

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

**Organisation:** Darkinjung Local Aboriginal Land Council

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

Dear Committee members,

**Darkinjung Local Aboriginal Land Council's supplementary submission to the Inquiry into the  
Aboriginal Cultural Heritage (Culture is Identity) Bill 2022**

I have recently given evidence and reviewing the evidence from other parties throughout the hearings. This submission is being made as additional information to support Darkinjung Local Aboriginal Land Council's (Darkinjung) original submission and evidence.

I note that the main dispute between Aboriginal stakeholders appears to be the elevation of Local Aboriginal Land Council's above Native Title.

Darkinjung recognises and supports the legitimacy of Native Title, particularly where determinations have been made and the claimants have demonstrated their ongoing connection to country. Darkinjung notes that there are illegitimate people here on the Central Coast who claim to be 'guringai' but have never proved their claims, ancestral connections or traditional linkages to this country in accordance with legal requirements.

Darkinjung's public position has always been to recognise the cultural authority of Native Title. We view ourselves as modern custodians of this ancient land, with shared creation and dreaming stories, ceremonies and practices. We see ourselves as caring for country with respect in the absence of traditional owners, acknowledging that our connections are shared but we are not Darkinjung. Many Local Aboriginal Land Councils that I have known and been part of over the last 20 plus years feel the same way.

This follows the challenge for many across NSW who cannot prove Native Title due to the past policies of extermination, dispossession and assimilation enacted by governments and religious groups. This was not the fault of our ancestors, but we now live with the legacy of this.

This is why we support the position that where a Native Title determination has been made and the applicants have demonstrated through legal processes that they are Aboriginal people with traditional connections to that country, and they have continued to exercise their cultural connections to that country. This is Aboriginal LORE where we recognise and respect Traditional Owners, and remains the foundation for the Welcome to Country and Acknowledgement of Country traditions that are exercised across NSW and Australia. In terms of the proposed hierarchy, we support Native Title being elevated.

In the absence of Traditional Owners under the *Native Title Act 1993*, we must recognise Registered Aboriginal Owners under the *Aboriginal Land Rights Act 1983 (NSW)*. While the scrutiny and evidence is not as deep as that of Native Title, it provides a secondary mechanism for recognising the Aboriginal people with traditional connections to country. Again, in accordance with Aboriginal LORE we must honor and respect this where it exists.

In the absence of Traditional Owners under the *Native Title Act 1993* and Registered Aboriginal Owners under the *Aboriginal Land Rights Act 1983 (NSW)*, Local Aboriginal Land Councils must fill the gap.

Under the *Aboriginal Land Rights Act 1983 (NSW)*, Local Aboriginal Land Councils are community-controlled organisations and all proceeds that are generated go to supporting Aboriginal people within their boundaries. Section 52(4) of the *Aboriginal Land Rights Act 1983 (NSW)*, Local Aboriginal Land Councils have the following functions in relation to Aboriginal culture and heritage:

- a) To take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law.
- b) To promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.

Section 52(4)(a) means that we have a legal obligation to recognise Traditional Owners under the *Native Title Act 1993* and Registered Aboriginal Owners under the *Aboriginal Land Rights Act 1983 (NSW)*. Any attempts by parties to elevate Land Councils (including the NSW Aboriginal Land Council under Section 106(6) and 106(7) of the *Aboriginal Land Rights Act 1983 (NSW)*) constitute a breach of our statutory functions. I understand that some stakeholders have tried to elevate us above these bodies.

In operating in accordance with cultural LORE and legal requirements, Darkinjung supports the following hierarchy:

1. Traditional Owners where a determination exists under the *Native Title Act 1993*
2. Registered Aboriginal Owners under the *Aboriginal Land Rights Act 1983 (NSW)*
3. Local Aboriginal Land Councils as established under the *Aboriginal Land Rights Act 1983 (NSW)*

We will need to work together to ensure the safety, protection and promotion of Aboriginal cultural heritage. This was a strong point made by NSWALC Councillor Leeanne Hampton in her evidence at the inquiry on Friday 14 September 2022. Darkinjung supports Councillor Hampton's position on this.

In my observations of the evidence, so much of the testimony continues to demonstrate the 'political pissing competition' that I described in my response to the Hon Shayne Mallard. As Aboriginal people we need to be better than this, but too often approaches have created a divide rather than unity.

We are all connected, and we all share the same passion to protect Aboriginal cultural heritage. In the absence of this Bill, we have nothing. Aboriginal cultural heritage continues to be destroyed and desecrated, regardless of the number of Reconciliation Action Plans businesses and government entities have. We are continuing to see people with no cultural authority and even people who are likely to not even meet the legislative and common law requirements for being an Aboriginal person profit from the provision of cultural heritage services. Often this could be described as 'cash for comment' remembering the scandal that this created in the mainstream broadcasting sector decades ago. But where is the outcry when it undermines and supports the destruction of ancient Aboriginal cultural heritage?

The system is fundamentally broken and we as Aboriginal people need to work together under cultural LORE and legal authority to fix it. But we need the mainstream government to create the framework that allows us to fix it.

This Bill is not an abomination. It would introduce best practice standards into the protection of Aboriginal cultural heritage here in NSW. We could showcase how to work together across passionate and knowledgeable Aboriginal groups and government to show the rest of Australia how to truly protect Aboriginal cultural heritage in accordance with the underpinning principles under Closing the Gap.

Yours sincerely

Brendan Moyle  
Chief Executive Officer  
Tuesday 4 October 2022