA remain valid and whether the terms of the ALRA remain appropriate for securing those objectives. A report on the outcome of the review must be tabled in each House of the NSW Parliament within 12 months.

In accordance with the legislation, the Minister has made it clear the purpose of the Review is to ensure the legislation is operating effectively and efficiently to meet the needs of Aboriginal people in New South Wales. He has asked for “sound proposals to improve it, where possible.”

The Review has the following Terms of Reference:

1. Inquire into and make general recommendations as to whether the aims and objectives of the *Aboriginal Land Rights Act* require expansion or change of the Act in light of developments since 1983,
2. Inquire into and make recommendations as to whether the administrative and operational provisions within the Act require any change to facilitate and improve the efficacy of the Act, and
3. Report all findings and recommendations by 1 November 2012 incorporating public responses following a period of consultation.

The Minister established a working group of the following members to undertake the review:

Mr. Stephen Wright, Registrar of the ALRA (Chairperson)

Mr. Geoff Scott, Chief Executive Officer of the NSW Aboriginal Land Council.

Mr. Sean Gordon, Chief Executive Officer of Darkinjung Local Aboriginal Land Council.

Ms. Stacey Meredith, an Aboriginal Owner from Central Western NSW registered under the ALRA and a member of the Griffith Local Aboriginal Land Council.

Dr. Richard Sheldrake, Director General of the Department of Primary Industries.

Ms. Kristy Masella, Group Manager Social Justice, Office of Aboriginal Affairs.

In February 2012, the NSW Aboriginal Land Council (“NSWALC”) commenced network consultations prior to those of the Government Working Group to ensure that the views of the network inform both the reform process and NSWALC’s engagement with it.

Network Consultation Process

LALC representatives were invited to participate in regional forums specifically conducted in each of the nine (9) ALRA regions to consider and constructively discuss the ALRA and the operation of the land rights network. Discussions at the regional forums were facilitated and recorded by NSWALC staff.

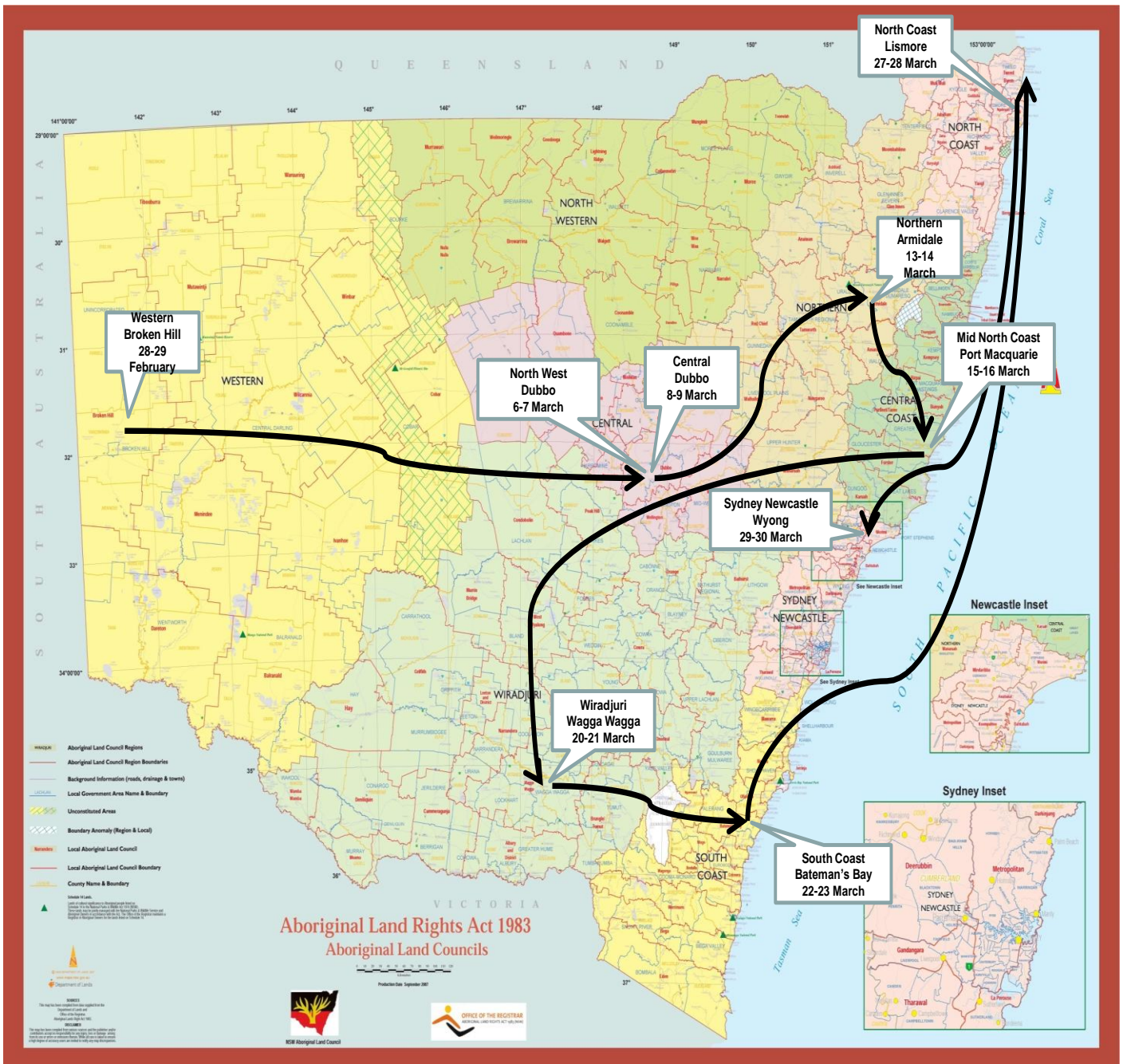


Diagram 1. Schedule of network consultations.

Region	Forum details	
Western	Broken Hill	28 - 29 February 2012
North West	Dubbo	6 - 7 March 2012
Central	Dubbo	8 - 9 March 2012
Northern	Armidale	13 - 14 March 2012
Mid North Coast	Port Macquarie	15 - 16 March 2012
Wiradjuri	Wagga Wagga	20 - 21 March 2012
South Coast	Batemans Bay	22 - 23 March 2012
North Coast	Lismore	27 - 28 March 2012
Sydney Newcastle	Wyong	29 – 30 March 2012

Table 1. Schedule of network consultations.

NSWALC developed a discussion paper to stimulate discussions and debate, both at the regional forum consultations and more broadly within the land council network. The discussion paper was a guide for, and did not limit, discussions at the forums. The discussion paper was developed around elements of the ALRA that are known to NSWALC to be an issue for some in the network or that have undergone recent amendment. The discussion paper addressed the following topics:

Objectives of the *Aboriginal Land Rights Act 1983*, including: Land Rights; and Protection of cultural heritage.

Land, assets and benefits, including: Land acquisition; Land Dealings; Community Land and Business Plans (“**CLBPs**”); Community benefits schemes; Social Housing; and Rates.

Network roles and functions, including: the role and functions of Local Aboriginal Land Councils (“**LALCs**”); the role and functions of NSWALC; the role and functions of the Registrar; and the role, responsibilities and authorities of the Minister for Aboriginal Affairs.

Governance structures, rules and representation, including: LALC governance structure; LALC Membership; LALC Board Elections; Employment in the network; Model and operational rules for LALCs; NSWALC structure and representation; the size of the network; Increasing membership, active member participation and quorums; and Honesty, disclosure, misbehaviour.

Compliance, reporting and accountability

This report presents qualitative outcomes and some direct quotations from the network consultations. It is important to note that the report does not present a complete record of discussions had at the regional forums. Discussions that went beyond the topic area of the ALRA Review, and explanations or information provided on the ALRA without further comment have not been recorded in this report.

The network’s discussions will be considered by a gender balanced roundtable, consisting of representatives nominated by each regional forum, which will assist NSWALC in the development of a position for the ALRA Review Working Group.

Common views from the consultations

The following views were well supported by the forum:

Objectives of the *Aboriginal Land Rights Act 1983*

- The protection of **Aboriginal culture and heritage** should be included in the ALRA's objectives, and provisions should be made for LALC to have enforceable functions for the protection of culture and heritage.

Land, assets and benefits:

- The ALRA has not delivered an equitable amount of land to Aboriginal people.
- The **land dealings** provisions should be reconsidered especially in regards to Development Applications and possibly timeframes for their administration.
- Social housing should remain in the ALRA.
- **CLBPs** are good in principle. However the regulation of their approvals needs to be more flexible.
- NSWALC should not have to pay the **rates of LALCs** that can afford to pay them.

Network roles and functions

- **Interventions** (the appointment of administrators, investigators or advisors) need to be reconsidered. There needs to be an intervention before administration and NSWALC needs to have greater oversight in respect to interventions.
- The current **regulatory functions of NSWALC** should remain with NSWALC.

Governance structures, rules and representation

- **LALC Boards** are an improvement on the previous governance arrangements.
- LALC **quorums** need to be reconsidered.
- **Operational and model rules for LALCs** should be logically compiled in one location within the regulations.
- The '**two meetings rule**' should be applied to members wishing to stand for election and those wishing to nominate someone for election to a LALC board.
- **Member participation** needs to be encouraged by provisions of the ALRA.
- LALC CEO's powers in regards to maintaining the membership roll should be reconsidered.
- Any **amalgamations of LALCs** must be voluntary.
- The **disqualification provisions** for staff are too onerous for temporary employment situations and for those employed in 'low risk' positions – i.e. sites officers.
- **Sanction provisions** for the misbehaviour of members and board members need to be reconsidered.

Compliance, reporting and accountability

- There needs to be greater flexibility/discretion in respect to compliance reporting.
- LALCs need a greater say in the appointment of their auditors.

Western Region

Broken Hill 28 - 29 February 2012

The following views were well supported by the forum:

- That the manner in which **land claims** are processed “*defeats the purpose*” of the ALRA.
- That the Government should be approached to recommence funding of the network.
- That **culture and heritage** should have a greater place in the ALRA and should be part of its objectives.
- That people depend on LALCs, even those that function poorly.
- The “*actions of rich coastal LALCs*” have brought in a **compliance regime** that is a burden on LALCs out west.
- That the current funding allocation is not enough to do LALC administration and compliance as well as land development and culture and heritage activities.
- In regards to **land dealings**:
 - That too much regulation is impacting on LALCs ability to operate as businesses.
 - That land dealings out west should not be subject to the same regime as that which covers more expensive lands on the coast.
 - That there should be “*some exemptions*” for LALCs that are operating on “*different levels to others*”.
 - That the blanket application of land dealings provisions to DAs needs to be reconsidered – some kind of threshold exemption was seen as appropriate (although was not quantified or explored further). This was raised with particular comment on its implications for residential housing management.
- That the **regulation of CLBP approvals** is too prescriptive, particularly for the different circumstances experienced out west.
- In regards to **social housing**:
 - That “*housing for our people has always been important*”.
 - That “*houses are our assets and should be managed by us*”.
 - In smaller communities the houses need to be managed by LALCs.
 - “*SHAPE needs to be tweaked*” – some mandatory fields need to change.
- In regards to the **payment of rates**:
 - That the network shouldn’t be required to pay any rates and at the least rates shouldn’t be payable on former reserves.

- That the many local governments are not providing the services they should for the payment of rates.
- NSWALC shouldn't be required to pay the rates of "*rich LALCs*".
- In regards to **interventions**:
 - There needs to be an option for intervening before the appointment of an administrator – this was raised in the context of both costs and effectiveness of administrators.
 - It was suggested that an intervention "*that can put in an effective CEO*" (from the network) so that problems (and options) can be assessed and rectified, should be put in place where possible.
 - NSWALC should have the power to appoint early intervention options – possibly advisors, and should have more power to oversight/monitor interventions.
 - There needs to be a focus on keeping boards and CEOs in place during interventions where circumstances would allow it.
 - Administrators should never have the power to make decisions that are reserved for members – "*they already have too much power*".
- That there needs to be some **discretion or flexibility in respect to compliance** – s163 of the ALRA needs to be reconsidered.
- That the **two meeting rule** needs to be extended to cover nominations for election LALC Boards – both in terms of who can nominate and who can be nominated (see view below).
- Lack of **member participation** could trigger loss of voting rights – i.e. members who do not attend two meetings in 12 months (or with less support consecutively) could have their membership status changed from voting to non-voting.
- **LALC CEO's need to have the power to change membership status from voting to non-voting** where members have not been located after reasonable attempts to do so – as a lesser step from the current power to remove such members from the roll.
- CEO's powers to remove members from the roll should require membership input if not membership decision.
- **Quorums** need to be looked at – the current 10% position should be reconsidered in favour of set quorum thresholds – based on size of membership – but less than the current requirement.
- Increasing membership – s110 of the ALRA "*should go*".
- "*Benefits should be linked to participation*".
- The **Board/CEO governance structure** is much better than the pre-2007 structure.

- **Boards should hold office for 4yrs** with chairs and deputies elected every 2yrs – like the council of NSWALC.
- That the only **sanction against members**, suspension, is not sufficient.
- That the **disqualification provisions for staff** can be too onerous when it comes to hiring temp staff or staff for specific projects (that may present a lesser risk to the LALC in respect to potential staff members criminal histories – e.g. land management activities).
- That the **operational and model rules** need to be consolidated and presented logically in one location, and they should be prescriptive to avoid ambiguity.
- LALCs should have more of a say in the appointment of **LALC auditors**.
- In regards to **numbers in the network**:
 - there needs to be *“LALC representation in our communities”*
 - Coastal LALCs are in a different position. Out west there are big distances involved between LALCs.
 - Cultural boundaries would need to be maintained in any changes.

The following views were raised with mixed support:

- That the objects of LALCs to support all Aboriginal people in their boundary area – can be contentious with LALC memberships.
- That decisions about land should be for those with cultural jurisdiction – the participant raising this view was unwilling to vote on LALC decisions about land as he was a member of a LALC not on his Country.
- That land dealings should require consultation with *“Traditional Owners”*.
- In regards to **culture and heritage** management:
 - *“We should have one body to represent us”*.
 - LALCs should be *“the filter for consulting on culture and heritage”* and not necessarily *“the end of the road on consultation”*.
- In regards to **CLBPs**: *“Putting too much in the plans is making us look like we are failing”*.
- That the two meeting rule shouldn’t apply to voting in elections.
- Members should be able to have voting rights in more than one LALC – where you live and where your Country is – this was raised in regards to the special circumstances of the non-residential Mutawintji LALC.
- Board members should be required to live within their LALC boundaries.

North Western Region

Dubbo 6 - 7 March 2012

The following views were well supported by the forum:

- In regards to **culture and heritage**:
 - It should be part of the ALRA's objectives.
 - Enforceable powers should be included in the ALRA to protect culture and heritage.
 - Registration of some Aboriginal Owners in a community can be divisive.
 - Provisions relating to accessing land for hunting, fishing and other cultural practices including having fires are a problem.
- In regards to **land acquisition**:
 - The ALRA has not delivered an equitable amount of land.
 - The cost of challenging land claim refusals should be paid by the Government.
- In regards to **land dealings**:
 - That the blanket application of land dealings provisions to DAs needs to be reconsidered. The provisions should not apply to:
 - By type i.e. in respect to single lot residential or essential services, or minor matters i.e. *"putting up a shed"*.
 - Dealings under a monetary (value) threshold.
 - Minor land dealings (capped by value) should be a board decision and not by necessity a members decision – *"DAs for example"* referring to Development Applications.
 - Administration of land dealings can be a problem given the time limit on the validity of valuations and other commercial time related imperatives.
 - If a land dealing is in a LALCs CLBP and is being reported on transparently – the land dealing process shouldn't be so onerous.
- That **CLBPs** are in principle good.
- In regards to **social housing**:
 - That it should remain under the ALRA.
 - That *"housing must be priced to be within reach of our community"*.
- That *"NSWALC's approval of **benefits schemes** is one thing but supervision of them is another"*.
- In regards to the **roles and functions in the Network**:

- Neither DAA or the Registrar should have more oversight over the network – their level of oversight/control is already too much.
- The <50 voting members trigger for dissolution must be removed from s91 of the ALRA.
- There must be greater safeguards against forcible dissolution.
- Dissolution of NSWALC should require an Act of parliament.
- In regards to **numbers in the Network**:
 - *“For remote communities their LALC may be the only organisation left in town”*.
 - The current numbers are right.
 - There should only be voluntary amalgamations.
- In regards to **interventions**:
 - NSWALC should be able to appoint investigators and advisors.
 - Extension of administrator’s terms should require NSWALC’s approval.
 - *“As much control as we can have over our Act the better we are”*.
 - The LMSS could be used to provide triggers for intervention.
 - There needs to be an intervention before the appointment of administrators.
- The **two meeting rule** should apply to those standing for election and those nominating someone for election to the Board. It was also suggested by some participants that administering the current two meeting rule is not problematic.
- In regards to membership **participation**: LALCs should have the power to alter the voting status of members who do not attend two meetings in 12 months – but not remove their membership. It was strongly put by one participant in response to this – that full voting membership means more than just participation – it goes to people’s identities and it is why we marched for land rights – you cannot take that away from people. Particularly when membership by association is considered.
- **Maintaining the roll**: There needs to be greater rigour or control over the CEO’s current power to remove members from the roll.
- LALC **quorum** requirements need to be reconsidered.
- Disqualification provisions for staff generally can be difficult for casual or temp staff and perhaps shouldn’t apply to specific ‘low risk’ roles – i.e. sites work.
- That the **operational and model rules** need to be consolidated and presented logically in one location, and they should be prescriptive to avoid ambiguity.

- NSWALC structure – the current structure was supported, although there was the view that “at least” the nine regions should be maintained.
- NSWALC should keep its regulatory functions.
- Re **increasing membership** – “this is an issue for the Government but not for us”.
- In regards to **compliance and reporting**:
 - The costs associated with auditing financial statements is a burden that is too much for many LALCs that do little beyond spend their allocations – “especially given the regular reporting we do”.
 - The focus on compliance and reporting leaves CEO’s little time to generate other business.
 - There seems to be duplication with the various reporting requirements and the LMSS processes.
 - There needs to be some discretion in the application of compliance provisions.

The following views were raised with mixed support:

- There should be a timeframe set on **determining land claims**.
- **Terms of LALC Boards**: some strongly for 4 year term with Chair and Deputy elected every 2 years; while a slight majority were strongly for the current regime.
- That **rates** should not be paid for “big LALCs”.
- That **apologies** should count (or do count) towards satisfying the two meeting rule.
- In regards to **interventions**:
 - NSWALC staff should be able to be appointed for interventions.
 - The costs of administrators should be borne by Government.
- Re: **Member participation**: Membership should be for an annual term requiring reapplication.
- **Disqualification** from being a board member on the grounds that they had been on the board when the LALC went into administration on two occasions – should be changed to on one occasion.
- **Re: Participation**: It was noted that tying benefits to members or participation is contrary to LALC’s objective of to foster and protect the interests of all Aboriginal people in their boundary.

Central Region

Dubbo 8 - 9 March 2012

The following views were well supported by the forum:

- In regards to **culture and heritage**:
 - Protecting culture and heritage is part of fostering and protecting the best interests of Aboriginal people but culture and heritage needs to be more obviously promoted in the objectives.
 - *“We need to put culture and heritage in the objectives to give us more strength”*.
 - Care must be taken with this, as we do not want to create divisions with traditional custodians. Government will try to divide our communities – we mustn’t help.
 - Access rights under the ALRA (ss47 & 48 of the ALRA) must be expanded to support ceremonial and other cultural activities besides only hunting, fishing and gathering.
- LALC Chairpersons should not be able to be **employed** as CEOs of other LALCs.
- **Land Dealings** – Some current land dealings should be exempt *“we are putting in an above ground pool and that’s a land dealing... a small thing like that has to go through a huge process to get it approved”*.
- In regards to **CLBPs**:
 - Approval and amendment processes are too restrictive - *“we cannot predict what is going to happen [and what will be needed] in three years”*.
- In regards to **Community Benefit Schemes**:
 - Benefits could be tied to attendance to encourage membership participation.
 - *“Where are we going to get the money to fund community benefit schemes?”*
- In regards to **social housing**:
 - In smaller communities particularly, unemployment is a real problem for our housing needs.
- On the Ministerial approval required for **NSWALC’s policies** (by s114 of the ALRA): *“They are NSWALC’s policies why should you need the Minister’s approval?”*
- In regards to **interventions**:
 - There needs to be a *“rethinking”* of interventions.
 - On getting value for money out of interventions: *“never did, never will”*
 - There needs to be another option before the appointment of administrators – the appointment of *“special auditors”* where a LALC is at risk of failing may be a usable option.

- Would it be better to have only one authority to “investigate” matters in the network rather than the current powers with the Minister and the Registrar?
- The ‘less than 50 voting members’ trigger for Ministerial **dissolution** of a LALC should be removed (s 91(1)(a) of the ALRA).
- In regards to **numbers in the Network**:
 - The current 119 LALCs are right.
 - *“You take the LALC out of our town, the community has nothing left. It is not like Sydney where the next LALC is just down the road”.*
 - *“We are not offering a service; it [our LALC] is part of what the community is. It is a different model from the legal service”.*
 - *“We don’t want forced amalgamations we want incentives for voluntary amalgamations”*
 - Concerns about whether amalgamations could really work.
 - There needs to be greater support of the LALC’s out west.
- The **nine (9) regions** should be retained.
- In regards to **membership** and the **membership roll**:
 - CEO’s should have the power to alter a members voting status – where members can no longer be located.
 - Voting status should be tied to a member’s participation and attendance at meetings.
 - Inactive members *“have already made up their minds”*; they are not going to be gotten back.
- In regards to **Boards** and **Board Elections**:
 - The **two meeting rule** should remain and should also apply to those wishing to stand for election to the Board.
 - Board terms should be for four (4) years and not the current two. Chairs and Deputies should be elected every two (2) years still.
 - There would need to be a *“no confidence”* mechanism for Boards to replace Chairs and members to replace Boards or Board Members.
- The current requirement for **quorums** is *“a problem that needs to be looked at”*.
- In regards to **employment**:
 - Board members should not be disqualified for doing site works.

- The Registrar’s discretion in respect to disqualification provisions for potential Board members (s66(2) of the ALRA) should also be applied to disqualifications provisions for employment.

The following views were raised with mixed support:

- NSWALC should create a **social housing** management entity for those LALCs that do not pass PARS or SHAPE.
- There were some concerns about the separation of powers (between the CEO and Board) in respect to the hiring and particularly firing of staff.

Northern Region

Armidale 13-14 March 2012

The following views were well supported by the forum:

- In regards to **culture and heritage**:
 - It should be in the ALRA's objectives, but care needs to be taken in how effect is given to it in any provisions/mechanisms.
 - Culture and heritage provisions in the ALRA must not be an assertion of LALCs rights over *"Sovereign Owners"*.
 - Putting culture and heritage in the ALRA must not disempower Traditional Owners/Custodians and Native Title Holders.
 - At a community level the interactions between LALCs and Traditional Owners/Custodians/Native Title Holders can cause tensions – leadership needs to be shown in resolving the issues at the state level.
- In regards to **land acquisition**:
 - The benefits of claiming land are not always coming - the land granted is often more of a liability than an asset.
 - The ALRA has not delivered an equitable amount of land.
- In regards to **land dealings**:
 - That Development Applications need members and NSWALC's approval is *"over the top"*.
 - The interaction between the ALRA land dealings provisions and Native Title need to be reconsidered – LALCs should not be extinguishing native title.
- In regards to **CLBPs**:
 - Requirements are too complicated and too inflexible – timeframes are too prescriptive and do not allow for the realities of operating a LALC.
 - In principle plans are good but in practice they have been too much of a *"wish list"*.
- In regards to **Community Benefit Schemes**:
 - Our members and not NSWALC should be approving our benefit schemes.
 - NSWALC should not have to supervise benefit schemes.
- **Social Housing** should still be an option under the ALRA.
- NSWALC should not have to pay the **rates** of those LALCs that can afford to pay them.
- In regards to **operational and model rules**:
 - Should be in one place.

- Should be detailed and prescriptive to avoid ambiguity and disputes.
- Should include general meeting rules i.e. procedures for passing resolutions.
- That the diversity of boards has diluted factionalism.
- In regards to **board elections**:
 - The **two meeting rule** should apply to standing and nominating for board elections.
 - Someone who has had their membership suspended should not be qualified to stand for election after their suspension has been served.
 - The time taken to obtain police checks can leave a disqualified board member on the board for too long.
- In regards to **board terms**:
 - That the term of a board should remain 2 years.
 - If 4 year board terms are introduced a more workable mechanism must be put in place to remove undesirable board members.
- That the number of members a LALC has is not an indication of its legitimacy.

The following views were raised with mixed support:

- In regards to **culture and heritage**: *“the Aboriginal Owners Register is just a register of individuals.”*
- **Board elections** – Board elections should generate an eligibility list, so that when a casual vacancy occurs the next in line can step in.
- The **disqualification provisions for staff** generally can be a problem for temporary staff.
- There should be absentee voting in NSWALC elections.

Mid North Coast Region

Port Macquarie 15 -16 March 2012

The following views were well supported by the forum:

- **Culture and heritage** is a “*big issue*” and there should be more scope in the ALRA to protect culture and heritage.
- In regards to **land acquisition**:
 - The ALRA has not delivered an equitable amount of land.
 - The government should pay (from funding previously allocated to managing the claimed crown lands) or waive holding costs for LALC lands
- LALCs Public Benevolent Institution (PBI) status needs to be supported by the ALRA, as NSWALC has been.
- In regards to **land dealings**:
 - Dealings that are of a low value or are simply DAs or other approvals of native vegetation plans (or similar) should not have the same level of land dealings regulation approvals.
 - Certain DAs and native vegetation plans should be exempt.
- In regards to **CLBPs**:
 - There needs to be greater flexibility around approvals.
 - They need to allow LALCs to be responsive to business opportunities as they arise.
- The definition of **community benefit schemes** needs tightening, it is currently too broad.
- In regards to **Social housing**:
 - it should remain in the ALRA.
 - NSWALC cannot take control of the former reserves.
- NSWALC shouldn't have to **pay the rates** of those LALCs that can afford it.
- NSWALC should keep its **regulatory functions** – as opposed to them going to another body.
- There needs to be an **intervention** before putting a LALC under administration.
- Complaints need to be handled properly within the network.
- **Casual vacancies** should not need to be filled until a LALC board drops to the minimum number of board members for a LALC its size.
- The **two meeting rule** should apply for nominating and standing for board elections.
- The LALC CEO should have the power to alter a **members voting status** if they do not attend meetings.

- Potential **LALC members** should be required to present themselves at the members meeting at which their possible membership is being considered.
- There needs to be a mechanism for removing non-Aboriginal people from membership rolls.
- **Operational and model rules** for LALCs should be in one location and should allow for LALCs to develop their own way of doing business (should not be overly prescriptive or should be amendable).
- The current **two tiers of the network** are good.
- The current two year **term for boards** was preferred to the four year term being suggested by some – although again some supported the suggestion.
- In regards to the **disqualification provisions for staff**:
 - They are too onerous for temporary staff and for staff employed in lower risk roles.
 - The provisions relating to crimes against the person can be problematic where the community expects employment opportunities to assist young people coming out of the juvenile justice system.
 - The Registrar’s discretion in regards to the disqualification provisions for CEO’s should be applied similarly to the general employment provisions.
- **LALC quorums** should be 10 voting members plus 1, or 10% of voting members whichever is the smaller.
- **LALC amalgamations** must only be voluntary.
- **In regards to LALC membership**:
 - The required 3% increase in members of s110 should be removed.
 - The following dissolution triggers of s91 need to be removed:
 - Membership significantly in decline.
 - <50 voting members. For some LALCs of this size they may be the only organisation in town.
 - **Benefits** should be linked to membership **participation**.
- It needs to be easier to **suspend members**.
- In regards to **compliance**:
 - There needs to be some flexibility in the compliance regime.
 - LALCs should be able to appoint their own auditors.
 - The current joint list approach to appointing auditors is restricting competition and is commercially unsound.

The following views were raised with mixed support:

- LALCs should have a function to issue culture and heritage certificates.
- Potential board members should be required to nominate and undergo governance training prior to the board elections.
- The age for membership should be dropped below 18yrs.
- There could be greater alignment of LALC boundaries with cultural boundaries/language groups.
- With the LMSS monitoring in place, LALCs should not need to be audited.

Wiradjuri Region

Wagga Wagga 20 – 21 March 2012

The following views were well supported by the forum:

- In regards to **culture and heritage**:
 - Protection of culture and heritage should be in the ALRA as an objective that is supported by enforceable functions.
 - *“Aboriginal people should be making decisions about our culture and heritage”*
 - With culture and heritage still in the *National Parks and Wildlife Act 1974*, *“we are still flora and fauna”*.
- In regards to **land acquisition** of the ALRA:
 - The ALRA has not returned an equitable and fair amount of land back to Aboriginal people.
 - *“The land we have got is ex-tips and contaminated old mines”*
- The land tax ‘tap’ should be turned back on.
- In regards to **land dealings**:
 - *“We shouldn’t sell what little land we have gotten back”*.
 - It is appreciated that the land dealings provisions are stopping people from doing the wrong things in regards to land – things that have been done in the past.
- In regards to **social housing**:
 - There was much debate, but a slight majority wanted social housing to remain in the ALRA.
 - Some were happy with the dual approval schemes, whilst some wanted it under the ALRA solely.
- In regards to the payment and non-payment of **rates**:
 - There was a strong view that NSWALC shouldn’t pay the rates of those LALCs that can afford to pay them but don’t.
 - *“Too much money is being spent on paying rates”*
 - *“Someone’s not doing their job”*.
 - *“We need to get away from welfare dependency”*
 - The payment of unpaid rates by NSWALC should not be mandatory – NSWALC should have discretion.
- In regards to **CLBPs**:

- LALCs that are not delivering on their CLBP are not really performing or delivering for their communities.
- **Community benefit schemes** should only be for members – but this should be addressed by policy and not legislative change.
- **Roles and functions** in the Network:
 - NSWALC’s regulatory functions should stay with NSWALC; *“its self-determination, we should be managing our own business”*.
 - The Registrar has *“too much power already”*.
 - The Office of the Registrar should be an identified position.
- In regards to **interventions**:
 - There needs to be a better way of doing interventions.
 - Administrators are too compliance focused. There needs to be attention paid to performance too.
 - NSWALC should be able to appoint investigators.
- In regards to **LALC Boards**:
 - The current governing structure for LALCs was strongly supported.
 - The current two (2) year term for Boards was seen as an issue for continuity.
 - The two meeting rule should be extended to cover those wishing to nominate or be nominated for election to the Board.
 - There should be one size range for LALC boards uniformly applying to all LALC’s regardless of the size of the membership.
 - The disqualification provisions may work against encouraging young people to stand for election – given the high rate of young people’s encounters with the criminal justice system.
 - Board members should not be disqualified from office for doing site works or other similar casual employment.
 - There needs to be a way of ensuring that the distribution of voting members and representation in a LALC is more even across family groups.
- In regards to **membership**:
 - Engagement and participation of members is an issue that needs to be addressed.
 - Some members, who are members by association, are not able to attend meetings.
 - There needs to be some consistency in how membership applications are handled.
- **Models and operational rules** for LALCs need to be logically located in one spot in the ALRA or ALR Regs.

- There must be no forced **amalgamations** of LALCs.
- The current nine (9) regions of the ALRA are about right.
- LALCs should be able to appoint their own **auditors** from a 'joint-list' that is centrally maintained.

The following views were raised with mixed support:

- NSWALC should have more of the **functions and authorities** under the ALRA that currently reside with the Minister and the Registrar.
- NSWALC should have all intervention powers.
- Cultural concerns aren't given enough weight in land dealing considerations.
- Re: LALCs not paying their rates: *"repeat offenders should be removed (dissolved)"*.

South Coast Region

Batemans Bay 22 – 23 March 2012

The following views were well supported by the forum:

- *“For too long we have been put in one basket. What works out west does not necessarily work on the coast”.*
- In regards to **culture and heritage**:
 - It should be in the ALRA.
 - There should be enforceable powers.
 - *“Let us mind our business”.*
 - But traditional owners should have the say on culture and heritage matters.
 - Care needs to be taken to ensure unity and harmony across the community.
 - Community determines who are the Traditional Owners not the Aboriginal Owners register.
- In regards to the intended **return of lands**:
 - Re-zoning is undermining the economic uses our lands.
 - Water rights should be returned too.
- Interactions between **Native Title and Land Rights** can currently divide communities; *“why can’t they work together?”*; *“There has to be a way to make it work”.*
- Some LALCs that are ‘under-performing’ have simply made the cultural decisions not to sell land – the allocation of funds to LALCs does not provide enough capacity.
- Ongoing education of our Boards and CEOs is vital to the networks operation and survival. The current board training regime is not enough.
- In regards to **CLBPs**:
 - CLBPs are needed but there are currently problems with them.
 - Writing business plans for LALCs under the current regulatory regime is *“nearly impossible...it is not flexible enough”.*
 - There needs to be more flexibility in the amendment processes.
- In regards to **land dealings**:
 - Native Title and the ALRA are meant to ‘travel parallel’ to protect Aboriginal people, but on land dealings they are not working together.
- **Social housing** *“We will see lots more people homeless or in the streets.... If we lose control over our rent where does that leave our people”?*
- In regards to **roles and functions** in the network:

- The Registrar interferes too much with what LALCs are doing. *“They confuse people. They do one thing in this hand and another in that hand”*.
- Complaints are not being dealt with properly in the network.
- In regards to **interventions**:
 - There needs to be a less severe intervention before administration – possibly a mentoring mechanism/program where performance is the issue.
 - Administrators are costly and often ineffective.
 - There seems to be insufficient oversight of administrators.
 - There have been investigations into serious allegations and the LALC hasn’t heard the outcomes of things.
- In regards to the **LALC Boards**:
 - The Board structure is good, but the pressure on such a number of volunteers is significant; the question is *“will [the same] people tire of being volunteers on the Board”*.
 - The 2 year **board term** is too short – a 4 year term with a 2 year term for Chairs and Deputy Chairs is preferable.
 - **Casual vacancies** on the board should be filled by the person with the next number of votes cast at the annual meeting – the first unsuccessful nominee for election at the annual meeting.
 - There needs to be a more effective way for censuring or dealing with misbehaving Board members – the ALRA is not strong enough to deal with wrong doers in the network.
- On **quorums**:
 - Quorums are a real issue.
 - *“The 10% rule doesn’t apply to other clubs or organisations; they would never get a meeting”*.
 - The 10% rule should still apply for land dealings.
- The mechanisms for dealing with disruptive members and board members need to be clearer and more forceful.
- The **model and operational rules** for LALCs must be located logically in one place in the legislation.
- *“Why isn’t there an effort by all those (government) agencies, including AHO and AECG to put dollars into an institution that is working to address the social and economic needs (the network)”?*

- **Auditors** are a big expense to the network.

The following views were raised with mixed support:

- The timeframe for paying the **community development levy** is too prescriptive.
- That: *“The Minister needs to be accountable too”*.

North Coast Region

Lismore 27 – 28 March 2012

The following views were well supported by the forum:

- There needs to be greater accountability for NSWALC to the network - transparency needs to be improved.
- In regards to the delivery of an equitable and viable amount of land by the ALRA:
 - While the Government takes so long to determine land claims, Local Government often rezones our land to restrictive environmentally focused land use zones. This rezoning is undermining the development potentials of our lands.
 - LALCs need assistance with economically developing lands.
 - The costs associated with legal challenges to rightful claims undermine land rights.
- In regards to interactions between **native title** and the **ALRA**:
 - Friction is being caused at the community level between traditional owners and LALCs as a result of the poor interactions between the two pieces of legislation.
 - Some members only turn up at meetings when something that impacts on native title is being considered.
- In regards to **culture and heritage**:
 - LALCs should have a mandate and authority (enforceable powers) to protect our culture and heritage, in the current system *"we are just an afterthought"*.
 - At least there should be better links between culture and heritage laws and the ALRA – *"it should be in the blue book [the ALRA]"*.
- **Land dealings** take too long to process – timeframes may need to be in the ALRA.
- In regards to **CLBPs**:
 - The content and approval process for CLBPs are too prescriptive.
 - *"We don't have the resources to make it [our plans] happen"*.
- In regards to **social housing**:
 - *"We should be managing our own housing"*.
 - *"The reason we got into housing was to help our members - not to make money"*.
 - *"If we lose control of our housing we lose control of our assets"*.
 - But it was also recognised that: *"the hardest part of running a LALC is running the housing scheme"*.
 - Board members who are tenants cause problems for LALCs managing social housing.
- All former missions and reserves should be **rates** exempt.

- There should be timeframes attached to the exercise of the **Registrar’s functions**.
- In regards to **quorums**:
 - Quorums are a big issue that needs to be solved: *“we do everything [put on food, try different venues and other things]...but we cannot get a quorum”*.
 - Factionalism and local politics play their part in whether quorums are achieved – *“this is something we will never get rid of....and that is why the current quorum system needs to be changed”*.
- In regards to **membership**:
 - Suspension of members *“is impossible”* and needs to be made easier.
 - People seeking confirmation of Aboriginality is pushing up membership without necessarily increasing participation; it is putting pressure on achieving quorums.
- In regards to **LALC Boards**:
 - *“The Elders are happy with the way the board structure is working”*
 - Disqualification provisions: Board members should be able to do site works for their LALCs.
 - The current approach to the training of Board members is not enough - skill levels of Boards can be a problem for the more businesslike approach of the governing structure of LALCs – *“if the Board isn’t operating properly we have big problems”*.
 - Board terms should be 4 years.
- The **regulatory roles of NSWALC** should stay with NSWALC: *“we are controlled by the Government enough as it is”*.
- There needs to be more effective mechanisms for dealing with disruptive and poor **behaviour of Board members and members**.
- The timeframes around **financial reporting** and annual meetings *“are a bit tight”*.

The following views were raised with mixed support:

- On whether the aims and objectives of the ALRA should be expanded: *“we haven’t achieved the ones we have”*.
- In regards to **land dealings**:
 - They should only have to be in the interest of members and not other Aboriginal peoples in the LALC area.
 - Native title and traditional owners are a problem for land dealings.

Sydney Newcastle Region

Wyong 29 – 30 March 2012

The following views were well supported by the forum:

- In regards to **culture and heritage**:
 - *“There is not enough emphasis on culture and heritage throughout the ALRA....the ALRA only has two lines about culture and heritage....putting culture and heritage in the objectives is a start”.*
 - Enforcement powers, such as an ability to issue infringement fines, are needed.
 - LALCs should have a greater say in natural resource and native fauna management.
 - Any functions and powers put in the ALRA must be linked to or enabled by other relevant legislation.
 - There is a role for *“legally recognised Traditional Owners”* – being those with recognised legitimate Native Title rights or those on the Aboriginal Owners Register.
 - There should be a state-wide program for registering Aboriginal Owners within each LALC boundary.
 - *“The network must determine who the Aboriginal owners are”.*
 - NSW Aboriginal people *“know who we are and we should be determining our cultural decisions”.*
- In regards to the **ALRAs compensatory mechanisms** (current and expired):
 - *“Land rights has not delivered the equitable compensation it should have to Aboriginal people”.*
 - Land transferred without title is more a liability than an asset.
 - The time lag for determining land claims often means the land granted is the only ‘green land’ left which results in the ‘down zoning’ of LALC lands by local planning authorities – this makes the land granted not equitable or viable.
- In regards to **land dealings**:
 - Timeframes for land dealings need to be introduced.
 - There is too much discretion in the land dealings approval process.
 - The 80% vote for passing a land dealing resolution needs to go. Such a sizeable vote is not required in any other democratic institutions.
 - The **community development levy** *“must go”* – at the least a clear policy for the levy must be developed.
 - The unworkability of the payment of the community development levy (prior to issuing of the registration approval certificate) must be reconsidered.

- Native title should be extinguished when title is granted under the ALRA – *“it is not right for Land Councils to be extinguishing Native Title to deal with our land”*.
- In regards to **CLBPs**:
 - They are a good idea, and *“if done well they are helpful”* but are too onerous in practice.
 - *“We don’t have the funds to implement the plans”*.
- Approvals for **Community Benefit Schemes** are too onerous.
- On **Social Housing**:
 - *“Social housing was never designed to make money...but it must be sustainable”*.
 - *“It is our culture to look after our people”*.
 - There needs to be an extension of time for the approval of social housing schemes.
- The network must be given greater opportunity to provide input on the development of **NSWALC policy**. The development of policies on compliance particularly, must be driven by the network.
- In regards to **rates**:
 - The current provision *“saves”* LALCs that have poor housing management.
 - *“The [State] Government should pick up the tab”*.
- In regards to **roles and functions in the network**:
 - LALCs should have enforceable powers in respect to culture and heritage, as well as land management generally – ability to issue infringement fines.
 - The regulatory roles in the network (those of the Registrar and NSWALC) need to be clearly spelled out.
 - There needs to be separation of NSWALCs conflicting functions.
 - NSWALC should not be *“eroded...let’s build on the strengths we have; not tear them down”*.
 - Compliance functions should be done well, but should be done in the interests of the network.
 - *“We need to make sure that we are not compelled to take on the roles and functions of government”*.
- In regards to **interventions**:
 - Administrators have been costly and often ineffective – there must be greater accountability to the network.
 - Administrators must not be *“left in LALCs to bleed them dry”*.

- The minister has too much power; NSWALC should be able to appoint administrators and investigators or at least must have the final say on administrators.
- Administrators must have the expertise and skills to address more than just the financial management of LALCs.
- In regards to **governing structures of LALCs**:
 - The board structure is an improvement but families can still dominate – *“could we keep more than one direct family member from sitting on a Board?”*
 - *“We must be careful in how we deal with these ‘issues’, we must not to erode our rights or dismiss our cultural way”.*
- In regards to **LALC membership**:
 - Aboriginality is a big issue. *“Our identity is the strength of a Land Council”.*
 - There needs to be a way of dealing with the question of a members Aboriginality where such a question arises.
- Sanctions for dealing with members and board members misbehaviour are too difficult and are not strong enough; expulsion should be an option.

The following views were raised with mixed support:

- Some attendees thought that the land tax compensation mechanism needs to be reinstated. Others thought that this was not a good idea as the statutory fund had not delivered for local people like land claims had, and further land tax compensation would increase the statutory fund at make it more enticing for Government.
- Lands granted under claim should come with the holding costs that would otherwise have been paid by the government.