

MEMORANDUM OF UNDERSTANDING
Concerning the
Cape Byron Marine Park

Between

The Bundjalung People of Byron Bay (Arakwal)

The Bundjalung Byron Bay Aboriginal Corporation
(Arakwal)

And

The NSW Marine Parks Authority

THIS MEMORANDUM OF UNDERSTANDING

is made this thirteenth day of September 2007

Between

The Bundjalung People of Byron Bay (Arakwal)

The Bundjalung Byron Bay Aboriginal Corporation (Arakwal)

And

The NSW Marine Parks Authority (MPA)

Published by:

Department of Environment, Climate Change and Water (DECCW) on behalf of the New South Wales Marine Parks Authority

Recommended citation:

Marine Parks Authority, 2007. Memorandum of Understanding Concerning the Cape Byron Marine Park between the Bundjalung People of Byron Bay (Arakwal), the Bundjalung Byron Bay Aboriginal Corporation (Arakwal), and the NSW Marine Parks Authority. NSW Marine Parks Authority, Sydney.

Available from:

www.mpa.nsw.gov.au

NSW Marine Parks Authority

© Copyright DECCW 2010/612: Use permitted with appropriate acknowledgment

ISBN 978 1 74232 874 4

1. Purpose of this Memorandum of Understanding

- 1.1 The purpose of this Memorandum of Understanding (MOU) is to establish the mechanism for the Bundjalung People of Byron Bay's (Arakwal) involvement in the management of the Cape Byron Marine Park ("the Marine Park") and to establish the principles for communication between the MPA and the Bundjalung People of Byron Bay (Arakwal).
- 1.2 This MOU recognises the Arakwal – Cape Byron Marine Park Consultative Committee (the Committee) as the representative body through which formal consultation between the MPA and the Bundjalung People of Byron Bay (Arakwal) and the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) will occur.
- 1.3 The Parties acknowledge the principles of the NSW Government "Two Ways Together" Plan of 2003 and the vision that Aboriginal people, the NSW Government and government agencies work together, and are jointly responsible, to plan and deliver solutions that meet community needs. The Plan is Schedule 2 to this MOU.
- 1.4 The Parties acknowledge that the provisions of this MOU in no way preclude consultation with any other group or person.

2. General agreement

- 2.1 The MPA recognises that the cultural heritage of the Bundjalung People of Byron Bay (Arakwal) relating to the Marine Park will be managed in consultation with the Bundjalung People of Byron Bay (Arakwal) in accordance with this MOU.
- 2.2 The MPA agrees, in accordance with this MOU:
 - a) to continue developing working relationships with the Bundjalung People of Byron Bay (Arakwal) to achieve effective involvement in the management of the Marine Park by the Bundjalung People of Byron Bay (Arakwal) in accordance with this MOU; and,
 - b) to recognise the right of the Bundjalung People of Byron Bay (Arakwal) to advise on the level of cultural importance of areas within the Marine Park.
- 2.3 The Bundjalung People of Byron Bay (Arakwal) and the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) recognise that the management of the Marine Park rests with the MPA, and that the MPA will manage the Marine Park in accordance with, the *Marine Parks Act 1997*, the *Marine Parks Regulation 1999*, other relevant legislation and this MOU.
- 2.4 The Bundjalung People of Byron Bay (Arakwal) and the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) agree, in accordance with this MOU:
 - a) to continue developing working relationships with the MPA to achieve effective involvement in the management of the Marine Park and communication between the MPA and the Bundjalung People of Byron Bay (Arakwal); and,

- b) to consult with MPA staff on the exercise of what the Bundjalung People of Byron Bay (Arakwal) consider to be their traditional rights and obligations within the Marine Park.
- 2.5 The Parties agree that the Committee is the representative body through which formal consultation between the MPA, the Bundjalung People of Byron Bay (Arakwal) and the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) will occur on matters relating to the management of the Marine Park.
- 2.6 The Parties recognise that, due to current government policy, the MPA cannot enter into legally binding Memoranda of Understanding. This MOU is therefore not legally binding. The Parties equally recognise that such policy does not lessen the significance or intent of this MOU, or the commitment of the MPA to this MOU.

3. Variation and Review

- 3.1 This MOU may be varied at any time provided the amendment is agreed to, is in writing and is signed by the Parties.
- 3.2 This MOU will commence on the day after it is signed by the Parties and will continue, unless terminated or replaced by some other form of written agreement.
- 3.3 The MOU will be formally reviewed by the Parties five years after commencement.
- 3.4 Should a dispute arise between the Parties concerning this MOU or the carrying out of any terms of this MOU, the matter shall be resolved in accordance with the dispute resolution mechanism provided for in Schedule 3.

4. The Cape Byron Marine Park

- 4.1 The Cape Byron Marine Park (the Marine Park) was declared on 1 November 2002 pursuant to the *Marine Parks Act 1997*.
- 4.2 The Marine Park is located on the far north coast of NSW in the shires of Byron and Ballina. The Marine Park extends for approximately 37 kilometres from Lennox Head in the south to the northern breakwall of the Brunswick River at Brunswick Heads in the north. The Marine Park covers an area of around 22,000 hectares of estuarine and marine habitats.

5. The Marine Parks Authority

- 5.1 The Marine Parks Authority (the MPA) consists of the Director-General of the Department of Premier and Cabinet, who is the Chair of the Authority, the Director-General of the Department of Primary Industries, and the Director-General of the Department of Environment and Climate Change (or their delegates).

6. The Bundjalung People of Byron Bay (Arakwal) and their traditional association with the Marine Park

- 6.1 The Parties acknowledge that the words “traditional” and “tradition” within this MOU relate to the lore, customs, culture, heritage and spiritual interests of the Bundjalung People of Byron Bay (Arakwal). “Traditional” and/or “tradition”, as used throughout this MOU are not used in the same sense as in s.223(1)(a) of the Native Title Act 1993 (Cth) (see also Clauses 7.2 and 7.3).
- 6.2 The Bundjalung People of Byron Bay (Arakwal) are part of the greater Bundjalung people or nation and identify themselves as the Bundjalung people of Byron Bay known as the Arakwal People (Schedule 1). The Bundjalung People of Byron Bay (Arakwal) have traced their ancestry to the Byron region before European arrival and consider themselves to be the traditional owners of the land and waters within the Marine Park that extend from the Brunswick River in the north to the southern point of Broken Head in the south.
- 6.3 The area of the Marine Park is culturally important to the Bundjalung People of Byron Bay (Arakwal) and the land and waters within and adjacent to the Marine Park have long been recognised by Bundjalung people as a special place, a meeting place for gathering and sharing resources and culture. The Aboriginal people of this place traditionally cared for and managed the land and waters for at least 22,000 years¹.
- 6.4 Many spiritual and culturally important places have been located and identified within and adjacent to the Marine Park. These include middens, burials, scarred trees, ceremonial bora rings and various open camping sites². Of particular significance are Tallow Creek and Belongil Creek, Julian Rocks and Broken Head, and the Two Sisters (Cocked Hat Rocks).
- 6.5 The Bundjalung People of Byron Bay (Arakwal) assert their traditional rights and obligations over the land and waters within the Marine Park that are within the traditional area of the Bundjalung People of Byron Bay (Arakwal).
- 6.6 The Bundjalung People of Byron Bay (Arakwal) have formed a corporation pursuant to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, called the Bundjalung Byron Bay Aboriginal Corporation (Arakwal). The MPA and the Bundjalung People of Byron Bay (Arakwal) acknowledge that the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) represents the interests of the Bundjalung People of Byron Bay (Arakwal).

7. Recognition of Traditional Association

- 7.1 The MPA recognises that the Bundjalung People of Byron Bay (Arakwal) have long standing spiritual and cultural interests and traditions in the land and waters of the Marine Park.
- 7.2 The Bundjalung People of Byron Bay (Arakwal) have lodged native title applications N6010/98 and N6020/01 which include most of the Marine Park. The MPA understands

¹ See Marine Parks Authority (2003). *Background Resource Working Paper for the Cape Byron Marine Park*, Marine Parks Authority, Byron Bay.

that the Bundjalung People of Byron Bay (Arakwal) claim to hold native title in the land and waters over the Marine Park. The MPA and the Bundjalung People of Byron Bay (Arakwal) acknowledge that this MOU does not constitute a recognition or acknowledgement by the State, under the *Native Title Act, 1993* and all native title rights including those at common law, of the native title rights and interests asserted by Bundjalung People of Byron Bay (Arakwal).

- 7.3 The Parties acknowledge that this MOU does not constitute an authorisation of any act, or surrender or extinguishment of any native title rights and interest and the Bundjalung People of Byron Bay (Arakwal) reserve their rights under the *Native Title Act, 1993* and all native title rights including those at common law.

8. Management of the Marine Park

- 8.1 The Bundjalung People of Byron Bay (Arakwal) and the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) acknowledge that the MPA have responsibility for the management of all NSW marine parks in accordance with the *Marine Parks Act 1997*, and the *Marine Parks Regulation 1999* and that management of the Marine Park is designed to meet the objects of the *Marine Parks Act 1997*. Namely, to conserve habitats and marine biological diversity, maintain ecological processes and, where consistent with these preceding objects, to provide for ecologically sustainable use of fish and marine vegetation and opportunities for public appreciation, understanding and enjoyment.

- 8.2 The Parties acknowledge that management of the Marine Park will be by a combination of the following mechanisms:

- a) Zoning Plan (and *Marine Parks Regulation 1999*) that provides varying levels of protection for different areas of a marine park;
- b) Operational Plan that describes management actions, other than zoning that assist to protect biodiversity and ecological processes while allowing for ongoing use;
- c) MPA consent provided as written permission from the MPA to undertake particular activities, examples include permits and other written agreements;
- d) Activity specific management plans (developed in consultation with stakeholders to effectively manage specific activities); and
- e) Codes of Conduct - guidelines for undertaking certain activities; these are a form of self regulation that are usually developed by interested stakeholder groups and voluntarily adopted by members of those groups.

- 8.3 Aboriginal culture and heritage will be considered in the management mechanisms described in clause 8.2.

9. Consultation and Communication

- 9.1 The Committee is the representative body through which formal consultation and communication between the MPA the Bundjalung People of Byron Bay (Arakwal) and the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) will occur.
- 9.2 The MPA will include the process for formal consultation and cooperation between the Parties in the Operational Plan prepared in accordance with Section 23 of the *Marine Parks Act 1997*.

10. The Arakwal-Cape Byron Marine Park Consultative Committee (the Committee)

- 10.1 The Committee is not taken to be an advisory committee within the meaning of s35 of the *Marine Parks Act 1997*.
- 10.2 The Committee consists of:
- a) Three Bundjalung People of Byron Bay (Arakwal) nominated by the Bundjalung Byron Bay Aboriginal Corporation (Arakwal).
 - b) The Marine Park Manager.
 - c) DECC Area Manager, Parks and Wildlife Division.
- 10.3 The Committee members may invite the following people to attend the Committee meetings:
- a) Other Arakwal and/or Bundjalung people.
 - b) DPI District Fisheries Officer.
 - c) DECC Regional Manager Parks and Wildlife Division.
 - d) DECC Operations Coordinator, Aquatic Protected Areas Section.
 - e) Other appropriate persons.
- 10.4 The Committee will be resourced by the MPA through the Marine Park including the provision of administrative and secretarial services.
- 10.5 The Committee is to develop protocols and procedures for the conduct of the business of the Committee within six months of the commencement of this MOU.
- 10.6 The Committee protocols and procedures will at a minimum meet relevant NSW Government guidelines for Committees including “Conduct Guidelines for Members of NSW Government Boards and Committees” (November 2001), “Guidelines for NSW Board and Committee Members Appointments and Remuneration” (October 2004) as amended or replaced from time to time.

- 10.7 The Committee shall meet at least 4 times per year. Additional meetings may be called by the Committee members in accordance with the developed protocols and procedures.

The Role of the Committee

- 10.8 The Committee will consider and advise the MPA on matters relevant to the Marine Park if requested to do so by the Bundjalung People of Byron Bay (Arakwal) members of the Committee, or by the MPA. This advice will be within the parameters of the associated legislation relating to the Marine Park.
- 10.9 The Committee may provide advice to the MPA on any relevant matters including:
- a) the management, protection and conservation of the Marine Park;
 - b) educational and interpretative policies to be utilised in relation to the Marine Park;
 - c) the resourcing of management and operations initiatives for the Marine Park;
 - d) the prioritisation of management and operations projects for the Marine Park; and
 - e) Aboriginal cultural and heritage matters relevant to the Bundjalung People of Byron Bay (Arakwal) within the Marine Park.
- 10.10 The MPA agrees to consider all advice provided to it by the Committee and will advise the Committee in writing of its decisions following such consideration.
- 10.11 The Committee may request specific information or reports from the MPA and/or the Marine Park staff.
- 10.12 It is acknowledged by the Parties that Bundjalung People of Byron Bay (Arakwal) Committee members may need to seek the advice of other members of the Arakwal or Bundjalung People including elders before making a decision or providing advice on any issue.
- 10.13 The Committee members will respond to the MPA in a timely fashion when MPA request information from the Committee.

11. Reporting

- 11.1 The Committee will receive an Annual Report from the MPA providing a summary of operations within the Marine Park and highlighting the achievements of this MOU.
- 11.2 Review of this MOU by the Parties will form part of the Annual Report.
- 11.3 The Committee will document achievements and issues associated with the conduct of the MOU annually within existing MPA reporting mechanisms.

12. Access

- 12.1 The MPA agrees to consult and seek advice from the Committee in development and implementation of:
- a) traditional use agreements and arrangements in accordance with the *Marine Parks Act 1997* and *Marine Parks Regulation 1999*, and
 - b) community cultural heritage and traditional use management strategies.
- 12.2 Traditional use agreements and arrangements that apply to the Marine Park may cover, but are not limited to:
- a) protection and conservation of cultural heritage and areas of cultural significance;
 - b) the conduct of ceremonies under the lore or custom of the Bundjalung People of Byron Bay (Arakwal);
 - c) gathering material for culturally recognised and important medicines, ceremonies and food; and,
 - d) the utilisation of wild resources.

13. Exemption From Fees

- 13.1 Members of the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) and other Indigenous persons authorised by the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) and agreed to by the Committee may not be liable to pay entry, camping or any other fees for non-commercial use of, or access to, the Marine Park should any be imposed for the Marine Park.
- 13.2 The Parties acknowledge that such exemption is subject to an appropriate provision being made within the *Marine Parks Regulation 1999* should any fees be proposed for the non-commercial use of the Marine Park.
- 13.3 If fees relating to non-commercial use are to be introduced in the Marine Park, the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) will consider how people can be clearly authorised by the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) so that MPA staff can readily ascertain whether a person is exempt from the relevant fees.

14. Research and Information

- 14.1 The MPA shall consult with the Bundjalung People of Byron Bay (Arakwal) and the Committee in the identification and recording of Aboriginal cultural sites within the Marine Park.
- 14.2 Identification and recording of Aboriginal cultural sites shall be included in the protocols and procedures developed by the Committee under this MOU.

- 14.3 The MPA shall keep confidential the nature and location of any sacred site identified and recorded pursuant to this MOU and, unless otherwise required by law, will not, without the consent of the Bundjalung Byron Bay Aboriginal Corporation (Arakwal), disclose any information about the site to person/s other than to the Bundjalung People of Byron Bay (Arakwal).
- 14.4 The nominees of the Bundjalung People of Byron Bay (Arakwal) may request the MPA to provide them with access to documents or information in the possession of the MPA, and outside of the normal operations of the Committee, relating to the Marine Park and the MPA.
- 14.5 The MPA may refuse to give access to any document that is: an exempt document within the meaning of the *NSW Freedom of Information Act 1989*; subject to legal professional privilege; contains personal information subject to privacy laws; or, contains information that was provided to the MPA in confidence.
- 14.6 Access to information shall be included in the protocols and procedures developed by the Committee under this MOU.

15. Employment

Aboriginal Identified staff positions

- 15.1 The MPA shall provide for the appointment under the *Public Sector Employment and Management Act, 2002* of at least two (2) Aboriginal Identified Positions (one full-time and one part-time; totalling 1.6 EFT) in the administration or management, protection and conservation of the Marine Park.
- 15.2 The MPA will use its best endeavours to provide for additional full time Aboriginal Identified positions in the administration or management, protection and conservation of the Marine Park.

Other employment issues

- 15.3 The MPA will consult with the Committee in the preparation and submission of an Indigenous employment strategy for the Marine Park. The employment strategy will be reviewed in accordance with the review and reporting provisions of clause 11 of this MOU.
- 15.4 The MPA agrees to consult with the Committee with regard to Aboriginal independent representatives on any recruitment selection committees associated with recruitment to the Marine Park.

16. Training

- 16.1 The Bundjalung Byron Bay Aboriginal Corporation (Arakwal), in cooperation and consultation with the Committee and the MPA, may establish a community capacity

building program for the education and skills training of Aboriginal people in skills relevant for employment, or contracting to, the Marine Park.

- 16.2 The community capacity building program may be forwarded to the MPA for consideration with regard to use in training programmes for Aboriginal staff employed at the Marine Park and for other Aboriginal people as identified in the program.
- 16.3 The Marine Park Manager will develop, in consultation with the Committee, a budget strategy for the training and development of Bundjalung People of Byron Bay (Arakwal). The Parties acknowledge that such a strategy is subject to availability of funds.
- 16.4 The Parties agree that the budget strategy developed for the purpose of clause 16.3 above will include the identification and sourcing of funds from external granting bodies.
- 16.5 The Committee may seek opportunities for training programs provided by other organisations to complement or extend training and community capacity building programs.
- 16.6 MPA will support the Committee in seeking funds for training programs in accordance with the Training Program.
- 16.7 The MPA will ensure, as soon as possible after commencement of duties, that all established officers or employees of the Marine Park attend a cross-cultural awareness course.

17. Commercial operations

- 17.1 The MPA will consider applications from the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) or Bundjalung People of Byron Bay (Arakwal) for permits to carry out commercial activities in accordance with current MPA policy, and policies and procedures developed by the Committee under this MOU.
- 17.2 All applications for permits to carry out commercial activities that involve Aboriginal culture and heritage shall be referred to the Committee for advice in accordance with policies and procedures developed by the Committee under this MOU.

18. Contracts and Services

- 18.1 This clause applies to the procurement of all goods, services and works by quotation, contract, tender, expression of interest or other manner consistent with Government practice for the care, control or management of the Marine Park where there is no preferred Government supplier which must be used for those goods, services or works.
- 18.2 The MPA will create and maintain a register of
 - a) local Aboriginal organisations or individuals; or
 - b) organisations that will implement specific measures for the benefit of Bundjalung People; that are able to provide services in accordance with this clause.

- 18.3 The Committee may recommend that the MPA set conditions for the procurement of goods, services and works for the care, control or management of the Marine Park, which may include conditions that give preference to:
- a) local Aboriginal organisations or individuals; or
 - b) organisations that will implement specific measures for the benefit of Bundjalung People.
- 18.4 When issuing the conditions of tendering for more substantial or ongoing works or services in the Marine Park the MPA agrees to ask tenderers to provide information about:
- a) whether they are an Aboriginal organisation or individual or have employed Bundjalung People over a period of time;
 - b) any measures the tenderer intends to implement for the benefit of Bundjalung People (including extending employment opportunities to Aboriginal people, training or otherwise enhancing the business skills of Aboriginal people and providing economic benefits to Aboriginal communities) as part of the contract;
 - c) examples of how similar measures have been implemented in past contracts undertaken by that tenderer; and
 - d) any other information that is relevant to the evaluation of any additional conditions included in the tender conditions on the recommendation of the Committee.
- 18.5 The Committee may nominate a representative who shall sit on any tender evaluation committee established by the MPA that considers tenders for work in the Marine Park.

19. Interpretation

- 19.1 In this Agreement unless the context or subject matter otherwise indicates or requires:
- “Bundjalung Byron Bay Aboriginal Corporation (Arakwal)” means the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) established under the *Corporations (Aboriginal and Torres Strai Islander) Act 2006*. The Bundjalung Byron Bay Aboriginal Corporation (Arakwal) represents the interests of the Bundjalung People of Byron Bay (Arakwal).
- “Bundjalung People” means identified members of the greater Bundjalung People or Nation.
- “Bundjalung People of Byron Bay (Arakwal)” means the people as described in section 6.1 and Schedule 3 of this MOU.
- “Cape Byron Marine Park” means the Marine Park declared pursuant to the *Marine Parks Act 1997*
- “DECC” means the NSW Department of Environment and Climate Change.
- “DPI” means the NSW Department of Primary Industries.
- “Marine Park” means the Cape Byron Marine Park as declared pursuant to the *Marine Parks Act 1997*.

“*Marine Parks Act 1997*” means the *NSW Marine Parks Act 1997*.

“*Marine Parks Regulation 1999*” means the *NSW Marine Parks Regulation 1999*.

“Marine Parks Authority” means the Authority constituted pursuant to Part 5 of the *Marine Parks Act*.

“MOU” means this Memorandum of Understanding.

“MPA” means the Marine Parks Authority.

“Native Title” when used in its generic sense means native title rights and interests as defined in section 223 or the *Native Title Act 1993* (Cth).

“Parties” means the Parties to this Agreement.

“Water” means water in all its forms and includes surface and subterranean water, but does not include living aquatic resources.

This agreement is understood and agreed to by the following representatives.

Signed sealed and delivered
by ROBYN KRUK on behalf of the
New South Wales Marine Parks Authority
in the presence of:

Robyn Kruk

Signed sealed and delivered
by LINDA VIDLER on behalf of the
Bundjalung People of Byron Bay (Arakwal)
in the presence of:

Signed sealed and delivered
by DULCIE NICHOLLS on behalf of
the Bundjalung People of Byron Bay
(Arakwal) in the presence of:

The Common Seal of the
BUNDJALUNG BYRON BAY ABORIGINAL
CORPORATION (ARAKWAL) was hereunto
affixed in the presence of:

Governing Committee Member

Governing Committee Member

Governing Committee Member

Schedule 1: “Bundjalung People of Byron Bay”

The Bundjalung People of Byron Bay (Arakwal) means those persons who:

- A. are descended* from the Aboriginal people who lived and/or held native title rights in the Agreement Area at the time of first contact by European settlers in 1820s-30s, and includes but is not limited to the descendants of the following persons:
 - (i) Bobby of Bumberbin (born between 1817 and 1837, and died 23 March 1907) and Alice (unknown),
 - (ii) Harry Bray (born 1850 and died 17 October 1922) and Clara (Bray) (born 1864 and died 7 May 1922),
 - (iii) Elizabeth “Lizzy” Bray (born between 1894 and ??? died in 1953) and Robert Moran (1892 – DEC);
 - (iv) Linda Jane Bray (born between 1903 and 1905, and died 14 January 1953) and Jim Kay born 1879 or 1901, and died 1977 at Ballina); and
- B. are known to the acknowledged elders of the Bundjalung People as members of the Bundjalung People of Byron Bay; and
- C. either:
 - (i) are resident within the traditional country of the Bundjalung People of Byron Bay; or
 - (ii) have maintained their primary identification with the Bundjalung People of Byron Bay through regular visits with the Bundjalung People of Byron Bay community in the traditional country of the Bundjalung People of Byron Bay and are acknowledged by the elders of the Bundjalung People as recognising and observing the laws and customs of the Bundjalung People of Byron Bay.

* A person may be said to be “descended” from the Aboriginal people who lived in the Agreement Area at the time of first contact by European settlers in 1820s-30s for the purpose of criterion (A) if they:

- (iii) are direct biological descendants of one of those persons described in (A) above;
- (iv) have been adopted and brought up by, and take their primary identification from, a direct biological descendant of one of those persons described in (a) above; or
- (v) are direct biological descendants of a person who had been adopted and brought up by, and had taken their primary identification from, a direct biological descendant of one of those persons described in (a) above.

TWO WAYS TOGETHER

Partnerships: A New Way of Doing Business with Aboriginal People

NEW SOUTH WALES ABORIGINAL AFFAIRS PLAN 2003 – 2012

FOREWORD

Two Ways Together is a new way forward for Aboriginal people and Government to work through partnership. The NSW Government will work with Aboriginal people to lessen and remove social disadvantage, and to ensure that all citizens of NSW share in the benefits that the state has to offer. The NSW Government recognises that Aboriginal people know best the needs of their community. The new Aboriginal Affairs Plan establishes ways to make sure that Aboriginal people have a strong voice in planning and deciding how their needs and aspirations are met. The NSW Government will negotiate with Aboriginal people how government services will be delivered at local and regional level.

Two Ways Together is new because, for the first time, all government agencies are working in a coordinated way to do business with Aboriginal people. This will cut duplication, and result in less wastage and fewer gaps in services.

It is also new because the areas for business were negotiated between Aboriginal people and Government. Extensive community discussion and consultation identified seven priority areas for action. Also, at a national level, all governments have agreed to a range of indicators on Aboriginal disadvantage and will be measured against these. These indicators correspond strongly to the seven priority areas for action.

The NSW Government will do business with Aboriginal people in culturally appropriate ways. This Plan establishes ways to do this. Much good work has been done and continues to be done by government agencies, and the key features of *Two Ways Together* are not new concepts.

However the difference will be that:

- this is a 10 year plan
- it will be a government requirement that the processes and agreed strategies will be followed by all agencies
- government agencies will work in a coordinated approach

- there will be targets and a monitoring system to ensure agencies are held accountable for actions and results
- CEOs of government agencies will be held accountable through their performance agreements.

The Plan builds on the *NSW Government Statement of Commitment to Aboriginal People of 1997* and the 2002 *Service Delivery Partnership Agreement* negotiated with ATSIC and NSW Aboriginal Land Council. Other specific policies which exist at agency level are identified as important strategies through which the objectives of this Plan can be achieved. For example, the NSW Aboriginal Justice Plan, the Circle Sentencing Trial and Community Justice Groups are key strategies in the Justice Priority Area. Additionally the NSW Aboriginal Health Impact Statement, the NSW Aboriginal Health Partnerships and the NSW Health Aboriginal Workforce Issues Strategic Plan are three of many strategies in place in the Health Priority Area.

This Government is proud to establish this Plan as part of its continuing commitment to Aboriginal people.

The Hon R J Carr MP
Premier
Minister for the Arts
Training
Minister for Citizenship

The Hon. Dr Andrew Refshauge, MP
Deputy Premier
Minister for Education and
Minister for Aboriginal Affairs

INTRODUCTION

VISION

Aboriginal people, the NSW Government and government agencies work together, and are jointly responsible, to plan and deliver solutions that meet community needs.

OBJECTIVES

The overall objectives of the Plan are to:

- develop committed partnerships between Aboriginal people and Government
- improve the social, economic and cultural and emotional wellbeing of Aboriginal people in New South Wales.

To achieve this will require:

- changing the way Government works with Aboriginal people
- enhancing the skills and capacity of Aboriginal communities and individuals
- achieving real and measurable improvements for Aboriginal people in health, education, economic development, justice, housing and infrastructure, families and young people
- supporting and affirming Aboriginal peoples' culture and heritage.

Two Ways Together reinforces the commitment of the New South Wales Government to Aboriginal self-determination, and expresses respect for the diverse cultures of Aboriginal peoples in NSW. The Plan builds on the *NSW Government*

Statement of Commitment to Aboriginal People of 1997 and operates within the principles entailed in the *2002 Service Delivery Partnership Agreement* between the Government, the Aboriginal and Torres Strait Islander Commission (ATSIC) and the NSW Aboriginal Land Council (NSWALC).

FRAMEWORK FOR MAKING THE PLAN WORK

The Plan has two core elements:

Making Services Work which establish **what** business needs to be done

New Ways of Doing Business with Aboriginal People which establishes **how** business will be done

Making Services Work

Through negotiation, Aboriginal communities and government agencies agreed that the 7 priority areas for action in New South Wales are:

- Health
- Education
- Economic Development
- Justice
- Families and Young People
- Culture and Heritage
- Housing and Infrastructure

A cluster group of key government agencies and Aboriginal peak bodies has been formed for each of the priority areas, and is led by a **lead agency**. The cluster groups have set goals, targets and action plans for NSW consistent with national indicators. The Cabinet Committee on Aboriginal Affairs will approve action plans and monitor the progress of each cluster group. Because government is complex, a coordinated approach is needed. At a state level the cluster groups will provide coordination; however, mechanisms may need to be established at regional and local level that build on existing structures such as Regional Coordination Management Groups and Community Working Parties.

Action in each priority area will be driven by the aim of improving specific socio-outcome indicators to reduce and ultimately eliminate the gap between Aboriginal people and the wider population.

The contracts of CEOs of NSW agencies will include **performance indicators** to show that their agency provides the services and takes action as agreed.

New Ways of Doing Business with Aboriginal People

This section of the Plan is aimed at changing the way that Government works with Aboriginal people to ensure:

- an effective whole of government approach
- greater sensitivity, flexibility and responsiveness within agencies in the way they work with and deliver services to Aboriginal people.

The following five areas have been identified as the focus of action in developing new ways for Government when doing business with Aboriginal people:

1. Agency capacity to work with Aboriginal people, through:
 - policies, procedures, and protocols recognising Aboriginal culture, needs and aspirations
 - partnerships between agencies
 - improving the cultural competence of staff so that they can be more responsive to Aboriginal culture, needs and aspirations
 - recognising Aboriginal service delivery is part of the core business of Agencies

2. Government's role in enhancing the capacity of communities, through support of:
 - leadership development and strengthening the ability of individuals and organisations to do business with Government
 - individual skill development (technical, management)
 - organisational capacity and governance

3. Local planning and decision making processes that:
 - assist communities to be informed
 - facilitate true negotiation between communities and Government
 - ensure a strong community voice in determining government services
 - enable different solutions to be implemented at the local and regional Level

4. Accountability processes to ensure the Plan is implemented at local, regional and state levels and includes:
 - monitoring, reviewing, and reporting processes for services and outcomes
 - assignment of responsibility for services and outputs

5. Whole of Government capacity that involves:
 - the review and strengthening of a centralised whole of government governance and coordination strategy

Good Practice Guidelines will be developed for agencies doing business with Aboriginal people.

Implementation

Clusters have developed indicators relevant to the NSW goals. In addition they will report on the national indicators developed by the Council of Australian Governments for the Framework for Reporting on Indigenous Disadvantage.

Monitoring and reporting will be simplified and coordinated at a state and national level.

Cluster Group's action plans will identify specific agency inputs and CEOs will be held accountable for agreed actions through their performance agreements. Cluster groups will coordinate and monitor actions at a state, regional and local level.

Monitoring and Evaluation

Annually, an audit report will be published of Government success in delivering the undertakings contained in this Plan. The reporting framework will align the Plan with

the draft Aboriginal Justice Plan (AJP) and the NSW Service Delivery Agreement (SDPA).

The Plan, the draft AJP and the SDPA have set goals, actions and targets for agencies to report on annually. Lead agencies will collect and integrate data from all partner agencies for reporting against targets and indicators of the priority areas. CEOs will report to their Ministers and to the Premier's Department on the success against the performance indicators in their contracts. CEO's performance against the performance indicators will be evaluated to ensure agreed targets have been met.

To ensure that the views of Aboriginal communities are heard, the Department of Aboriginal Affairs will also coordinate input from Aboriginal communities and peak bodies on the perceived success in making a difference where it counts - on the ground.

Alignment of the three reports eliminates duplication of reporting and provides an opportunity for assessment of the integrated whole of government approach to service delivery to Aboriginal people.

Explanation of Terms

AECG Aboriginal Education Consultative Group

ATSIC Aboriginal and Torres Strait Islander Commission

COAG Council of Australian Governments

MCATSIA Ministerial Council of Aboriginal and Torres Strait Islander Affairs

SCRCSPP Steering Committee for the Review of Commonwealth/State Service Provision

SCATSIA Standing Committee on Aboriginal and Torres Strait Islander Affairs

Schedule 3: Dispute resolution mechanism

1. Preliminary steps for resolution of disputes between the Parties

- 1.1. If there is a dispute between the Bundjalung People of Byron Bay (Arakwal), the Bundjalung Byron Bay Aboriginal Corporation (Arakwal) and the MPA in the operation of this MoU, or generally between the Bundjalung People of Byron Bay (Arakwal) and the MPA, the Parties agree to follow the steps in this schedule for resolution of the dispute.
- 1.2. In the first instance, the Bundjalung People of Byron Bay (Arakwal) representatives on the Committee will seek to resolve the matter in issue with the MPA representative on the Committee.
- 1.3. If such discussion is not able to resolve the matter in issue, the Bundjalung People of Byron Bay (Arakwal) representatives on the Committee will seek to resolve the matter in issue with the DECC Operations Coordinator, Aquatic Protected Areas Section and the Regional Manager of DECC for the DECC region that includes CBMP.
- 1.4. If any one of the Parties considers that the matter remains unresolved, that party shall notify, in writing, the other party of the matters continuing to be in dispute.
- 1.5. Such written notice shall give that other Party fourteen days in which to resolve the matter in dispute and notify the other party of the steps taken or to be taken in resolution.
- 1.6. If following the expiry of fourteen days after the giving of notice pursuant to this schedule, any Party considers that the matter has not been resolved, that Party shall convene, within twenty one days of the expiry of such notice, a formal meeting of the Parties to discuss the matter in dispute.
- 1.7. If any formal meeting is convened pursuant to this schedule, each Party shall attend such meeting either in person or by agent authorised to negotiate on their behalf.
- 1.8. If the Parties are able to agree on how to resolve the matter in dispute, the Parties agree that all or any one will take all such steps as are necessary to give effect to the proposed resolution.
- 1.9. If the Parties remain unable to agree on how to resolve the matter in dispute, the matter in dispute (and responsibility for any costs of the arbitration) shall be referred to the MPA (being Director-General of the Premiers' Department, the Director-General of the Department of Primary Industries, and the Director General of the Department of Environment and Conservation or their delegates) to make a decision binding on the Parties.
- 1.10. A dispute includes the wish by any party to terminate this MoU for breach of its terms.