

Portfolio Committee No 7. – Planning and Environment

Report on the online questionnaire

Inquiry into the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022

As part of its inquiry into the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022, Portfolio Committee No. 7 – Planning and Environment conducted an online questionnaire to encourage individuals to participate in the inquiry in an efficient and accessible way.

The questionnaire was not intended as a statistically valid, random survey. Participants self-selected in choosing to participate. This means that participants are unlikely to be a representative sample of the New South Wales population. Instead, the responses represent a sample of interested members of the public who volunteered their time to have a say.

The questionnaire was complementary to and did not replace the usual submission process. The submissions process was available to individuals and organisations who wished to provide a more detailed response to the inquiry's terms of reference. In this regard, some participants may have completed the questionnaire and also made a submission.

The online questionnaire process was a valuable tool to seek the views of interested stakeholders on the issues raised in the bill. It provided an opportunity for the public to participate in the inquiry and provided valuable input for the committee in informing its views on the bill.

The online questionnaire was open from 12 August 2022 to 30 September 2022 and received 25 responses, with 96.3 per cent of participants from residents of New South Wales.

The questionnaire consisted of two administrative questions collecting participants' basic details (questions 1 and 2) and two open answer, free text questions (questions 3 and 4).

The questionnaire asked participants to explain their position in no more than 300 words on the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022, for example whether they support the bill, support the bill but with amendments, or oppose the bill. Participants were also asked whether they had any other comments, providing an opportunity for participants to make general comments in no more than 300 words.

The general themes of these comments have been captured in this report. It summarises participants' views and provides some excerpts of responses. Sample comments were selected with the aim of reflecting the variety of views expressed.

The full list of questions is at Appendix 1.

Supported principles and aspects of the bill

From the comments provided, 19 participants indicated general support for the objectives of the bill. Underpinning support for the bill was the view that it will recognise the importance of Aboriginal cultural heritage and the need for its protection and preservation.

Other themes which emerged in participants' responses in support of the bill included:

- the positive impact of protecting Aboriginal cultural heritage in the healing and reconciliation process
- the importance of self-determination for Aboriginal people
- the need for reform to the current cultural heritage legislative framework.

Recognition of Aboriginal cultural heritage

Several responses in support of the bill referred to the importance of recognising Aboriginal cultural heritage.

- 'Our first nations people have a unique spiritual connection to country and this bill is important in order to recognise this a higher level.'
- 'I totally agree with the premise and purpose of this bill, our Aboriginal Culture is the only pure cultural entity of this country and its preservation and credibility should be guaranteed in law and perpetuity.'
- 'I think every effort should be made to protect Aboriginal burial grounds and sacred places and their art and culture should be preserved.'
- 'With more enlightened views now emerging, it is hugely important to preserve what is left with the recognition that this history is important to us all. Enshrining this conservation in law is hugely important.'
- 'I Support changes to NSW Legislation to Recognise the Spiritual Connexion to, and Cultural Significance of, all First Nations Land, Sky and Water as integral to the panCustodianship and Identity of Aboriginal Torres Strait Islander Peoples.'
- 'I believe there should be far more recognition of the importance of first nations cultural heritage & landscapes.'

Adding to this, the following responses noted the significance of recognising and protecting Aboriginal cultural heritage for Aboriginal people and also the community and nation as a whole.

- 'I support the bill as I strongly believe in the protection and preservation of Aboriginal culture, stories and land. I believe that Aboriginal peoples deserve more recognition and respect than they earn now, we must preserve Aboriginal culture heritage as the backbone of Australia and I want to live in a country where Aboriginal peoples are equal to everybody else.'
- 'I support the bill. I believe it isn't only important to Aboriginal people, but to all Australians for us to preserve Aboriginal cultural heritage. We are only just beginning to listen to their expertise & I strongly believe Aboriginal people have a larger role to play in what happens to this country.'
- 'It appears to be giving more power to Aboriginal people in the matter of their cultural heritage, and I therefore support its passing. I think it is important for the whole community that we embrace our country's heritage.'

Impact of protecting Aboriginal cultural heritage in the healing and reconciliation process

Related to the views around recognition, several responses made the connection between protecting Aboriginal cultural heritage and the healing and reconciliation process. The significant impact the destruction of cultural heritage has on the wellbeing of Aboriginal people was also noted.

- 'I support the bill because of the importance of Aboriginal cultural heritage to the health of their communities and to individual Aboriginal well being.'
- 'I have seen first hand the psychological distress that destruction of cultural heritage causes. It builds on the hurt caused to first nations people by our colonial past. Cultural heritage needs real protection & it's time our governments provided it.'
- 'As Sovereign peoples who have never conceded our cultural rights to exist and in the recognition of the United Nations World Indigenous People Rights which Australia is a signatory I feel establishing this Cultural Heritage Bill will enhance and support our people in recovering from the burden on colonisation and the toll it has bestowed upon us in healing and restoring our cultural right for our people into the future. ... I hope that this Bill when introduced to all Parliamentary parties will give a human conscious vote to support this very import recognition in healing and recognising the injustices of the past to move forward through reconciliation then we can truly walk together in respect.'

Two participants specifically outlined the need to recognise and protect both tangible and intangible Aboriginal cultural heritage.

- 'Based on my understanding of this Bill, I support it wholeheartedly. I believe we must make reparation for the many and far reaching detrimental impacts colonization has had upon First Nations people in Australia up to the present day. One way we can do this is to recognise, protect and preserve Aboriginal Cultural Heritage in all its forms. I believe this is a matter of urgency. We can do this by supporting Aboriginal and Torres Strait Island people to lead the way in determining how to move forward with their aims and objectives of how best to protect and preserve Aboriginal and TSI Cultural Heritage, from the tangible to the more intangible.'
- 'I Support this NSW Legislative Council Inquiry making recommendations to have all Crown Land, Water, Sky categorised as of 'Cultural Significance' to Aboriginal Peoples of NSW as an expression of the Recognition in Section 2 of the NSW Constitution, and in Recognition of the Tangible and Intangible Cultural Heritage Property and Values represented in 'Connexion To Country' Cultural Practitioning and Reciprocal Cultural Obligations.'

Significance of self-determination

Some participants expressed that Aboriginal people should be the decision makers when it comes to the management and protection of their cultural heritage.

- 'I support this Bill as I see this as finally a step in the right direction by Governments to give Aboriginal people a genuine voice in the management and control of our heritage as we have had since the beginning of time itself. ... I also hope that when the Cultural framework is set up that all Aboriginal peoples are equally given representation and a voice on the Council or Board that is established.'
- 'Our Governments have been slow to realise the importance of Aboriginal control over their cultural heritage. I hope this bill will help to redress this imbalance and place leadership, where is should always have been, in the hands of Aboriginals.'

- 'In all regions, Traditional Custodians of each area must have their voices heard and we must respect and allow time for due process by engaging in genuine consultative procedures with Traditional Owners, Land Councils, and Key Knowledge Holders in order for long term solutions for the preservation and conservation of Aboriginal Cultural Values and Heritage to be enshrined.'

Need for reform to current heritage legislative framework

Several participants noted concerns around the deficiencies of the current legislative framework in protecting Aboriginal cultural heritage and called for reform.

- 'I would like to see legislation that actually protects heritage & important places rather than facilitates their destruction as current outdated policies & legislation.'
- 'The current legislation does not protect Aboriginal heritage, any change is good change.'
- 'I support the bill. As an Aboriginal person running a Local Aboriginal Land Council, we have seen the ongoing destruction and desecration of Aboriginal cultural heritage sites across NSW. Current regimes do not allow appropriate protections and do not support local Aboriginal people and entities with legitimate cultural authority protect ancient sites and knowledge. This bill will strengthen the protection of Aboriginal cultural heritage protection in accordance with the principles of the National Agreement on Closing the Gap.'
- 'Many sites of High Aboriginal Cultural Significance are under threat from development and interference, by developers who clearly lack the care, respect and sensitivity needed to adequately preserve Aboriginal Cultural Heritage. We need laws and guidelines to make these individuals, companies and organizations accountable for their profit-making ambitions.'

Concerns about the bill

In participants' comments, concerns about the bill related primarily to a lack of consultation with the Aboriginal community on the bill. Some participants also had concerns with the proposed composition of the Aboriginal Cultural Heritage Council and suggested amendments to reflect established best practice.

Concerns about lack of consultation in development of bill

Several participants expressed their frustration that the Aboriginal community had not been adequately consulted on the bill and suggested that any future Aboriginal cultural heritage legislation should be developed with significant input from Aboriginal people.

- 'I suspect that there has been inadequate consultation with community about this bill. ... This highly flawed and unworkable Bill should never have made it to an inquiry. I look forward to seeing the government provide us all with a truly up-to-date framework that is much better than this Bill's and more closely co-designed with Aboriginal people of this state.'
- 'In determining appropriate legislation, I hope the NSW Government will turn to Aboriginal respondents for guidance.'
- 'This Upper House Inquiry is a sorry alternative to Aboriginal community consultation. No Parliament should legislate for Aboriginal people - on something as fundamental to identity as Aboriginal cultural heritage - without culturally appropriate Aboriginal community consultation.'
- 'The NSW government has not provided adequate time for Indigenous Australian people to engage with and provide quality feedback on this Bill. Failing to 'consult and cooperate in good

faith with [indigenous people] ... before adopting and implementing legislative or administrative measures that may affect them' is a contravention of UNDRIP Article 19. This consultation must be conducted 'through their own representative institutions' ... While stand-alone cultural heritage legislation is vital, this Bill should not be rushed through. By curtailing consultation in this manner, especially given this is a long and complicated Bill which necessarily interacts with existing legislation, Parliament is suppressing Indigenous voices and thereby perpetuating settler colonialism.'

One participant called on the NSW Government to progress the standalone Aboriginal cultural heritage legislation that has been in development for many years.

- 'I would prefer to see the government finish what it has been working on since 2018 than see it spend any more time or money considering passing this highly flawed and unworkable Bill.'

Composition of Aboriginal Cultural Heritage Council

Two participants raised concerns with the composition of the proposed Aboriginal Cultural Heritage Council under Schedule 1 of the bill, including the organisational representation on the Council and the requirement for Aboriginal identified positions.

- 'I do not support the Bill, because what it proposes - it's content - is contrary to the stated objective (above). The Bill proposes to retain the worst of the Registered Aboriginal Party system (not modern at all) while installing the NSW Aboriginal Land Council - a land marketeer and land developer - as 50% of the governing body. NSWALC and the Aboriginal Land Council network are not "representative Aboriginal bodies" for ACH custodians and should have nothing to do with the administration of ACH in NSW.'
- 'Subdivision 2, 15(1)b needs to replace the word 'promoting' with the word 'legislate'. This would be followed by Subdivision 3, 18 including the specification of ACH Council staff being 'Aboriginal Identified' positions. This would preferably be the entire staff body, but may end up being limited to senior staff or a proportion of staff, but must set a minimum quantity of representation by 'Aboriginal Identified' positions on the ACH Council. Without this amendment I find it very difficult to support the current bill as proposed.'

Other concerns and suggested amendments

Some participants commented that the bill requires amendment in order to reflect best practice, particularly in terms of self-determination principles.

- 'I am actually quite angry that the Bill offers a wish list that is not achievable. Instead, it plays callously with Aboriginal hopes and dreams of complete autonomy ... There are many gaps in what it provides and many aspects of genuinely "modern" good practice and protection of Aboriginal cultural heritage left out.'
- 'In my view, the bill needs to also make a provision for the entire bill to be transferred to any Indigenous governing body which may come about in the future of NSW governance. This amendment would achieve a basic level of recognising and facilitating the sovereignty of Indigenous peoples in NSW, which is not currently apart of the proposed bill in its current form.'
- 'Stand-alone ACH legislation is important, but if it undermines the tenets of self-determination and Indigenous Australian people lack confidence in its efficacy, it is worthless.'

One participant stated that the bill did not encapsulate the complexities of Aboriginal cultural heritage.

- 'I oppose this bill on the grounds that it is tokenistic and positions Aboriginal culture and Aboriginal cultural heritage as a part of the past rather than living culture.'

A participant also raised concerns about the unknown costs of implementing measures outlined in the bill.

- 'There is no clear outline of what the measures included in the Bill will cost, which also leaves it vulnerable to dismissal as a serious effort to assist in this importance space.'

Appendix 1 – List of questions

1. Please enter your contact details.

Name:

Email address:

Postcode:

2. Are you a resident of NSW? Select one of these options:

a. Yes

b. No

3. Position on the 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.

Based on your own understanding and the description above, please explain your position on the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022. For example, why do you support the bill, partially support the bill, support the bill but with amendments, or oppose the bill? (max 300 words)

4. Do you have any other comments (max 300 words)