

**Submission  
No 100**

## **INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977**

**Organisation:** National Parks Association of NSW

**Date Received:** 2 July 2021

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The Hon Peter Poulos MLC

Chair

Standing Committee on Social Issues

By email: <https://www.parliament.nsw.gov.au/committees/nquiries/Pages/edge-a-submission.aspx?pk=2814>

Dear Mr Poulos,

### **Review of NSW Heritage Act**

The National Parks Association of NSW (NPA) was formed in 1957 and sixty-four years later we have 15 branches, 4,000 members and over 20,000 supporters. NPA's mission is to protect nature through community action. Our strengths include state-wide reach, deep local knowledge and evidence-based approach to conservation advocacy. NPA appreciates the opportunity to comment on the *Review of NSW Heritage Discussion Paper* (the Discussion Paper) and commends the Committee for commencing the review.

#### **Scope of 'heritage'**

The Discussion Paper doesn't include a clear definition of 'heritage'. Although areas of indigenous and natural heritage value have been listed under the *Heritage Act*, in practice the overwhelming focus of the Heritage Council and Office to date has been on historic heritage. NPA is disappointed that the Discussion Paper misses the opportunity to consider heritage in the full context of the Aboriginal, natural and historic values of landscapes, places and sites. An overly narrow focus on historic heritage creates a discontinuity with Commonwealth (especially the National Heritage List) and NSW planning laws.

**NPA recommends** that the Committee advocate for a more integrated legislative approach to places and landscapes of exceptional indigenous, natural and historic value.

#### **First Nations heritage**

The Discussion Paper refers to the NSW government's stated intent to introduce stand-alone legislation for the listing, management and protection of Aboriginal heritage. The suggestion is that a revised *Heritage Act* is not a suitable vehicle to replace the outmoded legislative protections under the *National Parks and Wildlife Act*. NPA notes that it is well over two decades since the initial proposals for stand-alone Aboriginal heritage legislation and nearly a decade since the current government exhibited "*Reforming the Aboriginal Cultural Heritage System in NSW: Draft Recommendations to the NSW Government*" by the independent Aboriginal Culture and Heritage Reform Working Party (see <https://www.environment.nsw.gov.au/research-and-publications/publications-search/reforming-aboriginal-cultural-heritage-system-nsw-draft-recommendations-nsw-government>). It has become clear that there is no serious political intent to create independent Aboriginal heritage legislation, if only because such legislation would necessarily provide genuine control over their heritage to local Aboriginal communities.

Aboriginal heritage values are an integral element of all sites, places and landscapes across NSW. Sidestepping that heritage in this review logically and legally compromises its integrity and purpose. A practical alternative is to acknowledge that certain functions and powers under a revised *Heritage Act* would need to be transferred when, and if, stand-alone Aboriginal heritage legislation were enacted.

**NPA recommends** that the Committee evaluate the merits of providing acknowledgement and protection under a revised *Heritage Act*.

## Natural heritage

The objects of the *Heritage Act* should be amended to include reference to the natural heritage values of sites, places and landscapes. The definitions in the Australian Natural Heritage Charter (see <https://portals.iucn.org/library/node/7363>) provide an appropriate starting point for the description of natural heritage values. The purpose of including natural heritage under the *Heritage Act* should be to facilitate the identification of places containing natural heritage values of state significance, rather than duplicating the regulatory and planning provisions under the *Environmental Planning and Assessment Act*, *Biodiversity Conservation Act* and *National Parks and Wildlife Act*.

Meaningful inclusion of natural heritage issues under the *Heritage Act* will require appropriately qualified staff and at least one position on the Heritage Council.

**NPA recommends** that the Heritage Council include a person jointly nominated by the Nature Conservation Council of NSW and the National Parks Association of NSW.

## Historic heritage

The Discussion Paper focuses primarily on heritage activation rather than heritage conservation, with a strong emphasis on promoting the economic values of heritage sites. NPA does not oppose sensitive adaptive reuse of heritage sites and precincts, however it is imperative that such adaptations conserve and interpret significant fabric, form and uses. Moreover, the Discussion Paper should acknowledge that some places of heritage significance are not appropriate for adaptive reuse and that other mechanisms for ensuring their management and protection will need to be developed.

**NPA recommends** that the NSW Government substantially increase tied funding for the protection of state significant heritage, whether privately and publicly owned.

## Legislative protections for heritage

NPA considers that the current objects of the *Heritage Act* are appropriate for historic heritage but require further development to fully accommodate Aboriginal and natural values. Of particular note are the indivisibility of concepts of natural and cultural for many indigenous persons and the need to maintain essential ecosystem processes when conserving natural heritage values.

NPA also supports the tailoring of heritage assessment and protection provisions in the *Heritage Act* and *Heritage Regulation 2012* to better take into consideration the nature of individual heritage items. The Independent Review of the *Environment Protection and Conservation of Biodiversity Act 1999* (Cth) by Prof Samuel emphasised the need for proper assessment and standards for the conservation of National Heritage items. NSW Heritage legislation also should contain provision requiring proper assessment of natural heritage and standards for its conservation.

NPA considers that the following documents should guide the definitions, assessment and management of all aspects of heritage:

- The Burra Charter
- Australian Natural Heritage Charter
- Protecting Natural Heritage: using the Australian Natural Heritage Charter
- Ask First: A guide to respecting Indigenous Heritage Places and values.

The Australian Natural Heritage Charter states “In making decisions that will affect the future of a place, it is important to consider all of its heritage values — both natural and cultural. Issues relating to the conservation of cultural values may affect the selection of appropriate conservation processes, actions and strategies for the place’s natural values” It is designed to parallel the structure and logic of The Burra Charter.

NPA supports the retention of the provision requiring a Heritage and Conservation Register. However, the provision needs to be strengthened to require that both public and private owners of heritage items conserve the registered items, and provide for audits of items by independent auditors accredited by the Heritage Council.

NPA would be pleased to elaborate on these views.

Yours sincerely

Gary Dunnett  
Executive Officer  
**National Parks Association of NSW**  
*protecting nature through community action*