

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: NSW Aboriginal Land Council

Date Received: 4 August 2021



Standing Committee on Social Issues

Via email: socialissues@parliament.nsw.gov.au

**New South Wales
Aboriginal Land Council**
ABN 82 726 507 500
alc.org.au

Dear Committee Members,

Supplementary submission - Inquiry into the *Heritage Act 1977* (NSW)

Thank you for the opportunity to provide input into this inquiry (**Heritage Act**).

Further to our previous submission, we reaffirm our support for standalone Aboriginal culture and heritage (**ACH**) protection laws.

We are concerned by submissions made by the NSW Department of Planning Industry and Environment (**DPiE**) and the NSW Heritage Council that propose the incorporation of Aboriginal culture and heritage protection mechanisms from the *National Parks and Wildlife Act 1974* (**NPWA**) into the *Heritage Act 1977*.

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples across NSW and is the largest Aboriginal member-based organisation in Australia with over 23,000 members. NSWALC, and the network of 120 Local Aboriginal Land Councils (**LALCs**) across NSW, work to improve, protect and foster the best interests of all Aboriginal peoples in NSW and have functions to protect and promote ACH.

NSWALC supports separate and dedicated ACH protection laws that reflect our aspirations for culture and heritage protection. The merging of ACH protections in the NPWA within the *Heritage Act*, as proposed by some submissions, is not appropriate and redirects focus from the development of necessary stand-alone ACH laws. We note the NSW Government has indicated there is a separate process under way to develop new laws. NSWALC opposes any reforms to the *Heritage Act* which may undermine or inhibit the development of new standalone ACH laws.

While the development of comprehensive new ACH laws are needed, there are opportunities to improve the *Heritage Act* in parallel, to complement existing and new ACH laws, as we have outlined in our previous submission. NSWALC supports the strengthening of protections within the *Heritage Act* as a complementary means of protection for ACH. It is not supported by NSWALC as an adequate replacement for the development of standalone ACH protection legislation. The *Heritage Act* does not provide a means for Aboriginal people to control our culture and heritage, acknowledge or promote Aboriginal understandings and definitions of culture and heritage, or include the necessary safeguards to ensure cultural sensitivities are appropriately managed.

ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

Head office	Western Zone	Northern Zone	Northern Zone (Tamworth)	Eastern Zone	Southern Zone	Far Western Zone
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PO Box 1125 Parramatta NSW 2124	PO Box 1196 Dubbo NSW 2830	PO Box 1912 Coffs Harbour NSW 2450	PO Box 890 Tamworth NSW 2340	PO Box 670 Gosford NSW 2250	PO Box 619 Queanbeyan NSW 2620	Ph: 08 8087 7909 Fax: 08 8087 3851
Ph: 02 9689 4444 Fax: 02 9687 1234	Ph: 02 6885 7000 Fax: 02 6881 6268	Ph: 02 6659 1200 Fax: 02 6650 0420	Ph: 02 6766 4468 Fax: 02 6766 4469	Ph: 02 4337 4700 Fax: 02 4337 4710	Ph: 02 6124 3555 Fax: 02 6280 5650	

As stated in our previous submission, numerous reviews¹ and inquiries into the reform of ACH laws in NSW have supported:

- Aboriginal ownership and the right of Aboriginal people to control their culture and heritage recognised in separate stand-alone legislation,
- An independent Aboriginal Heritage Commission, with decentralised control of Aboriginal culture and heritage where the day-to-day management responsibilities are invested in local Aboriginal people, and
- Aboriginal understandings and definitions of what is culture and heritage.

NSWALC recommends that new ACH laws must:

- a) Strengthen self-determination and empower Aboriginal people;
- b) Be led by Aboriginal people;
- c) Be inclusive and respectful of cultural and native title rights;
- d) Build on existing structures of land rights and native title;
- e) Be independent of government;
- f) Improve ACH protection, promotion & repair, including rights to say no (free, prior, informed consent) including approaches to protection, regulation, intangible ACH, knowledge, languages, cultural access & use, repatriation, water, cultural practices;
- g) Have no detrimental impacts to land rights, native title or ACH

The Land Rights Network is the key vehicle to deliver social, cultural and economic outcomes to Aboriginal communities and is the framework for achieving self-determination in NSW. The link between Aboriginal land rights, land councils, and the need for proper protection of ACH is recognised within the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*. The protection of Aboriginal culture and heritage was promised with the passing of the *Aboriginal Land Rights Act* and ACH reform was intended to be the second stage of reforms to the ALRA. The ALRA provides for Aboriginal Land Councils² to take action to protect the culture and heritage of Aboriginal persons and promote awareness of ACH in the community.

NSWALC continues to advocate for an Aboriginal-controlled ACH protection process that acknowledges the ACH roles of LALCs and establishes an independent Aboriginal body for the protection of ACH.

The *Heritage Act* does not meet Aboriginal community aspirations for the protection and decision-making roles for ACH, and the incorporation of ACH protections from other legislation into the *Heritage Act* will not resolve these concerns.

We refer you to our previous submission which provides more in-depth analysis and recommendations regarding the future of ACH protections within the *Heritage Act*.

We urge the committee to ensure that:

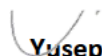
1. Laws relating to ACH protection and promotion are designed and delivered with representative Aboriginal community-controlled organisations and Aboriginal communities. This is in line with the NSW Government's existing commitments under the National Agreement on Closing the Gap.
2. Governments partner with us to develop and implement broader reforms that uphold our rights to self-determination, and free, prior and informed consent.

¹ See: <https://alc.org.au/wp-content/uploads/2019/12/110215-our-sites-our-rights-final.pdf>

² *Aboriginal Land Rights Act 1983 (NSW)*, section 52(4) and section 106 (7)

Thank you for the opportunity to provide these comments. NSWALC is committed to working to develop reforms and solutions to deliver better protections for ACH in NSW and empower Aboriginal people. We would welcome the opportunity to provide further inputs as the Inquiry progresses. Please contact us

Sincerely,


Yuseph Deen
A/Chief Executive Officer
NSW Aboriginal Land Council

4 August 2021