



New South Wales
Aboriginal Land Council
www.alc.org.au

Independent Pricing and Regulatory Tribunal
New South Wales

Submitted via Have Your Say

Submission to the Review of Local Government Rating System

Dear Sirs and/or Madams,

We thank you for the opportunity to provide a submission to the Independent and Regulatory Pricing Tribunal's (IPART) Draft Report of the Review of Local Government Rating System in NSW (**Draft Report**), currently on exhibition for public comment.

IPART has been tasked by the NSW Government to undertake a review of the local government rating system and provide recommendations for potential reforms. The Draft Report provides analysis on a range of issues as directed by the Terms of Reference and makes a number of recommendations to modify the way rates are levied in NSW.

The NSW Aboriginal Land Council (NSWALC) understands the NSW Government's aim of ensuring a sustainable and equitable rating base for local government. However, it is crucial that the ratings structure in NSW continues to recognise and provide for the important objectives of the *Aboriginal Land Rights Act 1983* (NSW) (ALRA) to be fulfilled through the work of Aboriginal Land Councils in their local communities. Our submission details the following key points:

1. The NSW Parliament's intention when passing the ALRA was to provide a means of redress for past dispossession of Aboriginal peoples, as well as creating a network of Aboriginal Land Councils to relieve the destitution and poverty of Aboriginal peoples in NSW through the advancement of their cultural, economic and social goals;
2. Current rates' exemptions for the Aboriginal Land Council Network, including exemptions for Public Benevolent Institutions (PBIs) operating social housing, are crucial to the continued ability of Aboriginal Land Councils to fulfil the objectives of the ALRA; and
3. That IPART undertake further consultation with NSWALC regarding how a number of the Draft Report's recommendations may adversely impact Aboriginal Land Councils and ultimately local Aboriginal communities.

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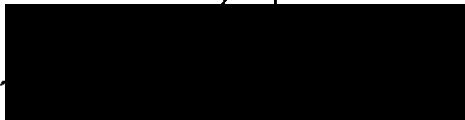
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We trust that the information provided in the following submission will be meaningfully considered. NSWALC is available to provide further information or to further discuss the recommendations outlined in this submission, in order to minimize any negative impacts on the Land Council Network.

If you have further questions regarding the content of this submission, please contact the Policy and Programs Unit on (02) 9689 4444 or policy@alc.org.au.

Yours Sincerely,

A black rectangular box redacting the signature of Malcolm Davis.

Malcolm Davis
A/ Chief Executive Officer

Date: 14/10/16



NSW Aboriginal Land Council

Submission to the

Review of Local Government Ratings System

October 2016

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Overview

The NSWALC is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. NSWALC is a self-funded statutory corporation created under the ALRA, 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 120 autonomous Local Aboriginal Land Councils (**LALCs**) across the state. LALCs have similar statutory objectives to NSWALC in regards to their own local communities.

The preamble of the ALRA recognises that '*Land is of spiritual, social, cultural, and economic importance to Aboriginal peoples.*' The ALRA was established to facilitate the return of land in NSW to Aboriginal peoples through a process of lodging claims for unused Crown land. The network of Aboriginal Land Councils was established to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities.

Aboriginal peoples in NSW and the network of Aboriginal Land Councils are key stakeholders in relation to issues of local government ratings systems. LALCs are significant landowners and managers of land assets across NSW; together Aboriginal Land Councils hold more than 127,000 hectares of transferred Crown estate, with a further 27,000 land claims pending determination. As per the ALRA, LALCs hold land for the economic, social and cultural benefit of Aboriginal peoples living within their boundaries, as well as to relieve the poverty, sickness and destitution of Aboriginal peoples in NSW. With the consent of their members, LALCs may seek to develop or sell land that they hold. LALCs may also seek to maintain key parcels of land for its cultural or environmental values.

The network of Aboriginal Land Councils is central to the NSW Government's policy objective of furthering the economic development of Aboriginal peoples¹ and provide public benefits for society as a whole. In recognition of this, existing rates' exemptions are provided for land vested in NSWALC under section 555(g) and section 556(1)(h) of the *Local Government Act 1993* (NSW) (**LG Act**), as well as section 43 of the ALRA and clause 4 of the *Aboriginal Land Rights Regulations 2014* (NSW) (**ALRA Regs**). The vast majority of Aboriginal Land Councils also have PBI status and access rates' exemptions for the provision of affordable housing to disadvantaged Aboriginal peoples.

The way rates are levied on land owned by Aboriginal Land Councils greatly affects their capacity to fulfil the objectives of the ALRA and further the social, economic and cultural interests of local Aboriginal communities. While the Draft Report explicitly recommends that rates exemptions under the ALRA are

¹ See, for example, page viii of the Discussion Paper released by the Standing Committee on State Development's *Inquiry into Economic Development in Aboriginal Communities*, 7 July 2016, available at: <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryOther/Transcript/10068/070716%20Discussion%20paper.pdf>

retained, there are a number of other proposals that either directly or indirectly impact on Aboriginal Land Councils. Most significantly, the proposal that rates should be levied on land being used for residential purposes regardless of ownership status, would negatively affect Aboriginal Land Councils operating social housing projects. As one of the largest providers of Aboriginal social housing in NSW², if abolished, these rates' exemptions could significantly affect the capacity of Aboriginal Land Councils to continue to operate social housing. Given this, NSWALC strongly opposes this proposal and submits that the principles of taxation outlined by IPART, in particular the vertical equity principle, is a compelling reason to retain the current rating structure or exempt Aboriginal Land Councils from the proposal.

Summary of Recommendations:

Recommendation 1.1

NSWALC strongly opposes Recommendation 10 of the Draft Report on the basis that it would result in a significant negative impact on Aboriginal social housing provided by Aboriginal Land Councils with PBI status. NSWALC recommends that if this proposal is adopted, an exemption is put in place to ensure that PBIs which are Aboriginal organisations providing social housing are not affected by the proposal.

Recommendation 1.2

NSWALC strongly supports Recommendation 11 of the Draft Report with regard to retaining existing exemptions for Aboriginal Land Councils under section 555(g) of the LG Act.

Recommendation 1.3

NSWALC strongly opposes Recommendation 18 in the Draft Report and submits that the applicability of water and sewer access charges for Aboriginal Land Councils under the LG Act should not be at the discretion of councils, on the basis that it shifts the burden to negotiate rate exemptions onto resource and capacity-poor LALCs.

Recommendation 2.1

That IPART undertake further consultation with NSWALC regarding the on-going rates issues in Discreet Aboriginal Communities and how these can be addressed.

Recommendation 2.2

The IPART consider whether safeguards to protect Discreet Aboriginal Communities from changes to ratings structures are required, especially with regard to the Draft Report's Recommendation 6.

² For example, out of the Aboriginal Housing Office's list of 104 Aboriginal Community Housing Providers, 62 are Local Aboriginal Land Councils: please see Aboriginal Housing Office, List of Aboriginal Community Housing Providers (14 March 2016), available at <http://www.aho.nsw.gov.au/housing-providers/approved-provider-list-14-mar-2016>.

1. Proposals to alter rate exemptions

Social housing and Public Benevolent Institutions

Recommendation 10 of the Draft Report proposes that:

Sections 555 and 556 of the Local Government Act 1993 (NSW) should be amended to:

- ...

- ***ensure land used for residential and commercial purposes is rateable unless explicitly exempted***

If enacted, this proposal would remove existing partial rates exemptions for providers of social housing, including PBIs. Under section 556 of the LG Act, land owned by PBIs is currently exempt from paying rates (except water and sewerage special rates) if the land is used or occupied by the institution or charity for the purposes of the institution or charity – regardless of whether it is a residential purpose.

Section 6.2.1 of the Draft Report outlines the key arguments underlining Recommendation 10, being:

- Land used for residential purposes generates a private benefit to the resident rather than a public benefit for the wider community;
- Residential users impose costs on councils;
- Concerns of councils with a high proportion of social housing in their local areas would be addressed; and
- Equity and commercial neutrality – IPART argues that PBIs are being given a cost advantage over private providers of social or low-cost housing.

Aboriginal Land Councils are substantial providers of social housing for disadvantaged Aboriginal peoples across the State, owning approximately 2600 dwellings across 120 Aboriginal Land Council areas, 960 of these located in former Aboriginal missions or reserves. The majority of Aboriginal Land Councils have PBI status. These dwellings are either self-managed by the Aboriginal Land Council, managed via a head-leasing arrangement with the Aboriginal Housing Office or managed through an arrangement with an alternative provider.

Social housing provided by Aboriginal Land Councils provides significant benefits to the community as a whole, providing affordable housing to disadvantaged Aboriginal peoples who do not have the means to otherwise participate in the rental market. The provision of these services by Aboriginal community-run organisations is also recognised as having significant advantages, including that services are culturally appropriate and more attuned to the needs of Aboriginal communities across NSW³.

The provision of social housing also generates revenue for Aboriginal Land Councils; particularly in rural

³ Aboriginal Housing Office, *Fact sheet for AHO tenants*, Issue No. 1, September 2016, available at: <http://www.aho.nsw.gov.au/tenants/aho-messages-aho-applicant-question-and-answer-sheet-2016>

and remote areas where other income streams are less accessible or non-existent, contributing to the economic self-determination of Aboriginal communities. Social housing operations by Aboriginal Land Councils contributes to direct employment of Aboriginal peoples, as well as subsidising the provision of other social and cultural services provided by Aboriginal Land Councils to members and local communities. Aboriginal Land Councils can also be significant contributors to their local and regional economies.

Given the limited market for the provision of social housing to Aboriginal peoples, NSWALC does not consider that commercial neutrality is a significant consideration for removing rates exemptions for the provision of social housing. In many areas, the market is not providing for the unmet need of Aboriginal social housing and services by Aboriginal Land Councils can operate in these areas on a strictly not-for-profit basis.

The removal of rates exemptions for PBIs undertaking social housing would have a significant and immediate effect on the capacity of Aboriginal Land Councils to provide social housing in their areas. As it is, rates exemptions work as a subsidy for Aboriginal Land Councils which assists them in establishing viable and sustainable operations. Many LALCs are small scale, community-run organisations and the establishment of social housing schemes for Aboriginal people and Aboriginal Land Council members allows LALCs to provide for their community's social needs.

The removal of rates exemptions would most significantly affect the most resource and capacity-poor LALCs, potentially resulting in their inability to continue to provide social housing, potentially leading to negative social impacts on disadvantaged Aboriginal communities. In NSWALC's view, the provision of social housing by Aboriginal Land Councils as PBIs is a crucial public good which merits a taxation concession by other ratepayers. As outlined in the Draft Report, grounds for rates exemptions include:

- Where an activity provides substantial public benefits to the community and where requiring rates to be paid may result in the reduction of services below a socially optimal level; and
- Providing exemptions on the basis of equity where an organisation has limited ability to pay, which allows more to be spent on public goods such as helping the disadvantaged.

As outlined above, the provision of social housing by Aboriginal Land Councils meets the above criteria, as well as fulfilling other important objectives of the NSW Parliament, such as contributing to the economic development of Aboriginal communities.

Recommendation 1.1

NSWALC strongly opposes Recommendation 10 of the Draft Report on the basis that it would result in a significant impact on Aboriginal social housing provided by Aboriginal Land Councils with PBI status. NSWALC recommends that if this proposal is adopted, an exemption is put in place to ensure that PBIs which are Aboriginal organisations providing social housing are not affected by the proposal.

Exemptions for Aboriginal Land Councils

Recommendation 11 of the Draft Report proposes that certain explicit rates exemptions under the LG Act should be retained, including the exemption contained in section 555(g) relating to land vested in the NSWALC. These rates exemptions provide important assistance to Aboriginal Land Councils in fulfilling the objectives of the ALRA and fostering the best interests of Aboriginal peoples across NSW. The substance of these exemptions is outlined in further detail below.

Recommendation 1.2

NSWALC strongly supports Recommendation 11 of the Draft Report with regard to retaining existing exemptions for Aboriginal Land Councils under section 555(1)(g) of the LG Act.

Discretion for local governments to grant exemptions to water and sewer access charges

Recommendation 18 of the Draft Report proposes that the LG Act should be amended to:

Remove the current exemptions from water and sewerage special charges in section 555 and instead allow council discretion to exempt these properties from water and sewerage special rates in a similar manner as occurs under section 558(1).

This proposal would affect current rates exemptions to Aboriginal Land Councils. As outlined above, section 555(g) of the LG Act provides an exemption for all rates, including water and sewerage special rates, for land vested in NSWALC or a LALC in accordance with the ALRA. Section 43 of the ALRA and clause 4 the ALRA Regs provide that Aboriginal Land Councils are exempt from paying rates and charges under the LG Act, the *Hunter Water Act 1991* (NSW), the *Sydney Water Act 1994* (NSW) and the *Water Management Act 2000* (NSW) in the following circumstances:

- If land is not being used for a commercial or residential purpose; and
- Land not being used for a residential purpose in respect of which a resolution has been passed declaring the land to be of spiritual or cultural significance to Aboriginal people.

In practice this exemption is most commonly used for vacant or unused land. Land returned to Aboriginal Land Councils under the section 36 land claim process of the ALRA is often vacant Crown land. In some cases it may remain vacant for some time while the LALC undertakes strategic planning or capacity building.

While the need for local government to collect rates to cover the cost of providing services to their rating base is understood, NSWALC does not support Recommendation 18 of the Draft Report due to the adverse impact it would have on the Land Rights Network. Vacant land imposes lower costs on local councils. We expect that if this proposal were enacted, there would be a substantial increase in the rating burden for Aboriginal Land Councils across the State.

Given that land granted under the ALRA is a form of compensation for past dispossession, NSWALC considers it would be contrary to the Parliamentary intent of the ALRA to increase the ratings burden on Aboriginal Land Councils in this way. It is important to note that the element of discretion in Recommendation 18 would move the burden to negotiate rates exemptions onto resource and capacity-poor LALCs. This would ultimately detract resources and funding from the functions of Aboriginal Land Councils to foster the best interests of Aboriginal peoples across the State.

Recommendation 1.3

NSWALC strongly opposes Recommendation 18 in the Draft Report and submits that the applicability of water and sewer access charges for Aboriginal Land Councils under the LG Act should not be at the discretion of councils, on the basis that it shifts the burden to negotiate rate exemptions onto resource and capacity-poor LALCs.

2. Giving councils greater flexibility when levying residential rates and potential impact on Discreet Aboriginal Communities

Recommendations 6 and 7 in the Draft Report propose to allow local governments to levy subcategories of residential rates based on an area being a separate town/village or community of interest with different access to and demand for council services or infrastructure. IPART suggests that these recommendations are predominantly targeted at metropolitan local governments, allowing them to set different residential rates for areas of contiguous urban development with varying costs for service provision. However, Recommendation 6 could arguably be used by local governments to set a different subcategory of residential rates to towns or villages in rural or remote areas.

NSWALC is concerned that this may lead to negative impacts on Discreet Aboriginal Communities. Discreet Aboriginal Communities in NSW are generally former Aboriginal missions and reserves that were historically created and managed by the Aborigines Protection Board until transferred to the Aboriginal Land Rights Network with the passing of the ALRA in 1983. Many of these settlements were located on low amenity land, isolated from local centres, services and facilities. There are currently approximately 60 Discreet Aboriginal Communities across NSW, which vary in size and amenity.

Discreet Aboriginal Communities have been developed outside of formal planning controls and as such, many buildings and infrastructure exist on single title allotments. The result of single title allotments is that the LALC rather than local government is responsible for arranging the maintenance and upkeep of all infrastructure and services on these lots, including road reserves, drainage infrastructure and garbage collection et cetera. Because of this, coupled with the historic lack of investment in this essential infrastructure, the standard of infrastructure (particularly road and drainage reserves) is extremely poor leading to negative impacts on health, economic opportunity and general quality of life.

It is important to note that arrangements between Discreet Aboriginal Communities, local governments and third party service providers vary greatly depending on the community, with a combination of formal and informal arrangements for service provision in place. However, research commissioned by NSWALC has shown that these arrangements are ad hoc and while most Discreet Aboriginal Communities pay equivalent levels of rates to local government, the level of service provision is poor and not on par with an equivalent non-Aboriginal community⁴.

For example, in a number of communities, garbage collection does not operate to each individual dwelling but collects from either a central point in the community or on the edge of the lot boundary for the community. Buses are unable to enter the communities due to inadequate state of road reserves in some areas, leading to children being unable to attend school. In other cases, heavy rains lead to flooding and water and sewerage issues caused by inadequate drainage infrastructure.

There is a lack of clarity and transparency about the relationship between service provision and the levying of rates and charges in Discreet Aboriginal Communities, often fuelled by the complexity of these arrangements and a general lack of understanding by local governments, third parties, residents and Aboriginal Land Councils. The majority of these communities are in remote and rural areas and can be isolated from the nearest town; economies of scale often impact on the cost of providing services to Discreet Aboriginal Communities.

Given the above, NSWALC is concerned that Discreet Aboriginal Communities may be impacted if local governments are encouraged to levy subcategories of residential rates as per Recommendation 6. Although it may be outside the Terms of Reference for IPART's Review of Local Government Ratings System, NSWALC strongly advises that there needs to be an increased level of awareness for all stakeholders involved in service provision of Discreet Aboriginal Communities, prior to any changes being made that could affect the way that residential rates are levied in such communities.

Please note that NSWALC is currently working closely with the NSW Government in order to address issues in Discreet Aboriginal Communities.

Recommendation 2.1

That IPART undertake further consultation with NSWALC regarding the on-going rates issues in Discreet Aboriginal Communities and how these can be addressed.

Recommendation 2.2

The IPART consider whether safeguards to protect Discreet Aboriginal Communities from changes to ratings structures are required, especially with regard to the Draft Report's Recommendation 6.

⁴ NSWALC's *Rates and Charges in Discreet Aboriginal Communities Investigation*. For more information, please contact NSWALC's Policy and Programs Unit.

We thank you for the opportunity to provide a submission on these important issues and trust that our feedback will be meaningfully addressed. NSWALC looks forward to working with the IPART and the NSW Government to address the issues raised in this submission.

This submission has been prepared by the New South Wales Aboriginal Land Council. If you have any questions regarding the content of this submission, please contact the Policy and Programs Unit on policy@alc.org.au or (02) 9689 4444.