



Response to Report No. 15 - PC7 - Aboriginal Cultural Heritage (Culture is Identity) Bill 2022

Introduction

Thanks are due to the Legislative Council's Portfolio Committee No. 7 for their review of the Private Member's Bill – Aboriginal Cultural Heritage (Culture is Identity) Bill 2022. Improving the recognition and protection of Aboriginal Cultural Heritage is an important issue that warrants careful consideration and new legislation which improves outcomes for Aboriginal communities across the state.

The NSW Government is developing standalone Aboriginal Cultural Heritage legislation that builds the foundation for better protection, recognition, and celebration of Aboriginal Cultural Heritage in NSW. Aboriginal Culture is a living culture that continues to be celebrated today and will be into the future. Developing improved legislative protections is critical in enabling this ongoing celebration. By working closely with Aboriginal stakeholders, the NSW Government is developing a new Bill which recognises the importance of Aboriginal Cultural Heritage and the role Aboriginal people play as custodians of their culture.

This document has been prepared in response to the Recommendations in Report No. 15 - Aboriginal Cultural Heritage (Culture is Identity) Bill 2022.

Recommendation 1

Recommendation 1 states that:

The committee believes the bill has merit and should be referred back to the House. The committee recommends that debate on the bill is informed by committee comments, stakeholders' views expressed in this report and that any amendments include further consultation with stakeholders.

Supported in-principle.

There is no opportunity to return to Parliament as the last sitting period of the 57th Parliament has now passed. Minister Franklin spoke in Parliament and committed to delivering an Aboriginal Cultural Heritage Bill as early in the new parliamentary term as possible. The NSW Government recognises the importance of standalone protection of Aboriginal Cultural Heritage in NSW and is currently drafting standalone Aboriginal Cultural Heritage legislation in alignment with best practice standards and community expectations as expressed through the parliamentary inquiry process.





Standalone Aboriginal Cultural Heritage legislation is critical for NSW. It is clear that new legislation is needed that is acceptable to both community, government and external agencies. The approach to developing new legislation is designed around the key principles that Aboriginal communities expressed to both government and the inquiry. The key principles are central to improving the management and protection of Aboriginal Cultural Heritage as a living, continuing culture.

Thorough and culturally appropriate consultation is imperative to the success of Aboriginal Cultural Heritage reforms. The complexity of Aboriginal Cultural Heritage requires extensive consultation with a diverse range of Aboriginal people and knowledge holders across NSW. Hearing the diverse perspectives of Aboriginal communities is paramount and reflects best practice requirements. Aboriginal Cultural Heritage in NSW is complex and there are a multitude of varying representative bodies to be considered within the consultation process. The NSW Government understands the importance of this matter and has committed to engaging in consultation with various stakeholders to develop a thoroughly considered Bill.

Recommendation 2

Recommendation 2 states that:

That if debate on the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 is not able to be concluded before the dissolution of the 57th Parliament, a bill to enact standalone Aboriginal cultural heritage legislation in New South Wales be introduced early in the 58th Parliament. This bill should take into account the committee comments and stakeholders' views expressed in this report, particularly around the importance of:

- *including statutory protections for intangible Aboriginal cultural heritage*
- *moving decision-making responsibility for the recognition, protection, conservation and preservation of Aboriginal cultural heritage from the NSW Government to Aboriginal people*
- *the Aboriginal decision-making entity appropriately recognising cultural authority*
- *State significant development and State significant infrastructure projects being subject to Aboriginal cultural heritage protections.*

Supported.

The NSW Government is committed to delivering improved standalone Aboriginal Cultural Heritage legislation in the 58th Parliament. The Inquiry highlighted key stakeholder's views on the importance of recognising Aboriginal culture as living and dynamic and is inclusive of tangible and intangible Aboriginal Cultural Heritage. The recognition of intangible cultural heritage plays an important role in recognition, celebration and healing of culture.





Decision-making by Aboriginal people on matters of Aboriginal Cultural Heritage is critical to self-determination and the Government is supportive of a bill which positions decision-making responsibility with Aboriginal Community.

Enabling Aboriginal decision-making reflects the best practice standards outlined in Dhawura Ngilan (2020) and targets in Closing the Gap (2008 & 2020) and is consistent with recommendations made in A Way Forward (2021).

The NSW Government acknowledges that cultural authority is a very complex issue and recognises the importance of decision-making by Aboriginal people with cultural authority. The trust and confidence of all stakeholders in a new legislative system is reliant on this aspect of reform which will ensure transparency and accountability.

The NSW Government supports legislation that enables thorough and culturally appropriate consultation with Aboriginal communities in the planning and development process to mitigate the risk of harm to Aboriginal Cultural Heritage. Future focussed strategic planning, including local cultural strategic planning, embedded within the new system will contribute to the conservation and protection of Aboriginal Cultural Heritage and support better outcomes for those working with and in Aboriginal communities across NSW.

Recommendation 3

Recommendation 3 states that:

That the NSW Government:

- *consider and engage with the committee comments and stakeholders' views expressed in this report, particularly the matters listed in Recommendation 2, in progressing its own reforms to Aboriginal cultural heritage laws in New South Wales*
- *support its reforms to Aboriginal cultural heritage laws with the funding necessary to ensure their success.*

Supported.

In progressing the Aboriginal Cultural Heritage reforms in NSW, the stakeholder engagement captured by this parliamentary inquiry and report will be duly considered.

This feedback will contribute to the development of stand-alone legislation that prioritises Aboriginal decision-making, with the appropriate recognition of cultural authority.

The NSW Government acknowledges the importance of supporting the protection, celebration, and preservation of Aboriginal Cultural Heritage in NSW with adequate funding and will ensure the necessary means are afforded.

