

**Submission  
No 11**

**INQUIRY INTO ABORIGINAL CULTURAL HERITAGE  
(CULTURE IS IDENTITY) BILL 2022**

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# Submission to inquiry into the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022

Kazan Brown

## Comments on current legislation

My name is Kazan Brown, I am a Gundungurra Traditional Owner from Burragorang Valley. I am a RAP on the Warragamba Dam Wall raising project. My submission will cover how current legislation abhorrently fails to protect Indigenous heritage and as such is an abhorrent miscarriage of justice and blatant epistemological racism in the highest regard.

The survey for the Warragamba Dam Wall raising project only covered 27% of the area. The Authors of the report only spent one day in the Valley and i have never met or spoken to the other. One day to assess the millennia of Dreaming stories, desecration of Country and sacred sites within the valley. Not only was this not done in the appropriate time frame, it was also not done in collaboration with any Traditional Owners including myself. Non-Indigenous people do not have the cultural knowledge of the specific Country in order to decide what is or isn't significant, to Indigenous peoples or culture. Viewing this process from a western standpoint is nothing short of epistemological racism. It can be likened to burning down 73% of a library, filled with ancient language and then remaining 27% of a library of ancient language, just because you don't speak that language.

How is it possible that an "assessment" of these sacred and highly significant sites was done by people who have no knowledge of value of the system? Moreover, how were they then able to make an assessment, from the wrong world view, based on just viewing photographs, this is insane? Not only were these people who did the assessment not culturally qualified to make judgement on Indigenous sites, but they even failed the western way of assessment with no dating or archaeological digs conducted to verify any of the artefacts in the photographs. The survey was culturally unsafe. Men visited women's sites, and women visited men's sites with no understanding nor regard for cultural protocol. Requests to limit the number of people walking all over sensitive sites during a "good faith" visit were ignored. Myself and my daughter have been visiting the area for many years and were not allowed to do survey work due to insurance issues. I have never required Insurance to access the area before, and offered to sign a waiver, however we were denied. This meant sites were missed and not surveyed.

Examples of the lack of care of the wider landscape and its significance and irrelevance of the assessment can be found in many examples including but not limited to Byrnes Creek. At Byrnes Creek a highly significant engraving was ignored because it was covered by silt, even though the surrounding landscape was also significant, it was not assessed. Cultural heritage includes fauna and flora however this was ignored in the assessment. An example of this is the area of camden white gum, the cultural significance of this area isn't included in the Aboriginal Heritage assessment. This together with only a fraction of the area surveyed means they really have no idea what will be destroyed if the project goes ahead.

Further investigation will only be carried out once the project is approved, meaning it will be too late to save anything. Unfortunately, of the 23 RAPS on the project only a few have actual knowledge and real connection to the sacred stories held in this Country. Those few are also the only ones that

attend RAP meetings. The “consultation process” is lacking epistemological validity in its consultation.

A consultation is the process of discussing something with someone in order to get their advice or opinion about something. In the consultation meeting we have attended, our opinions were ignored and only adopted when media covered the shortfalls. My personal opinion of the meeting was, they told us what they were going to do and did it regardless of our advice or opinions. What is consultative about that?

We have refused to participate in the cultural heritage assessment for many reasons. We believe that as Traditional Owners of the Country in question we should decide on what is and isn't important. It is our knowledge that has been handed down for millennia and should not be filtered through a non-Indigenous western worldview who decides on what to print and what not to print based on personal benefit or gain. We should be able to write our own report that reflects our own value and knowledge of the significance of this Country that will be desecrated if the dam wall goes up. It is my story that my grandfather shared with me, and his ancestors shared with him. I will decide who I tell, where, when and under what circumstances. This information is my intellectual sovereign cultural knowledge and property. I have no desire to share this with people who want to dissect it, cherry pick and use it to destroy mine and my future descendants Country.

Current legislation has ensured to keep my family and I locked out of my Country since the 1950s. This has meant sites have not been maintained, locations have been temporarily lost and stories have not been passed on like they were before this time. We have been refused access many times. Our last application was to take our children onto Country to teach them about their culture and show them where they came from. We were told we can undertake these activities anywhere, which is not possible, it is like telling a story with your mouth taped shut. The story and knowledge held in these sacred sites across the Valley holds sacred lessons that cannot be told off Country, they must be told in the way they have for millennia, on and with Country as Country is an entity and our Mother.

We need to be given access in order to tell the truth about our history, and with the impending destruction of our sacred sites, access to the area should be easier. Our children deserve to see and experience the area and their culture on and with Country before it is destroyed and not afterwards in a book, written by a white man, they will have to purchase. A non Indigenous person in an office should not be deciding what is and isn't a culturally appropriate way of learning. I implore you to take real action in protecting Country and allowing our voices to be heard.

I have also given evidence to other inquiries about our experience of the current legislation which demonstrates this, and which is attached to this submission.

## Comments on Bill (explanatory note)

### Part 1 Preliminary

I support the proposal for Parliament to recognise the *United Nations Declaration on the Rights of Indigenous Peoples* and the intention to apply those rights through the Bill. It isn't apparent that the Bill would implement those rights in NSW. For example, the Bill does not appear to provide for free, prior and informed consent for knowledge holders on development that will harm Country.

### Part 2 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

I do not support an Aboriginal Cultural Heritage Council or local Aboriginal cultural heritage services as proposed in the Bill.

These bodies will replicate issues that already exist in the Registered Aboriginal Party process and issues with Local Aboriginal Land Councils, where they do not represent the community.

Community are rarely on (or a majority of) members of LALCs or RAPs. They are dominated by people who are there to make money, not community (meaning those with cultural knowledge of the area that is going to be impacted).

An ACH Council or local ACH services will inevitably be made up of the same people that are currently on land councils or on indigenous corporations who sign up to be RAPs for projects that aren't on their Country. People seeking to make money from culture. OR they are cliquey and controlled by one or two families in an area to the exclusion of other families, even if there are many more families in the area with cultural knowledge.

The proposal for the ACH Council and local ACH services is open to misuse- these bodies would have powers and could be vulnerable to corruption (like other bodies with development powers), for example granting an ACH permit.

IF these bodies were really made up of and representative of community, it might work (for example, representatives of every family in the area). But not the same people currently on land councils or associations that do cultural heritage work for money.

We need to move away from land councils and local land services. There are so many Indigenous people who don't want to be part of land councils, who want to be able to have a say as community. No-one should be speaking for anyone else.

Who decides, under the Bill, who the knowledge holders are in relation to an area? If it's the land council (or ACH Council or local ACH service), that is not the real community.

In my opinion, a knowledge holder is someone from the area whose family has lived there and has on the ground knowledge.

At the moment with RAPs and LALCs there is no way of verifying this or stopping people who aren't knowledge holders from having a say. For example, RAPs for the raising of the Warragamba Dam wall on Gundungurra Country include people from other areas, they have no connection to the area. they do not have have cultural knowledge, do not know Country or any sites, and cannot contribute.

Having one body (either LALCs or local ACH services or an ACH Council) that the community is meant to speak through is not ever going to work. There are lots of different families with different knowledge and different interests in different areas. Maybe if there was a comprehensive list of families in the area that proponents had to speak to all of them that might mean the community is heard.

These things need to be transparent too. The ACH Council or local ACH service should be transparent, and should have to report back to the community.

Currently, developers tick the box saying "we've spoken to the land council", but the land council doesn't represent us.

Any bodies need to be made up of and actually represent the people whose families are from the area, with connection to the area, with intellectual property/knowledge of Country.

### Part 3 Rights and duties in relation to Aboriginal cultural heritage

I am concerned about the "commercial benefit". I don't believe my culture is a tourist attraction.

However, if this means intellectual property belongs to those people whose story it is then it is up to them. But people should not be able to make money out of culture or knowledge that is not theirs.

Knowledge holders should be exempt from the duty to report Aboriginal cultural heritage. Unless it is under threat we should not be made to disclose our cultural knowledge

#### Part 4 Protected areas

I support no go zones for development because of cultural heritage. However, community/knowledge holders need to be able to access an area to manage it and to teach younger generations.

Also, who decides what is of “outstanding significance”? You can’t break Country up into bits- saying this bit is more important than this other bit. It doesn’t work like that, it’s all connected.

#### Part 5 Offences about harming Aboriginal cultural heritage

There shouldn’t be a distinction between serious and material harm- you can’t half harm.

#### Part 6 Managing activities that may harm Aboriginal cultural heritage

This is the main part of the Bill that raises the possibility for corruption with the ACH Council or local ACH services (see Part 1 above).

Considering the “likely level of harm”- ignores the cumulative impact on the Country. Cumulative impact needs to be considered.

Requests for ACH permits need to go back to community to decide. Community needs to represent itself. The native title representatives or land councils (or ACH Council or local Ach service) shouldn’t be making decisions for me.

#### Part 7 Stop activity orders, prohibition orders and remediation

Orders need to be able to be obtained very quickly to stop harm. Often it just happens in the middle of the night and you don’t know until a couple of months later when a developer lodges a development application and sites that were there are destroyed (e.g. scar trees). Again I am concerned about the ACH Council as a decision maker because the people on it probably won't have knowledge of Country where the harm is.

#### Part 8 Aboriginal cultural heritage protection agreements

It is positive to have a way of protecting Country. However, like with the no go zones, community need to be able to access Country and should not have to ask permission to access Country.

#### Part 9 Aboriginal Cultural Heritage Directory and Register of Aboriginal Owners

I don’t support having a directory of heritage. It isn’t right for people without knowledge to be able to access that knowledge. This does not respect confidentiality or intellectual property and is contrary to the UNDRIP principles around intellectual property. I don’t think anything about cultural heritage or protected areas should be there, and definitely not anything that identifies sites.

No one (including the ACH Council or local ACH service) should be able to access a register like this that contains cultural knowledge that isn’t their own. It risks people finding out about sites and then those sites being destroyed and/or money being made out of that knowledge.

If the register of owners is of actual owners for the area and includes all owners (or at least a comprehensive list of families) that is okay, but a directory of cultural heritage is not.

## Part 10 Compliance

Prosecutions for harm need to actually happen, which they don't at the moment.

Penalties need to be high enough to negate any benefit to a developer. At the moment its cheaper to destroy and then pay the fine.

Fines should go back into the community.

## Attachments (previous submissions and evidence)

- Attachment A Evidence to Select Committee on the Proposal to Raise the Warragamba Dam Wall, 4 October 2018 (pages 2-12)
- Attachment B Submission to the Inquiry into Proposal to Raise the Warragamba Dam Wall, 4 September 2019
- Attachment C Evidence to Select Committee on the Proposal to Raise the Warragamba Dam Wall, 6 November 2020 (pages 2-14)
- Attachment D Answers to supplementary questions of the Select Committee on the Proposal to Raise the Warragamba Dam Wall, November 2020
- Attachment E Evidence to Select Committee on the Proposal to Raise the Warragamba Dam Wall, 8 November 2021 (pages 2-10)
- Attachment F Submission on the Environmental Impact Statement for the Proposal to Raise the Warragamba Dam Wall, December 2021
- Attachment G Letter of refusal from WaterNSW for access to Country