

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Aboriginal Cultural Heritage Advisory Committee (ACHAC)

Date Received: 25 June 2021

Aboriginal Cultural Heritage Advisory Committee (ACHAC)

Submission to the Legislative Council Social Issues Standing Committee

NSW Heritage Act Review

The Aboriginal Cultural Heritage Advisory Committee (ACHAC) was established in 2006 under the *National Parks and Wildlife Act 1974*. It comprises 13 Aboriginal people with expertise in Aboriginal cultural heritage, including a member nominated by each of the Native Title Services Corporation (NTSCorp), the NSW Aboriginal Land Council (NSWALC) and the Heritage Council of NSW.

The role of the Committee is to give independent advice to the Minister responsible for Heritage and the Executive Director of Heritage NSW on any matter relating to the identification, assessment and management of Aboriginal cultural heritage in NSW.

Preamble

ACHAC's vision is that Aboriginal peoples Country, culture, physical and spiritual connection to their land and waters is recognised, cared for and respected by all people, today and in the future.

ACHAC acknowledges that the *NSW Heritage Act* is being reviewed at the same time as the NSW Government is still considering reforms to Aboriginal cultural heritage provisions in the *National Parks and Wildlife Act*. Our focus is to advise the Minister and to work with other key Aboriginal stakeholder bodies to bring about long sought-after reform to Aboriginal cultural heritage legislation.

Reforming the NSW Heritage Act

Recommendation 1: *The Act should be amended to expressly recognise that Aboriginal cultural heritage forms the underlying fabric of all the lands and waters of New South Wales.*

While the Act requires one member of the Heritage Council to have expertise in Aboriginal cultural heritage (s.8.(3)A), the Act is otherwise silent on ACH. The Act should be amended so that in its objects, definitions or other provisions, it affirms ACH as the foundation from which all other NSW heritage is derived.

Recommendation 2: *The Act should be amended to include principle-based provisions on how shared heritage values must be administered for state and local heritage.*

Shared values occur when a heritage item has both Aboriginal and non-Aboriginal significance. There are currently 32 sites listed under the 'Aboriginal' item group on the State Heritage Register (SHR) with one or two additional listings each year. There will be many other sites on the SHR that are not necessarily listed for their primary ACH values, but which include significant ACH values.

Amendments to the Heritage Act should put forward a culturally respectful statutory framework requiring Aboriginal oversight and decision making (concurrence) on ACH for heritage items with shared values that are proposed for state or local heritage listing.

As part of that, the amended Heritage Act should define its ACH standing as legislation that is secondary and complementary to the proposed new Aboriginal Cultural Heritage legislation.

Recommendation 3: *The Act should be amended at s.8.(3)A to require that two members of the Heritage Council (an Aboriginal man and an Aboriginal woman) must have expertise in Aboriginal cultural heritage.*

Currently only one position on the Heritage Council is reserved for an expert on Aboriginal cultural heritage. It does not specify that the expert must be an Aboriginal person.

Aboriginal women and Aboriginal men hold cultural knowledge and experience. They operate through separate networks on gender-specific Aboriginal cultural matters and neither would seek to speak for the other.

To ensure that expertise on Aboriginal cultural heritage is properly represented on the Heritage Council, the Act must require direct representation (Council membership) of both an Aboriginal man and an Aboriginal woman.

Recommendation 4: *Any new Heritage Act should be reviewed following the reform of Aboriginal cultural heritage legislation to determine what amendments may be required.*

ACHAC notes that a new Heritage Act must be open to timely review and amendment, to ensure that it is consistent and can work effectively with new Aboriginal cultural heritage legislation when it is enacted.

Glenda Chalker

**Chairperson
Aboriginal Cultural Heritage Advisory Committee**

25 June 2021