



Report of
Ten Community Consultation Forums
Regarding the Aboriginal Land Rights Review
Issues Papers 1 and 2 of the ALRA Review Task Force
November – December 2005

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For the Department of Aboriginal Affairs

Meetings recorded and reported by Kate Sullivan and Associates Pty Ltd

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Facilitators' Overview

In November and December 2005 we assisted the NSW Department of Aboriginal Affairs (DAA), at the Minister's request, conduct a series of meetings around NSW in regard to proposed changes to the NSW Aboriginal Land Rights Act (ALRA). Ten different centres were selected in order to get a geographic spread and so offer the best opportunity for the maximum number of people to attend a meeting. One meeting was held in western Sydney and the rest in country centres of varying size.

The number of participants is indicated elsewhere in this report; however it is fair to say there were not large numbers at each meeting. Despite this, there was representation from a significant number of Local Aboriginal Land Councils (LALCs) in NSW, as well as participation by a small number of people who were not members of a land council.

Information was provided in two presentations, based on *Issues Paper 1 – Review of the Land Dealings provisions of the Aboriginal Land Rights Act 1983* and *Issues Paper 2 – Structure, Representation, Governance and Benefits*. These were publicised via the Departmental website and summary papers were produced and circulated. Issues Paper 2 was completed just prior to the commencement of the meetings and so many people had not had an opportunity to review this information at the time of the earlier meetings. Comment was made at every meeting that more time was needed to absorb this amount of significant information and the view was strongly expressed that this perceived lack of consultation was an insult to Aboriginal people.

At the meetings we did not attempt to discuss each of the 76 options individually. Rather, they were grouped by substantive issues under relevant themes for consideration. We have attempted to focus on the content of responses to the substantive issues presented from the Task Force issues papers, while giving due weight to the concerns of many of the participants that the issues were complex and require time for consideration.

As facilitators, we noted that different views were often expressed privately as opposed to the views that people were prepared to express publicly in the meetings. It was also notable that at most meetings the discussions tended to be dominated by a few strong personalities – often those with a great degree of involvement in the land council system over the years. This was good and bad. It could be said that some may have had a vested interest in the matters under discussion because of their involvement; equally it could be said that this greater degree of knowledge enabled us to extract some more informed comment on the options in the Issues Papers.

In presenting the options we stated that the Government had made it clear that no additional funding would be made available and this was the context for the preparation of the issues papers.

Issues Paper 1

In regard to the matters contained in Issues Paper 1 about land dealings, there was general consensus that there is a need to 'unlock' some of the potential wealth that is now held by LALCs. There was no opposition to the concept of developing 'Land and

Community Business Plans', although at every meeting there was a request for assistance in developing the plans. Depending on the location of the LALC, there were differing views on the potential benefits that may flow from the use of land, i.e. on the coast it is acknowledged that many LALCs hold valuable assets, whilst inland, some LALCs felt their land was of limited commercial value. The challenge is to ensure that the best use is made of the land and that land is not sold off inappropriately.

The Issues Paper suggests that an unspecified 'special majority' of members may be needed to make decisions on a land plan. In most meetings the difficulties of getting members to attend a meeting was discussed and many present at the consultations, often older people, expressed their disenchantment with the land council network. However, in our view, an opportunity also exists in the land planning process as a means of re-engaging the community with the land council system.

In some meetings, there was resistance to the notion of NSWALC having the authority to approve a LALC plan and to approve any particular land dealing because it was seen as patronising and removing the capacity of a LALC to have authority over its own affairs. On the coast some felt this may cause delays in approval and jeopardise a LALC's opportunities for entrepreneurial activity.

There was also considerable discussion about the role of the 'Expert Advisory Panel'. It was suggested that it include Aboriginal people with local knowledge when the Panel considers a particular proposal. When the Panel's role was explained further, most felt that it was acceptable as a means of ensuring that a LALC's interests were protected.

There was mixed support for the options that would redress the imbalance of wealth across the state and support the richer land councils helping out the poorer ones. Some coastal LALCs suggested that once they became self-sufficient on the basis of their land dealings, the annual funds provided by NSWALC for their administration could be re-allocated to smaller, inland LALCs. Not surprisingly, most inland LALCs supported the idea of a redistribution of wealth from the coast to the west through some form of central fund derived from fees and charges.

An issue of concern expressed repeatedly was the lack of recognition of the cultural authority of Traditional Owners by LALCs in their ordinary course of business. In regard to land dealings, some felt that it should be the decision of Traditional Owners only to sell land. The Task Force members who attended pointed out that the Terms of Reference did not address, and the options do not attempt to resolve, that issue.

Issues Paper 2

Issues Paper 2 addressed a broad range of themes, including the role of the Registrar, ongoing review of the Act, social housing, business enterprise and investment, benefit schemes, structure, governance and amalgamations under the general heading of *Structure, Representation, Governance and Benefits*.

Issues Paper 2 was somewhat contentious in the earlier consultations due to the fact that it was only distributed to participants two days prior to the forums being held. As the paper was explained in detail some very valuable comments were received, although the issue of time for adequate consideration of the paper was raised quite

strongly. This was subsequently dealt with by the Minister with the announcement of a six week extension for written submissions to be received by the Department of Aboriginal Affairs.

Options relating to the roles and functions of the Registrar were strongly supported, particularly the need for the Registrar to remain independent of both the Department of Aboriginal Affairs and NSWALC. There was some discussion around the degree of independence, i.e. separate premises and staff. Questions were also asked regarding the Registrar's capacity to cope with the additional workload; however this concern was satisfactorily dealt with in the Registrar's response.

The option of an ongoing review of the Act did not generate a great deal of discussion other than some concern that the changes from the previous review had not had enough time to be implemented and comprehensively assessed. Nonetheless this option appeared to have general support.

The option supporting the outsourcing of social housing management was discussed to varying degrees at the different forums, and it was generally felt that where housing under the management of LALCs was being poorly managed the outsourcing of this function was supported. Where LALCs were managing well it was considered appropriate that they continue to do so. The general discussion of this option centred on the questionable allocation of houses, and maintenance and repairs.

All forums supported the options regarding the business enterprise and investment theme. It was generally considered that this option encouraged economic development and minimised the risk to assets through the establishment of subsidiary companies. Detailed explanation of this option was required, particularly the concept of subsidiary corporations, however a broad range of possible enterprises were canvassed during discussions, suggesting that the option was widely supported, although several participants emphasised the need for training.

Benefit schemes were generally supported and many participants saw this option as having the capacity to encourage broader and more active membership of their respective LALCs if members could experience some tangible benefits derived from being active members. Undoubtedly, wealthier LALCs, particularly on the coast, have a far better opportunity to develop such schemes as opposed to the poorer LALCs west of the Great Dividing Range, and several participants raised this as an issue that would severely limit their opportunities.

The structure and governance options were the source of lively and occasionally heated debate, although no one was suggesting that there wasn't a need for change. Instead the nature of change, for example the option to abandon Regional Aboriginal Land Councils (RALCs) in favour of Regional Forums and reduce their number from 13 to six, raised a number of questions. These included boundary concerns and the capacity of one part-time NSWALC Councillor to adequately service the region, particularly as they would be taking on double the workload of previous full time councillors. There was a suggestion by one participant that it would be more beneficial to reduce the number to nine instead of six. Resources and the distances that would have to be travelled were also raised as concerns. It is our opinion, however, that the communities represented at the forums would accept this option.

The option to replace the current LALC three person executive with a seven to ten member board including a chair and deputy chair also raised some discussion, but it was generally accepted and there was a perception that it would minimise opportunities for any one family to monopolise the board. The issue of most concern in relation to this option was that the general membership of the LALCs would no longer have the opportunity to elect the chair of their LALC or the NSWALC Councillor for their region. Therefore the option to move from a plebiscite election to a college election model was accepted with a sense of loss and caution.

In regard to the proposed appointment of two NSWALC Councillors by the Minister, whilst not dismissed totally, the forums generally felt that they would prefer that the six elected NSWALC Councillors recommend two further appointments to the Minister for his approval, accepting that there could be a skills or gender imbalance on the Council.

Amalgamations were without doubt the most contentious of all the options presented, and participants in every forum rejected outright any compulsory amalgamations. However there was some discussion in favour of the amalgamation of unfunded LALCs and LALCs that are continually non-compliant. The major concerns associated with this particular option were: the amalgamation of different cultural groups, possible loss of identity, fear of loss of assets, and concern that amalgamating a poorly functioning LALC with a better performing LALC may weaken the latter instead of strengthening the weaker.

In addition to amalgamating unfunded and poorly performing LALCs, there was some discussion proposing the possible amalgamation of services i.e. insurances, auditing and possible sharing of CEO's. Therefore it was generally the view that the amalgamation of some services and functions of some LALCs was the preferred strategy to address this option.

Methodology

The methodology of Kate Sullivan & Associates Pty Ltd, who recorded and transcribed the proceedings, was to summarise workshop proceedings and work the content into topics that correspond to Task Force options from the Issues Papers. The use of references (in brackets) to the workshops where specific comments were made provides a useful reference to the more detailed workshop summaries that are included in this Report. We have then relied on our own summaries and conversations with people who attended the workshops to compile this report in a way that we feel will best assist the Minister to appreciate community response to the substantive issues.

We wish to acknowledge the skill and accuracy of Kate Sullivan & Associates in recording the forum proceedings and documenting their outcomes in a manner that is readily referable to the Task Force themes that we now want to report on to the Minister. The opinions, constructions, and emphases that the report places on the reports of the forums are ours and not that of Kate Sullivan & Associates.

Concluding comments

It should be noted that participants at a number of the meetings asked that they be provided with a copy of any report that might be produced about the consultations and requested feedback about the Minister's responses to the consultations.

Despite the clear statements by many attendees at the consultations that they require more time to consider and respond to the contents of the Task Force papers and the consultation workshop presentations, this report focuses on the substantive issues as a means to best assist the Minister for Aboriginal Affairs to consider the way forward.

Jack Beetson

Wendy Machin

1. Introduction

1.1 History of the Review and the Terms of Reference

In May 2004, then Minister of Aboriginal Affairs, Dr Andrew Refshauge, established a Task Force to review the *Aboriginal Land Rights Act 1983* (the Act). He approved the Terms of Reference in August 2004 and in October 2004, the Terms of Reference were published in the Indigenous and mainstream press and submissions were invited on the matters included in the Terms of Reference.

The Task Force members were:

- The Registrar of the ALRA, Stephen Wright, as Chairperson,
- Murray Chapman, NSWALC Administrator,
- Jody Broun, Director General, Department of Aboriginal Affairs.

The Task Force produced two issues papers: *Issues Paper 1 – Review of the Land Dealings Provisions of the Aboriginal Land Rights Act 1983*, and *Issues Paper 2 – Structure, Representation, Governance and Benefits*.

The community consultation forums were conducted by the Department of Aboriginal Affairs (DAA) for the purpose of giving the NSW Government feedback on the work of the Task Force. Minister Milton Orkopoulos appointed two independent persons, Wendy Machin and Jack Beetson, to facilitate the workshops.

1.2 About this report

This report summarises the comments made at ten Community Forums held throughout NSW in November and December 2005. The report seeks to document what people have said without making comment upon that.

Discussion of some of the issues tended to give the meetings the flavour of information sessions rather than consultation forums. Analysis of the transcripts of the meetings shows that a high proportion of the discussions were questions seeking clarification about the material presented, in part due to the fact that participants had generally not had time to review Issues Paper 2 in advance of the meeting. It would generally be

ALRA REVIEW

TASK FORCE TERMS OF REFERENCE

1. Inquire and make recommendations as to whether the aims and objectives of the NSW ALRA require expansion or change in light of developments since 1983.
2. Evaluate the material and other benefits achieved for Aboriginal people since the commencement of the Act in 1983 including
 - whether the ALRA allows benefits available under the ALRA to be delivered efficiently to Aboriginal people of NSW at state, regional and local levels.
 - whether better outcomes could have been achieved and what alternative arrangements might have facilitated better outcomes.
3. Report on the present resource and asset base of land councils and make recommendations for the efficient and effective use of assets and resources for the benefit of Aboriginal people of NSW, including an inquiry and recommendations into an improved framework for managing, selling and developing land council assets, in particular the sale and commercial development of land council real property.
4. Inquire and make recommendations regarding:
 - the development of funding models for the equitable distribution of land council resources; and
 - the development of funding models which tend to the better delivery of measurable outcomes for land council members and other stakeholders and which deliver benefits in a transparent and outcome oriented manner.
5. Inquire and make recommendations more generally on the strengths and weaknesses of present legislative and administrative arrangements with a view to improved efficiency and effectiveness of the land council system.
6. Make recommendations for more representative, effective and efficient governance within the NSW Aboriginal Land Rights system.

expected that participants would have many questions about such broad ranging proposals. Nevertheless, many helpful and well considered comments were made by participants.

Participants reserved the right to provide comment at a later time when they had had time to digest the material put before them and had had a chance to consult members of their land councils.

This report is in two parts

- an integrated summary of participant comments,
- a summary report of each of ten consultation forums.

1.3 The consultations

Ten public consultation meetings were held in accordance with the schedule below:

| | | |
|-----------|-------------|---------------|
| Thursday | 17 November | Coffs Harbour |
| Friday | 18 November | Armidale |
| Monday | 21 November | Albury |
| Tuesday | 22 November | Griffith |
| Wednesday | 23 November | Blacktown |
| Thursday | 24 November | Walgett |
| Tuesday | 29 November | Narooma |
| Friday | 2 December | Cobar |
| Monday | 5 December | Broken Hill |
| Thursday | 8 December | Dubbo |

Meetings were advertised in local newspapers, *The Koori Mail* and *The Indigenous Times*. All Local Aboriginal Land Councils (LALCs) received a letter (see Appendix 1) announcing the consultation meetings and inviting written submissions.

The meetings were facilitated by Ms Wendy Machin and Mr Jack Beetson. The program for the consultation meetings is provided at Appendix 2. The usual order of the day was:

- a welcome to country,
- an introduction by the Director-General of the DAA, Ms Jody Broun (or her representative), and an explanation of the review process,
- an introduction by facilitator Jack Beetson,
- a presentation of the recommendations from Issues Paper 1 – Land Dealings by facilitator Wendy Machin,
- discussion of the issues raised,

- a presentation of the options from Issues Paper 2 – Structure, Representation, Governance and Benefits by facilitator Jack Beetson,
- discussion of the issues raised.

Copies of Ms Broun’s introduction, including the review process timetable, and the overheads used by the facilitators are provided in Appendices 3 - 5

For logistical reasons part of the program order was reversed at the Dubbo meeting, and structure and governance issues were presented before the land dealings issues.

All meetings were recorded. At some meetings feedback sheets were available to participants to make “on the spot” written submissions. Five of these were received and the comments have been incorporated into the summary of each meeting. One typed submission was handed to facilitators and this has been forwarded to the Department of Aboriginal Affairs.

1.4 Attendance

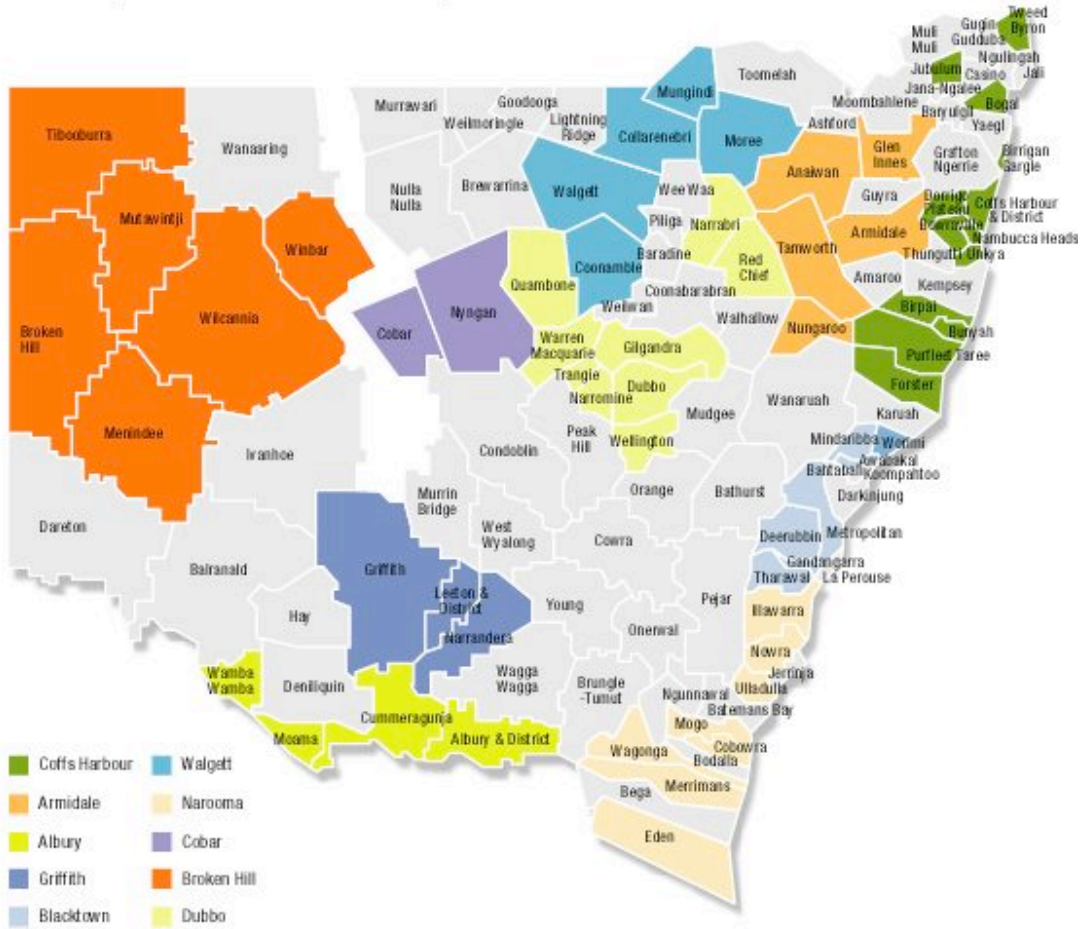
226 people and 68 land councils attended the consultations. Some land councils were represented at more than one meeting. Very few people who were not either members or employees of land councils attended the meetings. Representatives of the following organisations were present: Catchment Management Authority, National Native Title Tribunal, NSW Native Title Services, the Aboriginal Housing Office (AHO) and Murdi Paaki Regional Council. NSWALC zone office staff also attended.

| | Number of participants | Number who spoke | Number of LALCs | Number of RALCs |
|---------------|------------------------|------------------|-----------------|-----------------|
| Albury | 12 | 8 | 4 | - |
| Armidale | 30 | 15 | 7 | 1 |
| Blacktown | 27 | 13 | 6 | - |
| Broken Hill | 12 | 8 | 7* | - |
| Cobar | 12 | 7 | 3 | - |
| Coffs Harbour | 42 | 14 | 13 | 1 |
| Dubbo | 31 | 16 | 11 | 1 |
| Griffith | 17 | 10 | 3 | - |
| Narooma | 24 | 9 | 8 | - |
| Walgett | 19 | 11 | 6 | 1 |

Task Force members attended the meetings and were available to answer questions about the reasoning behind the options presented. The Task Force Chairperson, Stephen Wright (the Registrar) attended all meetings. Murray Chapman (the NSWALC Administrator) attended all meetings except Narooma, and Jody Broun (Director-General, DAA) attended meetings at Albury, Broken Hill, Cobar, Dubbo, Narooma and Walgett.

* This includes Winbar LALC. Traditional owners from this area attended

LALC representation at workshops



- Colours indicate land councils attending forums at meeting locations
- Grey indicates land councils that did not attend forums

2. Key comments in relation to the land dealings paper

2.1 Scope of the regulatory regime (Recommendations 1-2)

This issue was raised only once (when a participant enquired about whether the scheme would apply to investment properties).

2.2 ALC decision-making in relation to land (Recommendations 3, 4, 5)

These options were generally accepted as being useful and sensible, and would allow an audit of land as part of the planning process. It was thought that the plans (the planning process and the benefits that might flow) would assist in re-engaging communities with the land council system. A number of land councils had begun preparing plans already.

Some people spoke about the fact that business planning empowered members and thought it would be good if this could be done by members rather than by hiring consultants.

A number of issues of concern were raised. For the most part, participants seemed reassured by responses to most of these concerns.

- The cost of the planning was raised at every meeting. In the context of limited resources and no promise of additional funds, the planning options will require additional work and the application process will require an additional fee. This might be substantial, especially if a land council had seven or eight businesses, as well as land, to plan for. NSWALC had already issued a draft planning template (available since early 2005). Most participants who had seen it thought that it was a useful aid, though land councils expressed the view that they would need assistance with planning. Meetings were informed that a sum of \$300,000 had been granted to NSWALC by DAA and that it was hoped that Commonwealth sources would at least match this.
- While most participants thought that the draft planning template NSWALC has prepared was useful, some land councils were concerned that they had not been consulted in its development (Blacktown and Narooma).
- Concern about loss of control if planning was handed over to consultants.
- Concern about the level of planning. Smaller land councils or land councils without large parcels of land were reassured to hear that they would probably not have to undertake the same level of planning as large, land-rich councils.
- The need to allow flexibility. The provisions of the Act, the Regulation and the resulting plans must allow land councils enough flexibility to be able to respond to market forces, changing community needs and emergency relief. This issue was raised at the Blacktown, Narooma and Griffith, and Coffs Harbour meetings.
- Clarification was sought as to whether NSWALC would have to approve the content of the plan. A NSWALC spokesperson stated that in considering a 40D application, NSWALC's role would be to see if the application was in accordance with the plan. The plan would have to be developed in accordance with the Regulation with the correct community involvement. The extent of NSWALC's role in relation to the plan would be to check that it had been made in accordance with the Regulation (see further **Recommendations 8-10** below).
- Disappointment was expressed that the plans would not have Local Environment Planning (LEP) status and would have to comply with local government zoning restrictions¹ (see also section 6).
- The need for training land council members and executives in land dealings matters arose at several meetings (Coffs Harbour, Walgett).

¹ This point was made with particular reference to claimed lands, zoned for conservation purposes in the Sydney region.

- The importance of having a system that would allow for the implementation of the plan rather than having a plan that would sit in a cupboard. It was commented that the new LALC Board structure should assist implementation.
- One person felt strongly that land should never be sold as it belonged to future generations.

Suggestions

Some participants made suggestions:

- It was suggested that planning should include the wider community, not just land council members (Armidale).
- In Albury there was strong support for a community plan developed with the whole community and members of the LALC. This would add transparency and should encourage increased (and more active) membership.
- The amendments should be accompanied by provision for training in land dealings for land council members.

Special majority and who gets to make the decision on the plan (Recommendation 3)

- Most people who expressed a view were in favour of a special majority to approve the plans. The size and nature of the majority was not agreed. Proposals for the size of the special majority included:
 - more than 10 members,
 - 60% of members, and
 - 25% of members.

Some participants (Blacktown, Coffs Harbour) felt that the current requirement for 80% of members present and voting (together with the appropriate notification) and a quorum of 10 provided sufficient transparency.

The nature of the majority was not agreed. Some people felt strongly that people with traditional association to lands should be the only ones to make decisions about that land (e.g. Dubbo, Broken Hill, Cobar) and one participant felt that NSWALC should recognise traditional owner groups as well as LALCs and that these groups should be involved in the sale and development of land (Albury) (see further, section 6.1 below). In Cobar a strong statement was made that a person who was raised in the community and whose children were raised in the community, but whose family came from elsewhere, should have a say in all the issues relevant to her land council. It was evident that participants felt that this issue required more discussion.

- Many participants spoke of the difficulty of getting enough members to meetings, though many hoped that people might attend if they could perceive a benefit. The impact of the 2002 changes to the enrolment requirements was a major issue and land councils requested assistance in getting their rolls up to date.

- A strong statement was made that requiring a special majority of 25% would mean in reality that “it would never happen” and another participant said “if you can’t get people to attend a ‘P & C’ meeting, you won’t get them to come to a land council meeting to approve a plan”.
- Some participants were concerned about how enough of their members could become familiar with all the lands that had to be planned for, though other participants pointed out that detailed planning would not need to take place in relation to all land in any five year period.

2.3 Native title, traditional land ownership and culturally significant land (Recommendations 6-7)

One person (Armidale) raised a concern about **Recommendation 6**, stating that all land was culturally significant. She seemed reassured after Task Force members explained that the “cultural association” definition would remain. They explained that the intention of the option was to avoid forcing people to declare that land did not have cultural significance if they wished to sell it. One person (Coffs Harbour) said that he thought that there should be a clear definition of what is sacred land and what is not sacred land. There was no other discussion of this option (however see the discussion on “special majority” above and the importance of traditional owner involvement in decision making in section 6).

Coffs Harbour participants were pleased that **Recommendation 7** provided for exemptions from s.40AA for transfers between land councils.

A speaker at the Blacktown meeting stated that he thought that NSWALC should seek Native Title Representative Body status.

2.4 Approval criteria (Recommendations 8-10)

Participants were concerned about the detail of the amendments to the Act and the Regulation. Some participants (especially at Blacktown, Coffs Harbour and Narooma) were concerned about what proscriptions and restrictions might be placed on their activities. There was a fear that the NSWALC might become “the new ATSIC” in stifling development.

2.5 Approval process (Recommendations 11-12)

At some meetings (Dubbo and Broken Hill) support was expressed for the approvals process, specifically the fact that the NSWALC should approve land dealings. At some meetings no comment was made on these options (Walgett, Griffith).

One participant at Blacktown took exception to matters having to go to the NSWALC for approval but otherwise the options were not discussed. Several participants at Coffs Harbour considered that the local land council should be making their own decisions about land. Participants at Narooma were concerned that having to go to NSWALC for decisions reduced self-determination.

Concern about the timeframe for approvals was raised in Coffs Harbour and Narooma. It was commented that the current timeframe for approvals was too long

and there was some concern that under the proposed arrangements approvals may take as long or longer.

Expert panel (Recommendation 11)

Participants had a series of questions about the make up and operation of the panel. These questions included:

- What sort of expertise would be on the panel?
 - Could the panels include local experts?
 - Could local land councils nominate experts to be on the panels?
 - Would the panel include an Aboriginal person who understood about law and culture?
 - What sort of issues would have to go to the panel and when?
- Clarification was sought about whether the panel or NSWALC would actually make the decision and why it was necessary to have the panel set out in legislation rather than it simply being established by NSWALC.
 - Clarification was sought about the nature of the relationship between the expert panel and local land councils and the possibility of consultation and feedback.
 - The issue of the potential for local involvement in the expert panel was raised (Broken Hill, Armidale, Narooma and Coffs Harbour).
 - At Narooma a concern was expressed about the cost that the expert panel might add to the system.
 - The issue of the expert panel was not discussed at Dubbo, Blacktown or Griffith.
 - Some people stated that the need for local land councils to have access to expertise was evident in the questions asked of the Registrar at the meeting. At Cobar a strong statement was made that land councils needed to be protected from developers who had in the past set up profit-sharing deals to the detriment of the participating land councils. This person suggested that LALCs had a great need for a very good expert panel to ensure that people “don’t get screwed” as they had in the past.
 - Questions were asked about the composition of the panel (Walgett, Armidale, Albury).

Suggestion

It was suggested that land councils should be able to consult the expert panel and the panel should be able to provide feedback to local land councils.

2.6 Review of approval decision (Recommendation 13)

Cost of litigation (Recommendation 13)

Some participants were concerned about the possible cost of litigation (Armidale, Coffs Harbour) and may have been reassured by being informed that the whole process was designed to try to ensure that decisions were made properly and appropriately and that this should reduce litigation overall.

2.7 Information keeping and recording (Recommendation 14)

This option was not discussed.

2.8 Certainty mechanisms (Recommendation 15)

This option was not discussed.

2.9 Control on proceeds of land dealings (Recommendation 16)

This option was not discussed.

2.10 Providing benefits to members (Recommendation 17 and Option 27) and Fees for NSWALC approvals (Option 8)

People felt that changes which allowed members to benefit from land dealings, including groups being able to receive land providing this was done equitably and in accordance with an approved plan, would be likely to attract more involved members. People felt strongly that there had to be some benefit to encourage members to get involved.

In Narooma some participants were concerned about the need to write benefit schemes into Community Land and Business Plans because it was felt that they would not know at the time of their planning how much money they would make from a development that might not happen until two years into the life of the plan.

Redistribution

There was some support for the options that would redress the imbalance of wealth across the state and support the richer land councils to help out the poorer ones. At most meetings this was strongly supported. This was especially important where poorer land councils could not afford to pay rates or the costs of land management (Broken Hill, Dubbo, Walgett, Armidale, Albury).

One person in Cobar said he did not support the idea of funds raised from application fees being redistributed across the state. He said that while the coast had its lands, the inland had tourism and mining. He said he expected that traditional people from the coast would not like the idea and he himself would fight against it if he were from the coast.

The strongest opposition to these options came from the Narooma forum where one person thought that the capital investment fund should be used to fund the inland councils, and this could be achieved if the NSWALC used less funds. This person also thought that coastal land councils should be allowed to achieve self-sufficiency and could then decide if they want to send some of their funds out to other areas. Another participant observed that if all the east coast land councils became self

sufficient then money could flow from the investment fund out west (because coastal land councils wouldn't need it).

Some issues of concern were raised:

- Concern that the NSW Government might expect the east coast land councils to be funding services to Aboriginal people in the west when this should be funded by the state government (Blacktown, Albury).
- Could the benefit schemes benefit non-voting members? There should only be one class of membership.

Suggestion

It was suggested that if money from the central fund, raised from development application fees, was given to land councils to buy land, then a percentage of any profits resulting from the purchase of that land could go back into the central fund.

Fees

- The only opposition to this proposal was that a fee shouldn't be charged because it was NSWALC's core business to approve plans and developments. Other speakers supported the user pays approach as being an equitable one, especially when it was pointed out that the major "users" of the system would be wealthy land councils whose approvals would use up resources which should be common to all land councils.
- Participants were reassured when told that fees would be on a sliding scale (and/or waived in some cases). This was especially important for poorer land councils and land councils that held no lands that were capable of being developed.

2.11 Costs of funding the system (Recommendation 18)

This recommendation, that the scheme be the subject of an economic impact assessment, is assumed to be supported as a number of participants raised concerns about the cost of the system, though the recommendation was not discussed directly.

2.12 Cost of the approval process (Recommendation 19)

See section 3.10 above.

2.13 Probity and integrity – corruption prevention (Recommendation 20)

There was no discussion of this option.

3. Key comments in relation to Representation, Structure and Governance

3.1 Ongoing review of the Act (Option 1)

This was not specifically discussed, although participants frequently raised issues that they felt should be reviewed in the future.

3.2 Amendments to the purposes of the Act (Option 2)

Whilst no comments were made about the specific option proposed, a number of comments were made about the purpose and objects of land councils (see further section 4.13 Roles and functions of land councils, below).

One person thought that the Act should be changed so that land councils need only provide benefits to members (Dubbo).

3.3 Reduction in the number of LALCs (Option 3)

Compulsory amalgamations

A number of issues were raised about the potential difficulties of amalgamations because of cultural boundaries, the variations across the system and the distances involved. Questions were asked about assets and funds. All meetings shared the view that it would be very difficult to make amalgamations work and most people were opposed to them. Several people stated strongly that no one wanted amalgamations and that they were only willing to discuss them because they thought they may be forced into them. Some people refused to discuss them at all.

Some people argued that some amalgamations are needed, especially given the shifts in population. Participants wanted to know what sort of consultation would take place before decisions were made, and stated that if amalgamations were to go ahead then there should be a guarantee of consultation.

Some people found it hard to talk about amalgamations and whether they would be in favour or not, without knowing the specifics of what was proposed.

There were four main areas of concern:

- Cultural integrity and community cohesion
 - Many people felt that their land council boundaries followed cultural boundaries and that it was not possible to amalgamate different cultural groups without causing serious conflict and loss of identity;
 - Members' decision-making about land was a serious issue that would be complicated by amalgamating different cultural groups, as only people with associations to land should make decisions about land;
 - Several people spoke eloquently that compulsory amalgamations would be like revisiting history in that they would replicate the forced relocations that Aboriginal people had historically suffered (Walgett, Dubbo).
 - People felt that forced amalgamations could be very divisive in the community.
- Resource and service issues
 - There was concern that a new LALC made up of 'x' number of old LALCs would receive less than 'x' times the yearly allocation of \$110,000. There would be more members and a larger area to cover but not necessarily any additional resources;

- There was concern that although money may be saved, better outcomes might not be achieved;
 - Would NSWALC be able to offer the new LALCs a better service?
 - Amalgamating land councils would not solve the problems in the community. There is a need to look at the sorts of services that a land council is providing and the number of people they are helping, not just their membership or participation in meetings. Many land councils in small towns have up to 20 people per day asking for (and receiving) help with a wide range of issues;
 - There was a need to examine the social impacts of proposed amalgamations;
 - The ability to achieve savings was questioned because of the need for increased travel and the need to continue to have offices in different towns;
 - People were concerned about what would happen to the assets of their LALC if it were amalgamated with another, especially if their members might be in a minority in the new LALC;
 - People were fearful of losing assets because of their experience of what happened when the role of Regional Aboriginal Land Councils (RALCs) changed as a result of previous amendments (RALC assets were transferred to NSWALC);
 - People were concerned about staff losses and about losing their jobs;
 - Many people were seriously concerned that amalgamating a well-run land council with one which had financial, administrative or political difficulties would result in a worse-run larger land council, and would be unfair to the members of the well-run land council.
- Membership, representation and resource imbalance
 - Amalgamation of a LALC that has a small membership with one that has a larger membership would see the smaller LALC lose control of its assets and all that the members had been working for;
 - Amalgamation of a LALC which has traditional owner members with another LALC would mean the traditional owners would lose a say about their traditional lands;
 - If election of boards were to occur at the AGM and people couldn't get to meetings because there was no transport to the next town, then only the people who lived where the new land council was located would get to vote;
 - Larger land councils would dilute people's representation.
 - Logistical problems

People saw a number of logistical problems in amalgamating land councils, especially in the central west where land councils were centred in separate towns. The problems included:

- The difficulty of members getting to meetings, as most people did not have transport. It was hard enough for people to get to meetings now because of transport issues;

- The need to maintain an office in each town;
- Increased travel for land council staff;
- The size and complexity (and resulting cost) of the task of transferring property, businesses and leases.

Need for some amalgamations

A strong statement was made that the process of amalgamations has the potential to resolve some of the issues faced by land councils in the western region. Some of these issues related to people's associations with country and to the circumstances of non-residential land councils.

Some people felt that some rationalisation of LALC boundaries was necessary because of shifting populations; others were aware that something should be done about land councils that had been dysfunctional for many years.

People thought that something needed to be done about long term dysfunctional land councils but didn't know what should be done.

Some people suggested that amalgamations should begin with LALCs which didn't have any land.

A strong suggestion was made that if a LALC were self sufficient to the extent that they did not need to accept a grant from NSWALC then they should be exempt from being considered for compulsory amalgamation.

Recorders/facilitators comment:

It was evident in listening to participants that they did not in any way think of amalgamations as being equitable mergers, and took the perspective that their land council would be taken over by another one. Perhaps because of the short time frame for absorbing and understanding the proposals as a whole, it appeared that participants were not able to think about the issue from an objective viewpoint or consider the needs of the whole system. Participants moved quickly to thinking up the worst possible scenarios and assumed that decision makers would make the worst choices.

Voluntary amalgamations

Some people said that they could not see a wealthy land council being prepared to amalgamate with a less wealthy one or a well run land council taking on a land council that had financial or administrative difficulties.

Other people thought that there were opportunities to solve a number of problems through amalgamations. These not only included economic issues but also some issues of cultural association.

Alternatives (including alternative funding solutions)

- Some participants suggested a reduction in the amount of money that the State Land Council (NSWALC)² used, rather than have amalgamations. The cost of administering s.40D (land dealings provisions) was seen as part of the problem. If cost cutting was required, then the State Land Council should not be exempt.

Others asked for an explanation of how the State budget was allocated between the local councils and State land council functions, and some observed that there were perceptions about how the budget was allocated which needed to be corrected. At every meeting, participants requested more and better service of the State land council, especially in assistance with planning and training.

- It was suggested that a 'land bank' be set up (where land council land holdings could be used as security to be borrowed against to boost the investment fund to maintain all 121 LALCs).
- Amend the funding formula:
 - Some participants suggested fixing the funding formula to prevent the need for amalgamations. This suggestion was predicated on a perception (misconception) that LALCs with no residents were receiving \$110,000.
 - Means test the funding formula so that those who are wealthy don't receive the LALC funding allocation.
- A suggestion was made that, instead of putting in administrators for long periods, non-performing land councils could be put on probation and their administration undertaken by an adjoining land council for a time.

Suggestions

- Find a way to maintain the original land council boundaries within the amalgamated LALC.
- At a number of meetings it was suggested that rather than amalgamating LALC boundaries, LALCs could work together to jointly administer items such as insurances, IT and other functions to achieve cost savings (see Armidale, Coffs Harbour for example).
- Some suggested that if amalgamations were to go ahead then a ward system should be put in place to guarantee local representation.
- If amalgamations were to go ahead then the list of issues which the Registrar must look at should include the sort of services offered by land councils and the number of 'customers' they provided services to, not just the size of their membership. The social impact of amalgamations should be considered.

² Participants frequently referred to NSWALC as the State Land Council and the terms are used interchangeably.

A participant at one meeting (Narooma) pointed out that there was the potential for increased costs for the Registrar in conducting the consultations process for amalgamations (see section 4.14).

- The administration of a dysfunctional land council could be transferred to another land council – but not other issues.

3.4 Replace RALCs with Regional Forums (Options 4)

A number of people (RALC Representatives) objected to the removal of regional councils (Walgett, Coffs Harbour).

Clarification was sought about the potential role of Regional Forums and concern was expressed about the source of funding for Regional Forums.

Some people felt that, rather than removing RALCs, the need for the NSWALC should be evaluated.

3.5 Reducing the number of Regional Areas (Options 5-6)

There was much less discussion about this issue than about reduction in the number of LALCs.

- Some people were strongly opposed to the reduction in the number of regions.
- Some people observed that having six regions was much too close to the ATSI model and people were concerned about that because of what had happened to ATSI.
- The observation was made that within the regional boundary options presented in Issues Paper 2 (pages 34-35) the number of land councils in each region varied greatly – some had 14 and some had 45. Concern was expressed about how a part-time councillor or board member could represent 30-40 land councils effectively.
- Some people did not have any problem with the idea of reducing the number of regions, though there was not an agreement about the final number. One person made the suggestion that nine was the right number of regions (Albury). This could be achieved by amalgamating the following regions:
 - Murray and Western
 - Western Metropolitan and Sydney/ Newcastle
 - South Coast and Far South Coast
 - Northern and Northern Tablelands

It was suggested that regions should have equal numbers of land councils.

3.6 Funding models (Options 7-8)

This issue was not specifically addressed in the presentation, but a participant at the Broken Hill meeting raised it. The observation was made that the models discussed in

Issue Paper 2 (page 38) tended to favour the larger land councils and that people out west where numbers were smaller would be penalised. Concern was expressed about **Option 7** leaving the allocation decision up to NSWALC, and the need for a policy which required consideration of remoteness in determining funding decisions, was stated. (See also discussion in sections 3.10 and 4.3 above.)

3.7 Membership and voting (Options 9-12)

Some participants felt strongly that changes to the Act were needed to attract members and young people back to the system. Provision of membership benefits and less factionalism were seen as important for re-engaging community members.

Eligibility to vote and stand for election (Option 9)

A concern was expressed that there is no provision to ensure that board members have the skills or qualifications needed to carry out the role.

Participants were concerned that members had to attend only two meetings as a pre-requisite to vote, as some land councils have considerably more than four meetings per year. It was suggested that the provision should specify attendance at a percentage (50%) of meetings rather than a specific number.

Qualifications for membership (Option 11)

- One person (Blacktown) spoke against the part of this option which proposes membership rights to people who are on the Register of Aboriginal Owners. The speaker stated that the current provisions of the Act should stand (see further section 6.1).
- The need for a responsible person to deal with membership matters under the proposed structure (and in the absence of the Secretary position) was raised. Some people reported problems where younger people or people who had not previously identified as Aboriginal (and who therefore did not know 'who was who') had blocked membership applications.
- Some thought that there should be a rule requiring members to attend a certain number of meetings per year or have their membership lapse (Dubbo). (*It was pointed out that this could be achieved through a change in the LALC's rules, providing this was done following the correct process.*)

Registrar to maintain the membership roll (Option 12)

People were generally in favour of this option and **Option 10** (annual review of its membership roll by the LALC). Particular support was expressed in relation to the Registrar taking over the maintenance of the consolidated membership roll, particularly because of the difficulties that had been experienced in NSWALC's management of the roll. The following suggestions were made to strengthen the option.

- The options should provide that courtesy copies of the rolls be provided by the Registrar to the NSWALC.

- It should be clearly stated that neither the Registrar nor the NSWALC can provide copies of membership rolls to other parties without the consent of the LALC concerned.
- The Act should specify, in the event of a dispute, which copy of the roll is to be considered the correct roll.

General membership issues

A number of issues arose in relation to membership that were not directly relevant to these options. These included:

- The fact that many land councils had lots of non-voting members as a result of the 2002 amendments to the Act and membership details had not been able to be brought up to date was raised at several meetings.
- There were many members who were on the roll just so they could get benefits (such as housing) who did not come to meetings once they had their houses.
- Concern about NSWALC's role in having the "final say" on who could be members³ (Walgett).
- The idea that children should be able to be registered as members from birth (Walgett, Armidale).
- A number of procedural issues regarding particular cases, which were addressed by the Registrar.

3.8 Regional and state representation (Options 13-14)

Views about these options were mixed. Some felt that **Option 13** disenfranchised people by removing their ability to vote directly for regional and state representatives. People were very opposed to the idea of Ministerial appointees (see further below).

Others stated strongly that there was a recognition that the current system was not working and that the proposed options seemed to be an effective way to move forward (see for example, Blacktown, Albury, Armidale).

A strong statement was made that the current system needed to be improved as it had removed the accountability which had previously been there when State councillors were elected by a regional forum elected by members (Coffs Harbour) (see *suggestion* below).

³ Membership is in fact determined by a LALC's members, but since the 2002 amendments, NSWALC has been required to remove persons from the consolidated roll where their membership details (such as date of birth and address) were not provided.

A number of issues were not well understood due to the lack of time to understand and absorb the proposals. Confusion was expressed about several points and further explanation was requested. These included:

- the idea of an electoral college system,
- the change from Secretary, Treasurer and Chair to a board,
- the fact that local chairs held their seats for two years and State Councillors for four years.

Some people also didn't understand that the LALC Coordinator would be replaced by an Executive Officer (and that there would continue to be a staff member) and this required further explanation.

At the Armidale and Coffs Harbour meetings there was little discussion of the structure and governance issues as some participants stated that, as they were predicated upon a reduction in the number of regions (which people didn't support) then there was no point in discussing them. However others stated that if things were not working then they needed to be fixed.

It was acknowledged that the proposed electoral system would save money.

Election of Regional Forum and NSWALC members (Option 13)

Some concerns were raised about the proposed election system:

- Concern that people's democratic rights would be eroded by not being able to vote directly for regional or State representatives.
- Restricting the regional forum to LALC chairs seemed limiting.
- The proposed system would cut down input from the local level, and if two LALCs were amalgamated then only one person from each of those councils could be chair. *(There was no acknowledgment that the total number of people on the executive would be greater.)*
- Concern was expressed (at the Albury meeting and in a written comment) that the system requires a formal mechanism to allow reporting by State Councillors members back to the LALC chairs in the regional forums.
- Participants were not convinced that having a larger number of board members would prevent the biggest families being elected to all the positions on the LALC Board, and then elected to the State Board (NSWALC).
- Concern was expressed that if voting took place at the AGM then only those members present would be able to vote, and if amalgamations took place it would be harder than it is already for members to get to meetings; only those who lived in the town where the meeting was held would be able to vote.

- Concern was expressed at several meetings that the electoral college model was similar to the ATSIC model⁴ and people were fearful that what had happened to ATSIC would happen to the land council system.

Suggestion

- Consideration should be given to allowing a ward system to operate where members are located in several population centres or where discreet groupings occur (Griffith).
- The amendments should provide for a mechanism to ensure the NSWALC Board would report back to LALCs and members.

Elected and appointed NSWALC members (Option 14)

- There was concern that the proposal of fewer board members (NSWALC Councillors) would mean a dilution of participation.
- People were very opposed to the idea of Ministerial appointees:
 - Ministerial appointees should not be non-Aboriginal people;
 - Ministerial appointees reduce people's democratic rights;
 - One person thought that a Ministerial appointee would necessarily have to represent the Ministers views;
 - State Council should be able to seek advice as needed but there should be no Ministerial appointees;
 - Aboriginal people did not need a non-Aboriginal person (i.e. the Minister) to represent Aboriginal people and make these appointments.

Participants did not object to the rationale for the additional appointments (i.e. to ensure balance in respect to issues such as gender, expertise etc, on the NSWALC), however they considered that the recommendation for these positions should come from the elected Councillors.

Suggestion

- The suggestion was made that if two additional members were needed to ensure balance on the board then the Aboriginal people elected to the NSWALC should have the power to co-opt the additional two members rather than the Minister.

3.9 Governance – constitutional structure of LALCs (Options 36-38)

The LALC Board (Option 36)

Some participants felt that the board structure was a good solution to the difficulty of getting members to come to meetings, as having a board of at least seven would

⁴ The facilitator had made a reference to ATSIC to explain the electoral college model.

ensure a good cross section of the community would be represented and involved and would avoid the situation of not being able to get on with business because of not having a quorum (Albury). Some participants favoured the increase in the numbers of the executive from three to between seven and ten (Broken Hill).

Many people were confused about the proposed changes and about the difference between the board and the existing executive and sought further clarification.

Some people had concerns.

- There was concern that this structure would weaken the role of members which, under the current legislation, is what makes the land council system unique. The role of the LALC Board as proposed was seen to reduce the voice of the people. This was a widely-held concern.
- Participants were concerned that the LALC Board would not be answerable to members.
- Most land council executives work and cannot attend daytime meetings. Having more board members (seven to ten) may present difficulties for board members to attend daytime meetings.
- A query was made about the size of the quorum for a board meeting and whether board meetings could be held at the same time as general meetings to cut down travel costs.
- Having increased numbers on the board would not necessarily reduce nepotism and would cause friction. It would still be a 'numbers game'.

Suggestions

- The amendments should make provision for an appropriate person to be responsible for membership matters.
- The amendments should make provision to ensure that board members report back to members.

3.10 Governance – constitutional structure of NSWALC Option (39-41)

Election of Chairperson and Deputy Chairperson (Option 40)

There was widespread objection to the fact that elected NSWALC Councillors (except the Chair) would be part time positions, especially since the regions they would represent would be much bigger.

Frequency of NSWALC meeting (Option 42)

Two months was considered to be too long between meetings, from the point of view of land councils putting in applications for development approval (Narooma).

3.11 Duties and training of elected NSWALC Councillors (Option 43)

The need for training for LALC Board members and NSWALC Councillors was put strongly in several meetings.

3.12 Ineligibility for employment as LALC Executive Officer (Option 49)

This proposed provision was supported but it was felt it should be altered to apply to all LALC employees, as the current provision in the Act prevented anyone with a police record being employed even if they had only been convicted of stealing a can of coke (Narooma).

3.13 Roles and functions of land councils (Options 15-18)

LALC provision of government services (Option 15)

While this option was not specifically commented upon, a number of issues were raised that were not unrelated and would support the option.

- A number of people commented on the wide range of issues covered in the purposes of the Act and the “objects” of land councils and the small amount of money which land councils have to deliver services.
- Participants felt that there was an increasing pressure on land councils to run programs, put onto them by government but with no support. Land councils are expected to pick up programs and try to deliver services into the community. A belief was expressed that the State Government was intending to make sure that the land council system would go “like they made sure that ATSI went down” (Blacktown).
- Participants said that government programs were imposed on communities (Albury). There was a call for government departments to get on with service provision to Aboriginal people (Armidale and Coffs Harbour).
- In outback towns there is no one to report a problem to and get a quick response (Walgett).
- The populations in places like Narrandera are “used for statistics”, so that government departments get funds but communities don’t get the services – “we are just statistics” (Griffith).
- Participants spoke to the frustration of trying to assist their communities using the grant that the LALC receives from NSWALC: the system is reliant on CDEP positions. LALCs deal with social problems, housing and employment, native title, and culture and heritage issues (Albury).
- One person commented that the objects of the NSW Land Council “to relieve poverty, sickness, suffering, distress, misfortune, destitution, and helplessness of Aboriginal persons in NSW” (s105(b)) should remain, unaltered (Armidale) (reference to section 2.2 of Issues Paper 1 – Land Dealings).

3.14 Roles and functions of Registrar (Options 19, 20) and Compliance directions and investigation (Options 55, 56)

Independent role of Registrar (Option 19)

Several strong statements were made that the Registrar should be independent. No one spoke against this option. Some thought that the Registrar should also have his own staff and that, to ensure the perception of his independence, he should be housed separately from the Department of Aboriginal Affairs. It was felt that it was important that a person who deals with complaints should be independent.

Changes to the Registrar's functions (option 20), Complaints and compliance direction (Option 55), Investigative powers of NSWALC and Registrar (Option 56)

In the majority of meetings participants supported these options. There was some support for the general proposal to reduce the compliance role of NSWALC. Some participants wanted more information about how the proposed amendments would function (Cobar, Blacktown). Concerns or objections included:

- If the proposed options meant that issues would be resolved more quickly than they were supported.
- One person (Blacktown) spoke against the options as they would give more power to a person who was outside the land council network.
- One person (Coffs Harbour) said that the new power (**Option 56**) was too strong.
- Concern was expressed at the Coffs Harbour meeting about the potential conflict of interest of the Registrar, as a member of the Task Force, in making recommendations about his own role.

*The Registrar accepted that there was a conflict of interest in relation to these particular options but stated that he was comfortable being a member of the Task Force as the vast majority of issues dealt with in the Review posed no conflict of interest. At several other meetings the Registrar pointed out his conflict of interest and drew attention to the fact that the powers under **Option 56** were quite coercive. He said that people should carefully consider the issue.*

- Support for the increased powers was dependent on the Registrar being independent.
- Concern was raised (at at least three meetings) about the cost of the new functions and whether the Registrar would have enough resources to undertake them. The proposals were supported as long as they were economically viable and efficient. Some participants stated that the Government, not the land council system, should fund any shortfall.

One participant pointed out that if amalgamations went ahead then there was the potential for increased costs for the Registrar in dealing with that matter (Narooma) (refer **Option 3** and see section 4.3 Reduction in the number of LALCs).

- One person thought that the power “in consultation with the NSWALC to recommend the appointment of an investigator” (**Option 20**) should be broadened to allow the Registrar to recommend the appointment of administrators.

4. Key comments in relation to business and investments, material benefits and social housing

4.1 LALC Business enterprises and investment (Options 21-23)

Regulating LALC business enterprises and other investments (Option 21)

Related corporate entities to run LALC enterprises (Options 22)

Financial affairs of related entities (Options 23)

Participants were generally supportive of these issues and of their importance in:

- protecting LALCs’ assets from risk,
- supporting LALCs in achieving self-sufficiency, and
- protecting LALCs from the potentially corrupting influence of developers.

Some were strongly supportive of these options, especially in the context of the proposed Community Land and Business Plans. It was felt that the LALC Board would have clear direction to deal with business issues.

- There were quite a number of questions in relation to issues such as the nature and operation of the corporate entities envisaged, and the liability of the independent directors.
- There was some confusion about the nature of the “independent” directors and participants were initially concerned that this meant that the directors could not be members of the land council.
- Many land councils spoke of various attempts to set up separate businesses, which had not been easily achievable under the current Act. In their experience, concern about the land council being able to maintain control of the enterprise was a major issue. Some stated strongly that land councils should already be able to set up separate enterprises.
- LALCs’ experience in trying to establish these sorts of enterprises previously was that they had not received adequate support from relevant government departments or financial backers.
- Participants were pleased if the proposals meant that there would be greater accountability in the system and if people (independent directors of enterprises) who did the wrong thing could be charged.
- The option would allow the transfer of social housing to a separate entity outside of the land council and would protect council assets.
- In relation to **Option 21**, one participant (Blacktown) suggested that for an assessment of financial risk, a bank might make a better assessment than an expert

panel, however other participants thought that the NSWALC should have its own source of advice rather than rely on banks.

- Attention needed to be paid to training (funded by NSWALC) so that LALCs could run effective businesses.

4.2 Provision of material benefits (Options 27-29)

Provision of benefits to members (Option 27)

Approval of LALC community benefits schemes (Option 28)

NSWALC community benefits schemes (Option 29)

There is strong and widespread support for the removal of the current provision which disallows members from benefiting from the sale of land. **Option 27** is strongly supported. One participant thought that the only people who currently benefit from land rights are land council employees.

- A strong statement was made that while these options were supported, they were only relevant to LALCs with large and rich land holdings (Armidale) and/or they would only become relevant in the future when more LALCs had more money. A number of opportunities for providing benefits using existing resources were explored. These included:
 - using the investment fund;
 - setting up a land bank (where the land council land holdings could be used as security to be borrowed against to boost the investment fund, to fund all LALCs;
 - making use of the investment fund and setting up a land council bank for the 23,000 state-wide members.
- Participants were interested in the opportunities that the options might provide and:
 - requested an explanation of “home ownership schemes” which were mentioned in the presentation of this option;
 - were very interested in the possibility of local land councils and/or the State Land Council being able to operate funeral funds (several meetings);
 - were interested in being able to access aged housing through an Aboriginal housing provider;
 - wanted to know if they would be able to develop and sell land to members.

Some concerns were raised:

- There was some scepticism about whether land councils would be able to fund benefits schemes, when they couldn’t even fund a feasibility study for a proposed enterprise (Coffs Harbour).
- Concern was expressed at what “equitable across the state” meant, and how that would be achieved.

- Concern was expressed that if membership increased significantly there may not be enough resources to support a funeral fund and it was suggested that the Act be changed “so that we don’t have to look after all the community – just our members”.
- One participant was concerned at the fee that would be charged for approvals of LALC community benefits schemes (**Option 28**) because he considered that such approvals were core business for NSWALC, however other participants thought that a user pays approach was fair as only the wealthy land councils would be making applications and it was unfair that poorer land councils pay for this indirectly by this use of NSWALC funds.

4.3 Community Housing (Options 30-32)

LALC social housing (Option 30)

NSWALC approval of social housing schemes (Option 31)

Transfer of management of social housing schemes (Option 32)

The options were well supported. The major issue raised at several meetings was why a land council should need NSWALC approval to provide social housing. Some people thought that having to get NSWALC approval in relation to housing was a good safety mechanism. One participant (Blacktown) suggested that an alternative (and less disempowering) way to achieve the same intention would be to provide a trigger to impose a regulatory regime on those not doing well with housing.

Some participants thought that outsourcing the management of housing was a good thing because it would make the process of allocation of housing more transparent and accountable. This was important to alter the perception that land councils are being run by and for the benefit of family groups.

The concept of social or community housing was not well understood. Many participants did not seem to grasp that it meant not-for-profit housing. It was suggested that social housing should be defined in the Act.

Concerns and suggestions

- It should be a local decision as to whether the local land council wants to provide housing.
- There was some concern that LALCs with well managed housing might lose their right to manage the housing, but participants were reassured by Task Force members that this option would:
 - allow those with well run housing to continue to do so,
 - enable those land councils who did not want to continue to manage housing to pass the management on to another entity while maintaining the land and housing assets, and
 - mean that those that were not doing a good job (and may be costing the whole land council system) would be compelled to outsource the management of their housing.

- At one forum it was felt that private rental managers would never take on the sort of housing stock and the clients that LALCs have, and past difficulties with the AHO meant that it was not considered a viable alternative (Albury).
- Most people sought reassurance that the options meant that land councils would retain the assets and any income (above costs) that accrued.
- Some people were concerned about the capacity of the Aboriginal Housing Office (AHO) to take on the housing work.
- Some people found the idea of land councils becoming landlords for the AHO hard to take and suggested that housing should be put into a LALC enterprise instead.
- Participants at several meetings thought that the intention should be to replace “social housing” with “ownership housing” and several home ownership schemes were discussed. Some people had issues concerning the sustainability and equity of some current schemes.
- Some people felt strongly that land councils should get out of providing housing and concentrate on land and culture or enterprise development. The point was made that housing was not an “enterprise” because it didn’t make money, and it wasn’t social housing because of the nepotism involved in deciding tenancies.
- NSWALC should be putting pressure on governments to provide appropriate resources for social housing.

A need for training in real estate management was identified.

5. Issues not addressed or dealt with sufficiently in the Terms of Reference

Participants raised a number of issues which they thought should have been included in the Terms of Reference and were not, or should have been dealt with in a more substantial way in this Review, or are issues that should be dealt with in the future.

5.1 Recognition of Traditional Owner rights

At almost every meeting people stated that only people with traditional association with land should be able to speak for that country. The issue arose in relation to Community Land and Business Plans, and the nature of the special majority that might be required to make decisions (see section 3.2 ALC decision-making in relation to land, above). It also arose in relation to questions about the reduction in the number of LALCs where there were concerns about adjustment to land council boundaries that were perceived to follow traditional clan group boundaries or which related to groups with discreet identities (see section 4.3 Reduction in the number of LALCs, above).

This issue is addressed in this Review in **Recommendation 6** and **Options 11 and 33**, however these options were not explored in detail during the forums and many people felt that this issue requires further consideration in the future.

5.2 One vote, one area rule in non-residential situations

An exception to the “one vote, one area” rule needs to be made where non-residential land councils exist (i.e. where members who have membership by association by virtue of their traditional connection to the land are unable for legal reasons to live on it). In these situations people have close association to the country within that land council boundary but cannot live within the land council boundary due to legal and zoning issues. The review should consider allowing exemption of individuals from this rule.

Rates exemptions

Rates exemptions were raised as an issue at nearly every meeting. Some people felt that the Act needed to be changed to ensure that exemption will apply not only to non-income producing land, but also to land that is used for not-for-profit purposes. Situations in which this was relevant included use of land for social housing, and land which had zoning or use restrictions upon it but which still incurred land management costs and where recoupment of those costs might be seen as income (e.g. sale of feral goats removed for land management purposes). The rates issue arose in most regions.

Local government zoning

The Review did not deal with the imposition of local government conservation restrictions on claimed lands.

Participants expressed the view that both this and the rates issue should be examined in light of the original intention of the Act to provide compensation and support for Aboriginal people who had been dispossessed of their lands.

Reinstatement of the 7.5% land tax

Some participants thought that the Review should have considered the question of the reinstatement of the 7.5% of land tax previously paid to the land council system

Cultural heritage

At several meetings the issue of cultural heritage protection was raised as an issue that should have been addressed more thoroughly in this Review, and a call was made for a discussion paper on this issue (Blacktown, Broken Hill, Coffs Harbour).

Fishing and water rights

Fishing and water rights were identified as an issue that should have been addressed in this Review.

Mining rights

The Review should strengthen mining rights and strengthen the land councils' ability to negotiate with mining companies.

Access to land

This Review should have addressed the recognition of Aboriginal people's rights and a formal process to allow them to access farming land (including Western Land leases) to visit sacred sites and other places.

Native title

The issue of native title on land claimed after November 1994 was identified as one that needed to be addressed.

Training

As well as training in board member roles and responsibilities (mentioned in **Option 42**, which was strongly supported) there were also calls for adequate training to run corporate businesses and in real estate.

Women's business

One woman spoke about the need for the Act to give recognition to women's business to ensure that women's issues are given appropriate recognition in the land council system.

6. Comments in relation to the review in general

6.1 Comments about the consultation process

*Yeah, well you fellas need to not just say that ... we can make all these decisions in one day. So you fellas, government, need to make sure youse come back with, back to us before any recommendations are put to government as to how this process might be further defined and refined, because one day's just not acceptable.
(Broken Hill)*

The timetable

Many people commented that the timetable was far too tight (Blacktown, Broken Hill, Armidale). Participants were strongly critical that Issues Paper No 2 was not available before the meetings (e.g. Coffs Harbour).

Comments such as the following were made:

It is an insult to our people. We are at a great disadvantage. There is no time to put our views together at the local level and consolidate them into a state-wide view. The timeframe is ridiculous. (Blacktown)

Many people felt that it was a mark of disrespect to be consulted about something that they had not had a chance to digest.

It is not a partnership. It is an imposition.. (Armidale)

The most important comment today: I really feel that we've been again disenfranchised. These papers should have been sent out well before today, not given to us on the day to absorb and then give you comment on. That is total

disrespect to our communities from the Task Force, NSWALC and everybody else that's driving this process. (Coffs Harbour)

Lack of opportunity to consult with members and communities

People wanted it recorded that they need time to go home and think and talk over the issues with members (Narooma, Broken Hill, Cobar), and wanted a further opportunity (“a fair go”) to put forward their views when they had had time to consider and document the community’s views properly.

I mean, if you are going to come out consulting with the community you've got to come prepared, not just half-witted. I mean to say, a lot of us, our livelihoods depend on the outcome of the Review; not only ours – our communities, our children, our elders – so we want to have a fair go at it and ensure that our recommendations are put forward and are documented accordingly to what we are saying on behalf of our communities. (Coffs Harbour)

The options

At several meetings the participants’ perception was that the options were not real options and that people were being presented with a *fait accompli* (Narooma, Griffith).

At one meeting it was felt that there had not been enough community involvement in the drafting of the options (Narooma).

Future feedback

In at least half of the meetings, participants requested copies of the report of the meetings and also said that they would like another round of consultations after the Minister had considered their comments (Blacktown, Broken Hill, Walgett, Armidale, Cobar).

Yeah, I just wanted to know. I know you've only got a couple more communities to go with the presentation. Is the final feedback going to come back to all the people that are here today when they make the necessary changes? Are we going to be fully aware of all the decisions that are finally going to be made by Government? (Walgett)

Notice and location of meetings

Some people complained of receiving notice of the meetings only the day before the meeting (Armidale, Walgett) and that advice about the meetings to non-land council organisations was insufficient (Armidale).

Some people had had to travel for two hours or more to attend meetings and questioned why they were held in some centres rather than others (e.g. Armidale rather than Tamworth).⁵

⁵ Facilitators’ note: wherever meetings might have been held, some people would have had to travel.

6.2 Feedback on the forum

Four written feedback sheets (three from Walgett, one from Armidale) stated that the forum had gone well:

- information was presented in an open way;
- information was clear and useful;
- people were engaged in asking questions throughout;
- the discussion was understandable;
- there should be more forums more often;
- the process of visiting all communities was good; and
- DAA support staff, facilitators and Task Force members “were great”.

One of these submissions stated that participants at the meeting were fearful that they would not be fairly represented.⁶

6.3 Is the Review necessary?

- One person did not see why the review was necessary and thought that very few changes were needed because:
 - The land council system had been operating for seven years (since 1998 when the land tax monies ceased to flow) without the changes.
 - It was only 12 months after they implemented the outcome of the last review of the Act that they started the new one.
 - Legislating about corruption won’t change people’s behaviour.
 - The money in the Investment Fund (from the Land Tax) was there to compensate the Aboriginal people of NSW for dispossession. This fund is managed so that half of it is maintained for investment. The only change that needs to be made is to inform LALCs that half of the funds they get from enterprise should be invested.
 - The fact that the Albury LALC has been able to borrow funds to purchase houses and sell them to members illustrated that the current system was working.
- Some people were not convinced by the statement that there were not enough resources and dismissed lack of resources as a justification for some of the proposed options.

⁶ It was not clear if they were speaking about reporting of the forum proceedings (i.e. representation of their views) or of the options dealing with representation.

- Some people drew attention to the parallels between some proposed provisions and some ATSIC models and structure, and were concerned that the land council system would ‘go the way of ATSIC’.

6.4 General comments about the issues papers

- Speakers at some meetings thanked the members of the Task Force present for coming to the meetings and for “putting it out there for discussion” (i.e. for the efforts of the Task Force in conducting the Review and developing the proposed options) (e.g. Coffs Harbour).
- There was some concern that, on balance, the options would disempower members rather than empower them because of the perceived emphasis on compliance and the requirement to get approvals from NSWALC on various matters. One person thought that moving powers from NSWALC to the Registrar would mean moving power outside the network (Blacktown). Others thought that lessening the compliance or ‘policemen role’ of NSWALC was a good thing. The independence of the Registrar was strongly supported.

7. Other issues

At most meetings a number of issues arose that had no bearing on the issues papers and many of which related to specifically local issues. These were often referred to the NSWALC Zone Manager in attendance.

Housing

Probably the most common theme to arise was housing (Albury, Walgett, Dubbo, Armidale). The issues commonly raised were about repairs and maintenance, funding, and the performance of the AHO and other housing managers. Access to Aboriginal owned or managed aged care housing was also raised (Dubbo).

Funerals

Many people spoke of the difficulty in accessing funding for funerals and this appears to be an issue of widespread concern.

Membership

A number of specific membership issues were raised (apart from membership issues relevant to the Review – see section 4.7) including issues about cross-border membership (Albury).

Lands that have been handed back under joint management arrangements

A series of questions were asked in Cobar and Broken Hill in relation to lands that had been returned under joint management arrangements under the Aboriginal Land Rights Act and the National Parks and Wildlife Act (NPW Act).

NSWALC support

A common theme was the need for more assistance from NSWALC regarding various matters (e.g. Cobar), and questions about why various matters had not been funded were frequent (e.g. keeping places in Dubbo, attendance at the Local Government Conference [Blacktown]).

Issues in relation to land

In the Western Division, Aboriginal land owners are being forced to make decisions about their land that they might not make otherwise, due to what are perceived as unreasonable and unjust land management costs and restrictions (Broken Hill).

A number of other land-related issues were raised, including transfer of title of Land Trust Lands, the unconstituted lands in Western NSW, the future of land claims, land clearing in the Macquarie Marshes, and opportunities for rezoning rural lands (Dubbo, Walgett).

Land councils wanted to know about the possibility of having their lands and other assets (which had been removed as a result of the 1990 amendments) returned to them (Walgett).