



New South Wales

Aboriginal Cultural Heritage (Culture is Identity) Bill 2022

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is co-sponsored by Mr J R Field, MLC, Mr A H Greenwich, MP, the Hon Emma Hurst, MLC, Revd the Hon F J Nile, MLC, the Hon Mark Pearson, MLC and Mr G M Piper, MP.

Overview of Bill

The object of this Bill is to provide a modern framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage and recognise the fundamental importance of Aboriginal cultural heritage to Aboriginal people.

Outline of provisions

Part 1 Preliminary

Part 1 sets out the name, also called the short title, of the proposed Act and provides for the commencement of the proposed Act on 1 July 2023. The proposed Part also sets out the objects of the proposed Act, and provides that Parliament recognises the *United Nations Declaration on the Rights of Indigenous Peoples*, and the application of those rights to Aboriginal persons by the proposed Act. The proposed Part provides for defined terms, which are set out in the Dictionary, and also sets out the definition of *Aboriginal cultural heritage*, and related terms.

The proposed Act binds the Crown, and sets out the way the proposed Act interacts with the Native Title Act 1993 of the Commonwealth, the *Coroners Act 2009* and the *Environmental Planning and Assessment Act 1979*.

Part 2 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Part 2 establishes the Aboriginal Cultural Heritage Council (the *ACH Council*) and provides for the designation of local Aboriginal cultural heritage services (*ACH services*). The proposed Part also sets out the functions, powers of these bodies and related matters. The ACH Council functions include providing oversight of the Aboriginal cultural heritage system, promoting public awareness of Aboriginal cultural heritage, developing guidance materials in the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, making decisions in relation to protected areas, Aboriginal cultural heritage permits (*ACH permits*) and Aboriginal cultural heritage management plans (*ACH management plans*).

Local ACH services are given functions in relation to engaging and negotiating with persons intending to carry out activities in the area and native title parties and knowledge holders for the area. The functions also include facilitating or making ACH management plans for the area, providing advice to persons about whether Aboriginal cultural heritage is located in the area, providing information to the ACH Council about Aboriginal cultural heritage in the area and reporting on other matters relating to Aboriginal cultural heritage.

Part 3 Rights and duties in relation to Aboriginal cultural heritage

Part 3 provides for rights and duties of various persons in relation to Aboriginal cultural heritage and deals with the management of Aboriginal ancestral remains and secret or sacred objects. The proposed Part also establishes a duty for a person to report Aboriginal cultural heritage to the ACH Council and recognises the rights of Aboriginal persons to use Aboriginal cultural heritage for a commercial benefit.

Part 4 Protected areas

Part 4 deals with providing special protection to an area of land where Aboriginal cultural heritage of outstanding significance for the purposes of the proposed Act is located, by declaring an area a protected area. An ACH permit or ACH management plan application cannot be made in relation to a protected area.

Part 5 Offences about harming Aboriginal cultural heritage

Part 5 provides for the key offences of harming Aboriginal cultural heritage. The proposed Part defines the concepts of *serious harm* and *material harm* for the purpose of distinguishing the impact of harm to Aboriginal cultural heritage and sets out a number of defences in relation to the offences.

Part 6 Managing activities that may harm Aboriginal cultural heritage

Part 6 provides for how to manage activities that may harm Aboriginal cultural heritage. A tiered approach is adopted, which takes into account the level of likely impact to Aboriginal cultural heritage. The requirements to be satisfied in relation to an activity likely to harm Aboriginal cultural heritage in a particular tier are set out.

The proposed Part also establishes the process for the grant of an ACH permit and requirements for the approval or authorisation of an ACH management plan. ACH permits and ACH management plans may be required for certain tiers of activities to allow an activity to be carried out.

Part 7 Stop activity orders, prohibition orders and remediation orders

Part 7 provides for the giving of stop activity, prohibition and remediation orders by the ACH Council. Stop activity orders and prohibition orders can be used to prevent or cease an activity that may harm Aboriginal cultural heritage where the activity is not authorised or there is new information about Aboriginal cultural heritage. Stop activity orders will be limited to 60 days during which time the ACH Council will be required to consider the matter and decide whether a prohibition order is required. The ACH Council will be required to provide the opportunity for submissions to the person undertaking the activity as well as relevant Aboriginal people.

Remediation orders may be issued to allow for remediation work to be undertaken to restore impacted Aboriginal cultural heritage.

Part 8 Aboriginal cultural heritage protection agreements

Part 8 enables the ACH Council to endorse Aboriginal cultural heritage protection agreements (*ACH protection agreements*) which are voluntary agreements with Aboriginal parties that focus on proactive actions to recognise, protect, conserve, preserve and manage Aboriginal cultural heritage in an area. An ACH protection agreement cannot permit harm to Aboriginal cultural heritage in the area.

Part 9 Aboriginal Cultural Heritage Directory and Register of Aboriginal Owners

Part 9 provides for the establishment, maintenance, use and access to the Aboriginal Cultural Heritage Directory (the *ACH Directory*). The ACH Directory will list information and documents about Aboriginal cultural heritage, including protected areas, the local ACH service for an area, a native title party for an area, knowledge holders for an area, and other agreements, permits, plans, determinations and orders under the proposed Act. The ACH Directory will also include information about characteristics of Aboriginal cultural heritage in the state, and the location of the heritage.

The proposed Part also provides for access to the ACH Directory for particular persons and purposes in addition to the establishment of the Register of Aboriginal Owners.

Part 10 Compliance

Part 10 provides for the investigation and prevention of offences and for related matters under the proposed Act.

Part 11 Legal proceedings

Part 11 sets out provisions applicable to legal proceedings for the prosecution of offences, the relationship of certain persons to the commission of offences, and matters relating to evidence.

Part 12 Miscellaneous

Part 12 provides for financial matters, decisions subject to administrative review by the Civil and Administrative Tribunal, matters relating to the administration of the proposed Act, regulations and guidelines that may be made under the proposed Act and for the review of the proposed Act.

Schedule 1 Establishment, constitution and procedures of ACH Council

Schedule 1 sets out the process for the appointment of the ACH Council, the constitution of the ACH Council and the procedures for the ACH Council.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Dictionary

Schedule 3 contains a Dictionary of defined terms used in the proposed Act.

Schedule 4 Amendment of Acts

Schedule 4 amends the Acts specified in the proposed Schedule.