

Submission
No 25

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

Organisation: NSW Farmers Association

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President

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Portfolio Committee No. 7 – Planning and Environment
Submitted via website

RE: NSW Farmers' submission to Aboriginal Cultural Heritage Bill inquiry

NSW Farmers welcomes the opportunity to provide a submission to the inquiry into the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022.

NSW Farmers is Australia's largest state farming organisation, representing the diversity of interests of its members. Our focus extends from issues affecting particular crops and animals, through to broader issues including the environment, biosecurity, water, economics, trade and rural and regional affairs.

Farmers are stewards to over 80% of land in New South Wales, managing and tending to their land and water resources to produce food and fibre for Australian and overseas markets. Most of NSW Farmers' members are family farm operations.

NSW Farmers understands and recognises the fundamental importance of Aboriginal cultural heritage to Aboriginal people and the whole Australian community. The Association does not oppose the principles and intent behind this Bill, to recognise and protect Aboriginal cultural heritage and its importance to Aboriginal people and the whole Australian community. Our concerns outlined below relate to the potential wide-ranging impacts of the Bill and powers contained therein, and the likelihood of unintended consequences for farmers.

Whilst it is important that there is greater recognition and protection of Aboriginal cultural heritage in decision-making, and greater involvement of indigenous Australians in these processes, this must be an integrated approach that is balanced with the expectations of the whole of Australian society, ensuring there is no overreach of power or erosion of landholder rights.

NSW Farmers makes the following comments in relation to the proposed Aboriginal Cultural Heritage (Culture is Identity) Bill 2022.

Aboriginal Cultural Heritage (ACH) Council structure and decision-making

The Bill indicates that the proposed Aboriginal Cultural Heritage (ACH) Council will be taken to be a public authority for the purposes of the *Ombudsman Act 1974*, the *Independent Commission Against Corruption Act 1988*, and the *Government Information (Public Access) Act 2009* (GIPA Act). However, the GIPA Act will not apply to information documents or other records under this Act, to the extent that the GIPA Act would otherwise enable or require the disclosure of culturally sensitive information. This means that it may be difficult to access the reasons behind any decisions, reducing accountability and transparency, and adding to the challenges of having any decisions reviewed.

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Additionally, as outlined in the second reading speech, the council will serve three primary roles – to be an advisory and resourcing body to preserve Aboriginal heritage in NSW, to create local ACH services, and to be a medium between the local ACH service and the government. The ACH Council appears to be completely autonomous from the relevant minister and any relevant agencies, aside from initial involvement in selecting ACH Council members and the requirement to review and report on the Act every 5 years. Defining and protecting Aboriginal heritage is left entirely to those empowered by the bill with ACH Council alone responsible for all decision-making and creating its own framework for this decision-making. NSW Farmers is concerned that the ACH Council will be empowered to make all decisions unilaterally without input or oversight, despite potential broader impacts, including on landholders and their property rights.

NSW Farmers is also concerned that the only avenue of review available for ACH Council decisions is through NCAT, and this avenue is only available for certain decisions. NSW Farmers holds significant concerns around the potentially significant impact that the ACH Council could have on landholders.

Potential consequences for landholders

NSW Farmers recognises that cultural heritage needs protection, but we are unsure how this Bill will work in practice and hold concerns about the potential consequences. Farmers conducting their business in New South Wales are already subject to a significant amount of regulation in relation to activities they can undertake on their farm, including planning, native vegetation management, and private native forestry regulation. Our members hold serious concerns around how the provisions of this Bill would be implemented, and the implications of its interaction with other legislation, including the *Local Land Services Act 2013* (NSW), *Environment Planning and Assessment Act 1979* (NSW), and various State Environmental Planning Policies. There is concern around the level of reporting and assessment required in relation to potential and unknown cultural heritage sites on-farm, for example if a farmer would be required to undertake an inspection or assessment prior to conducting any activities, including those that are routine. This could be very costly in terms of time and money if additional assessments are required prior to completing routine activities such as those allowable under the *Local Land Services Act*, and would not be a practicable, workable outcome.

This concern is heightened by the requirement that only the ACH service can complete assessments which could result in lengthy delays depending upon the number of qualified assessors. Additionally, there is no information as to whether this service is aimed at cost recovery or a commercial revenue raising context, and as there is no competition available for this service, prices could be driven up. Whilst the fee structure for the ACH service is set to be legislated, the provision is set to include an ability for the service to vary its fee structure upon request to the ACH Council.

Additionally, there will likely be impingement on landholders' existing property rights. This includes lost ability to utilise land, whether this be temporarily whilst waiting for assessment or permanently; lost productivity in areas declared culturally significant (and potentially areas surrounding this); and lost right to private enjoyment through potential unwanted and unnotified entry of inspectors.

There is no clear definition around what defines a protected area, for example it could be a small section of a farm or an entire valley, and limited opportunity for affected landholders to have input in assessment processes that will significantly affect them.

Broad powers

In addition to the broad powers granted to the ACH Council, the powers granted inspectors under the Bill are concerningly broad. The open definition could encompass a broad group of people, in addition to the ability to authorise as many other people as reasonably necessary to assist in exercising the power. A key reason this causes concern for farmers is that they need to understand who is entering their property and when for biosecurity requirements.

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Further information needed

Further to the concerns raised above, NSW Farmers seeks further information and clarity around the operation and implementation of a number of the provisions contained in the bill.

This includes further information and detail around:

- different levels of Aboriginal cultural significance,
- tier 1 and 2 activities,
- definition of culturally significant areas in terms of specificity and scale,
- impact on Local Land Services and planning legislation,
- reporting requirements e.g. is there a requirement to report any indigenous object or place a person is aware of, regardless of what activity is undertaken on their land? Would the reporting process be simple or detailed and complex?
- what would reporting data be used for and what impacts would there be on the landholder (if any),
- potential level of input and involvement in creation of guidelines,
- identification of knowledge holders, as this can be challenging,
- ACH Council transparency and accountability requirements, including annual reporting and auditing.

NSW Farmers supports greater recognition and protection of Aboriginal cultural heritage but holds significant concerns with the Aboriginal Cultural Heritage Bill as it is currently drafted. Instead, NSW Farmers encourages the protection of cultural heritage using an approach based on cooperation and trust rather than coercion. Over recent years, indigenous cultural heritage processes have moved positively towards building effective relationships between farmers and indigenous groups to identify and enhance protection of cultural heritage sites. This model has been effective in the past and would be a better approach to achieving the desired outcomes.

NSW Farmers is concerned that this aspect of the Bill has not been properly considered and encourages the adoption of a cooperative approach.

Yours sincerely

Xavier Martin
President