



14 September 2021

The Honourable Peter Poulos MLC
Chair
Standing Committee on Social Issues
Parliament House
Sydney NSW 2000

Dear Mr Poulos,

Inquiry into the Heritage Act 1977 – Response to Supplementary Question

I refer to the recent hearings conducted by the Standing Committee on Social Issues in relation to the Review of the *NSW Heritage Act 1977*. I am writing to respond to the following Supplementary Question from the Committee, arising from my evidence on 2 September 2021:

1. *Prof Mackay the committee notes your comment that “Aboriginal heritage legislation also needs to deal with far more than current statutory limit on ‘Aboriginal Objects’ – addressing ‘Country’, beliefs the meaning of places and other intangible values, storylines and connection.”*

Do you yourself have any ideas as to how best we preserve these intangible cultural heritages?

As indicated in my submission (Number 56) and during the hearing on 2 September, if there is any priority for statutory reform of heritage in NSW, that should relate to Aboriginal heritage.

At present, Aboriginal heritage vests (highly inappropriately) within the *NSW Parks and Wildlife act 1974* and is focused on protecting “Aboriginal Objects”. The focus for protection is therefore on physical evidence of Aboriginal culture – with a narrow, anthropological focus that does not encompass the full spectrum of Aboriginal heritage vales. These values need to be determined by Aboriginal people.

Stand-alone legislation for Aboriginal heritage is warranted, and that this should be complimented by related changes to associated legislation including consequent changes to the *NSW Heritage Act 1977* and the *NSW Environmental Planning and Assessment Act 1979*.

The suggested stand-alone Aboriginal heritage legislation should (among other matters):

- recognise the multi-faceted attributes of Aboriginal heritage – comprising both tangible and intangible elements and the ongoing and timeless aspect of Aboriginal culture;
- establish the importance of Aboriginal ‘Country’;
- Provide a mechanism for evaluating and recognising Traditional Custodians who speak for Country;
- Recognise the importance of intangible attributes – such as songs, stories and traditions,
- Enable and Aboriginal people to speak for their heritage and to be consulted;

- Recognise the legitimate rights of Aboriginal people to have a determinative voice in decision-making for their heritage;
- Recognise that some physical places may have significance created through association, meaning or spiritual belief – in other words acknowledge that not every significant the Aboriginal place shows physical evidence of Aboriginal activity;
- Accept that some places and stories must be restricted to respect cultural practices and requirements;
- Establish an ‘Aboriginal Heritage Council’ or similar, which can provide well-informed advice to the Minister and other relevant decision-makers;
- Establish and provide resources for a separate statutory authority to manage and regulate Aboriginal heritage;
- Enable lands to be reserved for the purpose of Aboriginal cultural practice or to protect significant Aboriginal places; and
- Allocate resources to recording and supporting the continuation of such of important Aboriginal practices and traditions.

In summary, what is required is new Aboriginal legislation, which establishes an associated representative Aboriginal body and well-resourced government agency.

These should be established in a manner that facilitates integration with existing statutory protection and management processes for heritage and the current development consent process.

The reform and review process for Aboriginal heritage in NSW has been underway for years – and has been consultatively undertaken, as is appropriate. However, it is dragging on and the time has come for the NSW Government to show leadership and to address the long-overdue need for new Aboriginal heritage legislation.

Yours Sincerely,

Prof Richard Mackay, AM