

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

Organisation: NSW Aboriginal Land Council

Date Received: 21 September 2022

Portfolio Committee No 7 – Planning and Environment
Legislative Council
NSW Parliament

Via email: portfoliocommittee7@parliament.nsw.gov.au

Dear Chair,



Inquiry into the *Aboriginal Cultural Heritage (Culture is Identity) Bill 2022*

Further to our previous submission, we write to raise concerns about a number of submissions to the Inquiry into the *Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 (Bill)*.

While we appreciate there are different views and opinions, we are concerned at the divisive, disrespectful, misleading and defamatory nature of some submissions.

We had hoped that the Inquiry would be an opportunity to progress important discussions about improving Aboriginal Cultural Heritage (**ACH**) protections in NSW.

However, we are concerned that some submissions have focused on issues unrelated to the Inquiry, and fundamentally not engaged with the contents of the Bill.

While we do not wish to further divert the Committee's time, we provide some brief remarks below to correct false, misleading and defamatory statements.

NSW Government submission

The NSW Government submission refers to NSWALC support for the majority of the NSW Government's policy positions in-principle. This is not correct.

While we welcome the opportunity to work with Government and all stakeholders to progress reforms, this needs to be done in accordance with the NSW Government's commitments to genuine partnership under Closing the Gap.

Despite this, NSWALC has provided extensive comments to the NSW Government over many years, which remain unaddressed. Council has long standing key principles which we understand the NSW Government model does not meet.

ACHAC submission

We have serious concerns about the Aboriginal Cultural Heritage Advisory Council (**ACHAC**) submission to the Inquiry.

The submission makes offensive, inappropriate, incorrect, misleading and defamatory remarks about Aboriginal Land Councils.

In response to these remarks NSWALC makes the following comments:

- NSWALC is the peak elected representative Aboriginal community-controlled organisation for all Aboriginal people in NSW. NSWALC is the largest Aboriginal member-based organisation in Australia. Our membership is over 26,000 state-wide, and all Aboriginal Land Councils are accountable to their members. We have statutory functions and responsibilities to represent the best interests of Aboriginal people in NSW.
- Under the ALRA, NSWALC and the 120 Local Aboriginal Land Councils (**LALCs**) across NSW are established to deliver social, cultural and economic outcomes for our communities. NSWALC and LALC

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have statutory functions in relation to the acquisition and management of lands. NSWALC and LALCs also have statutory functions to protect and promote Aboriginal cultural heritage, among other matters.

- We note the recent five-yearly, public statutory review of the ALRA undertaken by the Minister for Aboriginal Affairs¹. The review found the policy objects of the ALRA remain valid and proposed various opportunities to continue to build on the successes of land rights, and strengthen the ALRA, including the Aboriginal Cultural Heritage provisions.
- Schedule 1 of the Bill is clear that the appointment of ACH Council will be a function of the relevant Minister. The Bill provides for NSWALC and native title holders to nominate “*potential members*”. Nomination from NSWALC and native title holders is entirely appropriate and in keeping with recognising the two key legislative regimes in NSW – the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) and the *Native title Act*.
- The Bill is very clear that nominees are to be Aboriginal persons, comprised in equal number of Aboriginal Land Council members, native title holders and Aboriginal owners, be gender balanced as far as practicable, and have relevant skills and experience. These are important safeguards to ensure the Minister’s appointments are based on recognised Aboriginal community-controlled structures. There is no ‘dedicated seat’ for NSWALC.
- The ALRA provides very clear public requirements for NSWALC and LALCs in relation to governance, decision-making, transparency, accountability, financial, reporting, management and consultation. NSWALC and LALCs also have legislated functions to act in the best interests of Aboriginal communities.

Other submissions

Again, while we appreciate there are different views and opinions, the nature of some other submissions is misleading.

We note that:

- A number of submissions make false and unfounded statements about Aboriginal Land Councils and proposed roles in the ACH Bill,
- We refer the Committee to roles, functions, transparency and accountability requirements of Aboriginal Land Councils as set out in the ALRA,
- LALCs are autonomous and have clear membership, governance and decision making requirements set out in the ALRA,
- We refer the Committee to the compliance and regulatory regime set out in the ALRA; and note there are appropriate channels, authorities and complaints processes for any aggrieved persons to follow. Making inappropriate allegations during Parliamentary inquiries on unrelated matters is not an appropriate channel.

Finally, we urge all Parliamentarians to support the Bill’s passage through NSW Parliament as a matter of urgency to secure long overdue ACH protections.

Sincerely,

Yuseph Deen

Chief Executive Officer

Date: 21 September 2022

¹ https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/land-rights/the-aboriginal-land-rights-act-1983-ala/legislative-review/Aboriginal-Land-Rights-Act-1983-2021-Statutory-Review-Report.pdf