

NSW Environmental Protection Authority

Via email: climatechange.review@epa.nsw.gov.au



**New South Wales
Aboriginal Land Council**

ABN: 82 726 507 500

Re: NSWALC Submission – EPA draft Climate Change Policy and Action Plan

Thank you for the opportunity to comment on EPA's draft Climate Change Policy and Action Plan (**the Policy and the Action Plan**). The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples in NSW and is the largest Aboriginal member-based organisation in Australia. The network of 120 Local Aboriginal Land Councils (**LALCs**) represent over 28,000 Aboriginal people in NSW. As elected bodies, LALCs represent not only the interests of their members, but of the wider Aboriginal community.

Our network of Aboriginal Land Councils has key roles to play in relation to the management and mitigation of the impacts of climate change in NSW. Aboriginal peoples are not merely a stakeholder among others, but possess inherent and pre-eminent rights, values and interests in lands, waters and the climate due to our status as Australia's First Peoples. As such, Aboriginal peoples and communities must be engaged in meaningful consultation and regarded in NSW policies and plans relating to climate change.

NSWALC broadly supports the EPA's proposed policy and action plan relating to climate change and welcomes the EPA's commitments to engaging with Aboriginal communities and knowledge holders. We commend the work the EPA has already undertaken with our communities, as well as the EPA's efforts to embed Aboriginal perspectives across the organisation and in its policies as outlined in the EPA's Statement of Commitment to Aboriginal People of NSW. NSWALC would urge that the stakeholders involved are inclusive and include representation from NSWALC, LALCs, Traditional owners and the broader Aboriginal community. NSWALC advocates that work done in this space must ensure Aboriginal peoples inherent and pre-eminent rights, values and interests are acknowledged and addressed where appropriate.

Finally, NSWALC seeks to ensure the EPA recognise and embed the NSW Government's commitments and responsibilities as a signatory under the National Agreement on Closing the Gap.

Enclosed is our submission. Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: policy@alc.org.au.

Sincerely,

Yours sincerely,

Yuseph Deen
Chief Executive Officer
NSW Aboriginal Land Council

04 November 2022

ALWAYS WAS. ALWAYS WILL BE.

alc.org.au

NSW Aboriginal Land Council Submission

EPA draft Climate Change Policy and Action Plan

Introduction

NSWALC is committed to pursuing cultural, social and economic independence for Aboriginal peoples. As a self-funded statutory corporation established under the Aboriginal Land Rights Act 1983 (ALRA), NSWALC has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples and communities across the state.

LALCs are autonomous, elected bodies. The core business of each LALC is to protect Aboriginal culture and heritage, acquire and manage lands for cultural and economic purposes, and as compensation for dispossession.

Under section 106 (7) of the ALRA, NSWALC has the following functions in relation to Aboriginal culture and heritage:

- a) *To take action to protect the culture and heritage of Aboriginal persons in NSW, subject to any other law,*
- b) *To promote awareness in the community of the culture and heritage of Aboriginal persons in NSW.*

The Land Rights Network is the key vehicle to deliver social, cultural and economic outcomes to Aboriginal communities and is the framework for achieving self-determination in NSW. The ALRA was enacted by the NSW Parliament to facilitate the return of land in NSW to Aboriginal people to go some way to redress the injustices of dispossession.

Aboriginal cultural interests in Land and Sea Country

Aboriginal peoples in NSW are key stakeholders in relation to land and water management and are holders of specific Traditional Ecological Knowledge (TEK) accumulated over millennia.

Article 25 of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* states that *“Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard”*.

In the Australian context, it is generally accepted that Aboriginal worldviews do not distinguish between *“land and water in terms of rights and responsibilities”*¹. Aboriginal peoples maintain important, ongoing relationships with Country, and this includes Sea Country. The dispossession and degradation of the lands and waters since colonisation has had significant negative impacts on the physical, cultural and spiritual wellbeing of Aboriginal peoples.

Despite colonial and postcolonial impacts, cultural practices continue to this day², as do dreaming stories of numerous totemic land and sea species. The humpback whale, for instance, was and remains significant in the Dharawal and Kuringgai cultures, as reflected in the numerous rock carvings depicting whales in the

¹ O'Donnell, M. 2011, *Indigenous rights in water in northern Australia*, TRaCK, Charles Darwin University, Darwin, p. 10.

² See: <http://aiatsis.gov.au/exhibitions/south-coast-new-south-wales>

Royal National Park, Kuringgai-Chase National Park, and elsewhere. The blooming of the wattles on land was taken as a sign that the whales were arriving in local waters – just one instance of the “*Traditional Ecological Knowledge*”³ that continues to be held by Aboriginal peoples.

TEK can be defined as “*a cumulative body of knowledge, practice and being evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment*”⁴. The concept of TEK recognises the utility of traditional knowledge and methods of resource and environmental management, and it is increasingly being recognised that the inclusion of TEK is needed for more resilient and equitable natural resource management outcomes.⁵

The lands, waters, seas and their resources have been sustainably and successfully managed by Aboriginal peoples for millennia, who, in fulfilling customary obligations to care for Country, obtain physical as well as spiritual nourishment in return.

NSWALC seeks to advance the human rights of Aboriginal peoples, protect and create opportunities and/or processes for Aboriginal peoples to be active participants in the intergenerational protection and management of Indigenous Knowledges.

Accordingly, NSWALC draws the EPA’s attention to Article 11 and Article 31 of the UNDRIP which respectively state:

“1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs”

and

“1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights”.

³ Menzies, C.R. (ed) 2006, *Traditional Ecological Knowledge and Natural Resource Management*, University of Nebraska Press, Lincoln.

⁴ Berkes, et al. 2000, ‘Rediscovery of Traditional Ecological Knowledge as adaptive management’ in *Ecological Adaptations*, Vol. 10, No. 5, pp. 1251-1262.

⁵ The *Nagoya Protocol*, which Australia signed in 2012, requires parties to recognise and protect the inherent rights and interests of Indigenous peoples to their Traditional Ecological Knowledge and ensures policies and governmental use of such knowledge is principled and consensual.

Recommendation 1

- The EPA considers Aboriginal Traditional Ecological Knowledge and cultural practices in their work to manage climate change, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.

As a ready-made system of democratic Aboriginal governance, there is great scope for the network of LALCs to be integrated into government approaches to the management and mitigation of climate change. Given that LALCs are the elected voice for Aboriginal people in NSW with legislative responsibilities to advocate for the interests of the local Aboriginal community in each of their respective jurisdictions, it is imperative that LALCs be consulted and invited to participate in all land, marine and climate-related matters that concern them.

Consultation and engagement with Aboriginal peoples must provide for adequate notice, incorporate the principles of 'free, prior and informed' consent, and actively seek Aboriginal people's views. Initiatives to engage and partner with Aboriginal peoples in the management of land, waters and climate must not be undertaken in isolation or on a 'one off' basis.

Aboriginal Land Rights must be seen as a public outcome in itself and as a way to deliver broader public benefits, including climate change resilience. There should be an increased focus of all levels of government to return land and waters to Aboriginal peoples, and in particular in NSW to Land Councils. For example, returning land to Aboriginal peoples:

- provides environmental protection and climate change resilience
- contributes to sustainable land management and management of Sea Country, and improved quality of life
- supports economic development and tourism initiatives, stimulating local and regional economies, and provide jobs and training opportunities

Recommendation 2:

- The EPA must partner with NSWALC and the network of LALCs to support the best possible outcomes for Aboriginal peoples and communities with an interest in land, waters and climate change.

NSWALC seeks to ensure that the NSW Government meet their commitments outlined in the National Agreement on Closing the Gap. The National Agreement on Closing the Gap provides an important framework for governments to work in partnership with Aboriginal people to support Aboriginal peoples maintaining our distinctive cultural, spiritual, physical and economic relationships with Country, and advancing our rights and interests in lands and waters.

All governments have committed to increasing Aboriginal land and water rights through a specific target relating to land and waters in the National Agreement on Closing the Gap. The Closing the Gap National Agreement includes four priority reforms⁶ (and a fifth in NSW) which aim to change the way in which governments work with Aboriginal people, these are:

1. Shared decision making
2. Building the Aboriginal community-controlled sector
3. Transforming mainstream institutions
4. Data sharing

⁶ [People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters | Closing the Gap](#)

5. Employment, business growth and economic prosperity (NSW specific) ⁷

Recommendation 3.

- The EPA must ensure that the Policy and Action Plan are aligned to Closing the Gap commitments and commit to delivering social, cultural and economic outcomes for Aboriginal people.

NSWALC's Recommendations

Recommendations:

1. The EPA considers Aboriginal Traditional Ecological Knowledge and cultural practices in their work to manage climate change, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.
2. The EPA must partner with NSWALC and the network of LALCs to support the best possible outcomes for Aboriginal peoples and communities with an interest in land, waters and climate change.
3. The EPA must ensure that the Policy and Action Plan are aligned to Closing the Gap commitments and commit delivering social, cultural and economic outcomes for Aboriginal people.

Thank you for your consideration of this Submission.

For further information please contact the NSWALC Strategy and Policy Unit on (02) 9689 4479 or policy@alc.org.au.

⁷ [Aboriginal Affairs NSW - Priority Reforms](#)