

Question on notice #1 - Heritage Act review hearings - 17 August 2021

Response of Aboriginal Cultural Heritage Advisory Committee (ACHAC)

Question:

Mr DAVID SHOEBRIDGE: *My time is very close to concluded, but can I ask each of the witnesses one more question. What is your view about the priority of the Government here? We are progressing changes to the 1977 Heritage Act and prioritising those legislative changes, and not progressing through any similar process empowerment of First Nations peoples and standalone Aboriginal heritage law reform. The Government has said that they have got a separate process, they are working with stakeholders. Do you accept the priorities are right?*

Response:

- The reform of ACH legislation in NSW has been identified many times as a NSW Government priority. ACH reform was a bipartisan commitment in 2010 and was restated as a government commitment in 2011. Over the last ten years it has been confirmed as a government priority on many occasions.
- ACHAC fully supports NSW Government statements that ACH reform is a priority and was pleased when in 2018, following seven years of preparation, the ACH Bill was put out for public consultation.
- ACHAC contributed substantially to the development of the 2018 ACH Bill, as did many other state-level and regional Aboriginal groups. The ACH Bill is broadly supported by Aboriginal groups including ACHAC, NSWALC and NTSCorp. It is also broadly supported by non-Aboriginal stakeholders, including industry groups.
- In 2020 ACHAC learnt that:
 - in the government's view the 2018 ACH Bill was too expensive and too complex and that the ACH reforms must be made cheaper and simpler
 - the government would not establish an ACH Authority – a central piece of the 2018 ACH Bill that proposed an independent statewide administering body for the ACH reforms, led by a board of Aboriginal people.
 - rather than set up a new statewide ACH structure, the government wanted to make use of “existing structures”.
- Within the above constraints, in late 2020 ACHAC and Native Title Services Corp were invited to join with the government and the NSW Aboriginal Land Council in a “co-design” the ACH reforms.
- At the Standing Committee's review hearings on August 17, all three Aboriginal groups discussed the difficulties posed by the government's pre-conditions for ACH co-design.
- ACHAC agrees with NSWALC's view that the process has been divisive and agrees with NTSCorp's assessment that:
 - “... there are (*government co-design*) parameters which have been put to the parties which create a series of difficulties”.
 - “One critical issue from NTSCorp's perspective is the funding for standalone legislation and for the standalone culture and heritage authority. If there was a commitment to funding that would enable the kind of system to be built that Aboriginal people want, then things would move in a much faster fashion”.

Question on notice #2 - Heritage Act review hearings - 17 August 2021

Response of the Aboriginal Cultural Heritage Advisory Committee (ACHAC)

Question:

The Hon. BEN FRANKLIN: *Thank you. I understand we are getting close to time but if either Ms Holt or Ms Chalker had anything quickly they would like to add, please do so. If either of you wanted to talk in a more substantive way about how we can incorporate cultural authority and speaking for country into the legislation, you could certainly take that on notice if you had some more detailed thoughts. But if you had something short, noting time, then that would be wonderful as well.*

Response:

The 2018 ACH Bill (consultation version attached) provides an example of how speaking for country can be put into legislation. The Bill proposes two levels of Aboriginal decision making: one at state level (the ACH Authority with an Aboriginal Board) and one at local level (Local Panels of culturally authorised Aboriginal people).

Only culturally authorised Aboriginal custodians of Country can speak for Country. It was understood by Aboriginal people and other stakeholders that the state level ACH Authority could speak for (and make decisions about) Aboriginal cultural heritage in an administrative way, but that it did not speak for Country.

Under the ACH Bill, the first step was to establish the ACH Authority, which would then establish and register the Local Panels. This was to be done through Aboriginal consultation at the local level, which is where Aboriginal community knowledge of Country resides and where Aboriginal cultural authority comes from.

In this two-step way, the ACH Bill ensured that cultural authority for speaking for Country would be established in accordance with the Bill's foundation principles of Aboriginal self-determination and Aboriginal decision making on ACH.

The 2018 ACH Bill offers a model of how Aboriginal decision-making, including culturally authorised speaking for Country, can be incorporated within legislation. A disadvantage of reforming the Heritage Act before reforming ACH legislation is that at the moment there is no certainty about what the ACH reforms (a new ACH Bill) will eventually look like.

In making its submission to the Heritage Act review, ACHAC reflected on this uncertainty: should the Heritage Act reforms articulate with the current ACH legislation (the *National Parks and Wildlife Act*) or should the Heritage Act reforms try to anticipate what might emerge from the ACH reforms project?

The ACHAC submission (and its four minimal recommendations) assumes that for some time the *National Parks and Wildlife Act 1974* will continue to regulate for ACH. The ACHAC submission also recommends that, following the enactment of new ACH legislation, the Heritage Act should be reviewed to ensure it aligns with a new ACH Act.