

**Submission
No 14**

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

Organisation: NSW Council for Civil Liberties

Date Received: 16 September 2022



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NSWCCL SUBMISSION

PORTFOLIO COMMITTEE NO. 7 - PLANNING AND ENVIRONMENT

ABORIGINAL CULTURAL HERITAGE (CULTURE IS IDENTITY) BILL 2022 INQUIRY

15 September 2022

NSWCCL

Acknowledgement of Country

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The New South Wales Council for Civil Liberties (NSWCCL) welcomes the opportunity to make a submission to the NSW Portfolio Committee No.7-Planning and Environment in regard to the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 Inquiry.

NSWCCL supports this Bill. We acknowledge that it is designed to better protect and support Aboriginal Cultural Heritage (ACH) and that it presents an opportunity for long overdue and meaningful changes to cultural heritage legislation. If passed, it would also effect a tangible step forward for First Nations' justice in NSW.

Currently, most Aboriginal cultural heritage in New South Wales is protected and managed under the provisions of the *National Parks and Wildlife Act 1974*. These provisions are outdated, inflexible, difficult to administer and do not provide Aboriginal people self-determination over the management of their cultural heritage.¹ NSWCCL recognises the substantial intergenerational trauma suffered by First Nations people across Australia and notes that the inclusion of Aboriginal cultural heritage as part of the provisions of the *National Parks and Wildlife Act 1974* compounds the impacts of colonisation, loss of land, language and culture and the forced removal of First Nations' children. We believe that the situating of cultural heritage protections under the *National Parks and Wildlife Act 1974* is racist, inherently discriminatory and long overdue for reform.

The Bill aims to prevent the destruction of Aboriginal cultural heritage by affording true custodianship of sites, objects and remains through the introduction of a new state-level Aboriginal Cultural Heritage Council. The ACH Council would be led by Aboriginal people with including native title holders and Aboriginal Land Councils. The ACH Council would enable Aboriginal people to make decisions based on their own cultural heritage and traditions while simultaneously being informed by their current needs and aspirations.

Another reason for our endorsement of the Bill is that it aligns with the intent of Article 11 of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) providing that Indigenous People have the right to maintain, protect and develop their cultural traditions and customs. UNDRIP was first adopted by the United Nations General Assembly in 2007 and endorsed by Australia in 2009. UNDRIP provides a global framework for the advancement of the human rights of Indigenous Peoples.

¹ New South Wales Aboriginal Land Council SUMMARY Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 "NSWLAC ACH Reform Principles" 2022 available at https://alc.org.au/wp-content/uploads/2022/06/SUMMARY_ACH-Bill_22-June-2022.pdf

Australia is a signatory to the UNDRIP and has ratified the Covenants and Conventions it was drawn from, including the International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Aboriginal and Torres Strait Islander peoples and Tribal Peoples Convention (ILO Convention 169), Convention on Biological Diversity and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 of UNDRIP confirms:

'Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technology, and visual and performing arts and literature.'

The draft bill before this Inquiry would assist in complying with Australia's international obligations.

Importantly, the Bill has the support of the New South Wales Aboriginal Land Council (NSWLAC) and aligns with the NSWALC's ACH reform principles, including:

- a. Strengthening self-determination and empowering Aboriginal people;
- b. Be led by Aboriginal people;
- c. Inclusive and respectful of cultural and native title rights;
- d. Build on existing structures of land rights and native title;
- e. 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.²

The cultural dispossession of First Nations peoples during the colonisation of Australia "not only set the stage for social disintegration, it deprived Aboriginal people of their land and material livelihood, setting the stage for their economic deprivation and continuing poverty".³ The process of dispossession was violent, and the "colonial government's authorisation of settlement allowed Aboriginal deaths at the hands

² New South Wales Aboriginal Land Council SUMMARY Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 "NSWLAC ACH Reform Principles" 2022 available at https://alc.org.au/wp-content/uploads/2022/06/SUMMARY_ACH-Bill_22-June-2022.pdf

³ Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry in New South Wales, Victoria and Tasmania* (1991) 26.

of Europeans to take place with impunity”.⁴ The path forward for First Nations’ justice is far from complete, but this draft Bill contributes to affecting justice in a small and incomplete way.

In addition to being dispossessed of their land, First Nations peoples were also forcibly disconnected from ‘culture, language, land, resources, political autonomy, religious freedom, and, often, personal autonomy’.⁵ Placing self-determination regarding ACH decisions back into the hands of First Nations’ communities will aid in restoring this connection.

First Nations peoples should be able to make key decisions, develop guidance materials, compliance and enforcement, and appoint Local Aboriginal Cultural Heritage Services to protect Aboriginal Cultural Heritage. Aboriginal people should be in control of their heritage.

We recommend that the New South Wales Government legislate the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 to allow this to happen.

This submission was prepared by Anne Charlton on behalf of the New South Wales Council for Civil Liberties. We hope it is of assistance to the Committee.

Yours sincerely,

Josh Pallas
President
NSW Council for Civil Liberties

Contact in relation to this submission: Josh Pallas

⁴ Bugmy Bar Book Committee, *Cultural Dispossession Experienced by Aboriginal and Torres Strait Islander Peoples* (The Bar Book Project, November 2020) 5 [13]

<https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/barbook/pdf/BBP_CulturalDispossession_chapter-Nov2020.pdf>.

⁵ Linda Archibald, *Decolonization and Healing: Indigenous Experiences in the United States, New Zealand, Australia and Greenland* (Aboriginal Healing Foundation, 2006), quoted in Chris Cunneen ‘Sentencing, Punishment and Indigenous People in Australia’ (2018) 3 *Journal of Global Indigeneity* 15.