

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 7 - PLANNING AND  
ENVIRONMENT**

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

**CORRECTED**

**At Room 814-815, Parliament House, Sydney, on Friday 23 September 2022**

**The Committee met at 9:20**

**PRESENT**

Ms Sue Higginson (Chair)

The Hon. Rose Jackson  
The Hon. Aileen MacDonald  
The Hon. Shayne Mallard  
Reverend the Hon. Fred Nile  
The Hon. Penny Sharpe

**VIA VIDEOCONFERENCE**

The Hon. Scott Barrett

\* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.



**The CHAIR:** Welcome everybody. Thank you for being here. Welcome to the first hearing of the inquiry into the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022. Before I commence, I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past, present and emerging, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and the waters of New South Wales. I also acknowledge and pay my respects to Aboriginal and Torres Strait Islander people joining us today.

The Parliament has asked this Committee to do an inquiry into a private member's bill called the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022. This bill is separate from the cultural heritage reforms that the Government has been working on over a period of time. I acknowledge the short amount of time the Committee has to examine the bill and to get the community's views on it. I acknowledge that this is not desirable. The Parliament has told the Committee it must publish its report by 8 November 2022. The reason for this deadline is the New South Wales Parliament will meet for its last time in mid-November before the 2023 State election.

Today we will be hearing from a range of stakeholders, including Aboriginal peak organisations, such as the NSW Aboriginal Land Council, the NSW Coalition of Aboriginal Regional Alliances, the Aboriginal Cultural Heritage Advisory Committee and the Native Title Service Provider for New South Wales. We will also hear from a number of other stakeholders. The Committee is very grateful to all the individuals and organisations who have made themselves available to appear at today's hearing on such short notice. We thank everybody for making the time to give evidence to this important inquiry. While we have many witnesses with us in person, some will be appearing via videoconference today. I ask for everyone's patience through any technical difficulties that we may encounter today. If participants lose their internet connection and are disconnected from the hearing, please rejoin the hearing by using the same link as provided by the Committee secretariat.

Before we commence, I will make some brief comments about procedures for today's hearing, which is being broadcast live via the Parliament's website. The proceedings are also being recorded, and a transcript will be placed on the Committee's website once it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments they make to the media or to others after they have completed their evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Due to the short time frame for this inquiry, we ask that written answers to questions taken on notice are provided within seven days.

Finally, for those participating in today's hearing via videoconference, can I please ask everyone to state their name when they begin speaking, to speak directly into the microphone and to mute their microphones when they are not speaking. In terms of the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphones. Finally, would everyone please turn their mobile phones to silent for the duration of the hearing.

**Mr WARLPA THOMPSON**, Director, Barkandji Native Title Group Aboriginal Corporation Registered Native Title Body Corporate, affirmed and examined

**Ms TARA MERCY**, Business Manager, Bandjalang Aboriginal Corporation Prescribed Body Corporation Registered Native Title Body Corporate, affirmed and examined

**Mrs DIANNE CHAPMAN**, Manager, Office and Administration, Yaegl Traditional Owners Aboriginal Corporation Registered Native Title Body Corporate, affirmed and examined

**Mr MICHAEL BELL**, Chairperson, NTSCORP Limited, affirmed and examined

**Ms NATALIE ROTUMAH**, Chief Executive Officer, NTSCORP Limited, affirmed and examined

**Mr TERRENCE ROBINSON**, Director, Ngullingah Jugun (Our Country) Aboriginal Corporation RNTBC, affirmed and examined

**Ms MISHKA HOLT**, Principal Solicitor, NTSCORP Limited, affirmed and examined

**Mrs YVONNE STEWART**, Bundjalung of Byron Bay (Arakwal) Elder and Member, Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) Registered Native Title Body Corporate, affirmed and examined

**The CHAIR:** I now welcome our first witnesses.

**WARLPA THOMPSON:** Firstly, I'd like to pay my respect to Gadigal country and recognise the people that care and look after this country, as they have since the start of time. I'm one of the directors of the Barkandji PBC and I'm also the chairperson of Mutawintji Land Council and one of the Aboriginal owners listed for Mutawintji under a State lease or State legislation.

**TARA MERCY:** Hello, I'm the business manager for Bandjalang Aboriginal Corporation. Before I commence, I'd like to pay my respects to the Gadigal people whose country we meet on today. I'm a traditional owner. I am the granddaughter of Lawrence Wilson who started the native title application on behalf of the Bandjalang people many years ago. My grandfather is no longer with us. He has taken his place with our ancestors like many Elders who started the native title process. They were determined and resilient in their right to have our rights recognised as the traditional owners of our country. I pay my respects to them.

**DIANNE CHAPMAN:** I'm Dianne Chapman nee Ferguson. I'm a proud Yaegl woman, and I'd like to acknowledge that I meet here on Gadigal country and respect Elders past, present and emerging. I'm the manager of Yaegl Traditional Owners Aboriginal Corporation Registered Native Title Body Corporate. I've been endorsed by the board of directors of the corporation to speak with you today, and I speak on behalf of all Yaegl people. I am very honoured to be sitting here. I feel privileged. I look at who came before me, my ancestors, and what they did in relation to us having our native title rights on our country, which is huge for me.

**MICHAEL BELL:** Good morning. I would also like to acknowledge and pay my respects to the Gadigal people, the traditional owners of the country on which we appear today. I'm Michael Bell. I'm a Ngunnawal Gomeri man. I'm the Chair of NTSCORP, the service provider for the ACT and New South Wales for native title services.

**NATALIE ROTUMAH:** I would also like to acknowledge and pay my respects to the Gadigal people, the traditional owners of the country on which we appear today. I also acknowledge the Chair and Committee members of the planning and environment Committee. My name is Natalie Rotumah. I am a Minjungbal Bundjalung woman from up on the North Coast, and I'm the Chief Executive Officer of NTSCORP Limited.

**TERRENCE ROBINSON:** Good morning. I'm Terence Robinson. Firstly, I'd like to acknowledge country—Gadigal country—and pay my respects to the Elders past and present. I'm from the far North Coast of New South Wales, up in the Bundjalung country. I live in a small place called Malabugilmah, out in the middle of nowhere.

**MISHKA HOLT:** My name is Mishka Holt. I'm the Principal Solicitor of NTSCORP, and I acknowledge Gadigal people, the country on which we are today and all of the witnesses here today and the various communities that I've had the privilege to work with.

**YVONNE STEWART:** Hello and thank you. I'd first like to also acknowledge the Gadigal people and the lands that we sit on today and acknowledge the Elders past, present and emerging. My name is Yvonne Kay Stewart. Stewart is my married name, and I'm an Arakwal Bumberlin Bundjalung woman from Byron Bay, formerly known as Cavanbah.

**The CHAIR:** Thank you. Would you like to start by making a short statement? Mr Bell.

**MICHAEL BELL:** We've already acknowledged country so I won't repeat that, although this is Gadigal land. I acknowledge the Chair and Committee members of the planning and environment Committee. I also acknowledge the Board of NTSCORP Limited, our CEO Natalie Rotumah and PLO Mishka Holt, and all of the delegates who join us today from our respective prescribed body corporates around the State, from Broken Hill to Brooms Head to Baryulgil. I appear today on behalf of NTSCORP Limited. NTSCORP is a company comprised of Aboriginal members from throughout New South Wales and the ACT. NTSCORP is the native title service provider for New South Wales and the ACT. We are funded to represent the interests of Aboriginal traditional owners who hold or may hold native title rights and interest in lands, waters, sea and sea country, and specifically to assist traditional owners to exercise their rights under the Native Title Act 1993. That's the Commonwealth Act.

NTSCORP welcomes the opportunity to appear before the Committee today and discuss the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 and our principles for Aboriginal cultural heritage legislation in New South Wales. From NTSCORP's perspective, it is of central importance that the cultural heritage legislation be enacted, which will see Aboriginal people's sites protected for future generations and which honours the Elders and ancestors who have gone before us and their struggle to protect country. Native title has been a long, hard battle in New South Wales. Traditional owners have had to jump through every hoop to demonstrate their traditional connection to country and their rights and interests that they have always had. Sometimes that battle has taken more than 20 years in litigation.

There have now been 16 determinations that native title exists in New South Wales and there are more to come, including the current native title claims by Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan people, the Gomerioi people, the South Coast people and the Widjabul Wia-bal people. Those rights and interests that have been recognised by the Federal Court under the Commonwealth legislation include the right to maintain and protect from physical harm sites and places of importance under traditional law and custom. That's an interesting point. I would just like to stop and highlight for the transcriber that that's a big point. In NTSCORP's view, any cultural and heritage legislation enacted must have culture at its core and respect our traditional systems of operation for millennia, a system in which traditional owners speak for their country and make decisions about what occurs there. NTSCORP considers that any cultural heritage legislation enacted in New South Wales must reflect those traditional laws, beliefs and cultures.

NTSCORP supports standalone cultural heritage legislation in New South Wales; Aboriginal ownership of Aboriginal cultural heritage; greater Aboriginal heritage management and oversight, compliance and enforcement, and opportunities for self-determination, capacity building and employment, including the right to veto; broader recognition and definition of Aboriginal cultural heritage, including intangible heritage, and a broader recognition of the landscape, which includes seas and waters; the inclusion of State significant infrastructure and major developments in the protection regime; a system that is properly funded and set up for success; establishment of an Aboriginal Cultural Heritage Council, which is independent of government; localised management of Aboriginal cultural heritage through local Aboriginal cultural heritage services, which will have cultural legitimacy, including that, where native title is determined, the native title prescribed body corporates be the local Aboriginal cultural heritage service for the whole of the determination area and have exclusive decision-making rights; and that, where there is no native title determined, the local Aboriginal cultural heritage service should comprise traditional owners, being the right people for country, the right people to speak for cultural heritage and those who hold knowledge and carry the responsibility for sites.

That should include the registered native title claimants. The legislation should contain a transition provision to provide for native title holders to assume those functions once determined to be native title holders. NTSCORP can't support the enactment of any cultural heritage legislation which would operate to diminish native title holders' current or prospective legal rights. Aboriginal people and their voice must be the central focus of any reform. NTSCORP consider that any cultural heritage legislation enacted must be consistent with Australia's international obligations, best-practice standards for cultural heritage management and the National Agreement on Closing the Gap by promoting, and not in any way diminishing, the cultures of Aboriginal people in New South Wales and by building and strengthening Aboriginal structures and decision-making.

Any cultural heritage legislation enacted must have cultural legitimacy. It must recognise the Aboriginal people who have the cultural responsibilities to care for sites and country and those who suffer spiritual consequences for harm to sites, objects and places. The Aboriginal Cultural Heritage Council, established under the legislation, must be Aboriginal-controlled and include appropriate representation of traditional owners. I would also like to make and put a point in that National Reconciliation Week starts on 27 May with the anniversary of the referendum vote and finishes on 3 March, which is the Mabo decision. It's a very important date for Aboriginal people and non-Aboriginal people in this country. Moving forward, it changed the legislation in Australia. Native title is here. Native title needs to be recognised, and cultural heritage and our traditional owners need that recognition.

**The CHAIR:** Would anyone else like to make a short opening statement?

**NATALIE ROTUMAH:** Firstly, NTSCORP would like to recognise the importance of standalone Aboriginal cultural heritage legislation being introduced into Parliament. It has been long advocated for by Aboriginal people in New South Wales, and is a key aspiration of Native Title holders and traditional owners in New South Wales. Importantly, the inclusion of State-significant infrastructure and development with the statutory regime, contemplated in the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022—the bill—is a significant and welcomed improvement, as are the increased decision-making rights for Aboriginal people and the reduced ministerial direction and control.

In many respects the bill is a significant improvement upon the current Aboriginal cultural heritage regime in New South Wales, particularly given its similarities to the Western Australian and Victorian Aboriginal cultural heritage legislation. The incorporation of tangible and intangible cultural heritage, the "cultural landscape", and FPIC is consistent with the recommendations of the Juukan Gorge report and the vision statement—which I'm not going to do any justice to—the Dhawura Ngilan, standards, and the incorporation of the UNDRIP principles adds additional strength to the regime.

It is unfortunate that NTSCORP cannot support the bill in its current form for the reasons outlined at length in previous parts of this submission. NTSCORP cannot support the enactment of any cultural heritage legislation which would operate to diminish native title holders' current or prospective legal rights. NTSCORP cannot support the enactment of any cultural heritage legislation which fails to recognise the very Aboriginal people who have the cultural authority and responsibility to care for sites, nor respect the legal rights they have as native title holders in relation to the management and protection of cultural heritage. We look forward to discussing with the Committee the amendments which NTSCORP considers could be made to the bill which would enable us to support its enactment.

**The CHAIR:** Are there any further opening statements?

**DIANNE CHAPMAN:** Can I say one thing?

**The CHAIR:** Yes, of course.

**DIANNE CHAPMAN:** In relation to native title, and where I am and where all the others come from, it's actual blood line. We've got a lot of Aboriginal people who visit home. But, at the end of the day, we don't believe that they have the right to make decisions on our behalf because that's our country. They have their own country. Basically, from day dot, we never severed our blood lines. That's why we ended up with our determinations, because we could validate that. I just wanted to say that from a Yaegl people perspective.

**The CHAIR:** Thank you.

**YVONNE STEWART:** I feel like I've been doing this for a long time and we've been talking about it for a long, long time. Our native title started when the Eddie Mabo case started. We registered a native corporation in 1994. I've spent the last 25 years walking with my Elders every step of the day. I don't think the Parliament understands that our Elders didn't work three or four days a week; they worked seven days a week. They never slept. They never ate. This was a long, arduous process for them. We lost them in that process. Out of the four sisters who started this claim, I want to acknowledge my Bundjalung people, the Bundjalung of Byron Bay Aboriginal Corporation, who have brought me here today as their representative.

I have spent 25 years and I have practically walked away from my responsibilities due to the stress, the loss and now the hurt. We have gone through every legislative process. We don't sit and we don't just talk to one lot of people. We have layers and layers of government legislation, Acts—everything—that has pulled our people apart to prove our existence within our country and on our country. It took from 1994 to 30 April 2019 to get to a determination—three Indigenous land-use agreements and a native title determination. You can imagine the layers of legislation that apply to all of it in every step we take. We can pass through four or five different government agencies to get to the beach and then get told we can't take our resources off the beach. Our Elders went through that. My people and I are very disheartened that this legislation doesn't include us properly and acknowledge us as the traditional owners. We have proven to the court that we were the people here before colonisation. That is the rule of native title. That is the Act.

I am disheartened also that this Commonwealth Act is put into the States but the States don't want to acknowledge it. They want to ignore it. This legislation has been talked about for around 12 years. I think you may have heard about, only a week or so ago, the cultural fishing rights legislation that was sitting around and is still sitting around to be enacted, endorsed and respected. For us traditional owners, we are a little bit different. We didn't mean to be like that. But what we're seeing here—and I'm sorry if I'm speaking too frankly—is the Government has put a bone there and made native title services and State land council argue among ourselves and

cause more division among ourselves. We can work together. We've been doing that and we do that on a daily basis since we have been determined. We work with our land councils and we work with our people, but this legislation will be very divisive and it has already been divisive. On behalf of the Bundjalung of Byron Bay Aboriginal Corporation, we do not support the bill in its current form. We would like to see more massaging and respect given to the traditional owners on the ground.

**WARLPA THOMPSON:** With our PBC determination area, it's a blanket claim. It covers about nine different dialects. From one end to the other it is about 600 kilometres and it is about 400 kilometres across. For us the local autonomy needs to be recognised so that people who are Bundjalungi aren't talking on behalf of people from Maraura country. It's one of those things that needs to be worked out, recognising that local autonomy for us, but the interconnectedness of the broader tribal group as well. The other thing that I don't want to see lost is—I'm not sure if you've got anybody speaking for 4A, but I'll switch between those two hats. We've got a piece of State legislation that talks about Aboriginal owners. They are the same group as what traditional owners are, it's just that it's State legislation, so they've got two different names. Those two Acts, the Federal Act and the State Act, don't speak to each other. Some of those things need to be worked out so that for us in Mutawintji, the traditional owners of Mutawintji country—we still call ourselves traditional owners of Mutawintji, even though that's a Federal term. In our lease agreement, it talks about Aboriginal owners.

Within our lease, we've resumed ownership of the cultural heritage in our park. It's vested in the land council to hold on behalf of Aboriginal owners, but we exert full care, control and management—whereas outside the 4A parks, it's still the property of the Crown. There's this unique condition within each of the 4A parks leases, and I don't want to see those rights lost to sit with a broader blanket group. I'm sure the other local autonomous groups don't want to lose control of their cultural heritage when they're down in Maraura country and someone from Bandjigali country comes down and does site work there. It shouldn't happen like that. But these are cultural rights. What we're talking about is our rights to culture, and we've all gone through that process of proving our connectedness to that country over a long, long, long period of time. It shouldn't sit with an organisation that looks after the social rights of all human beings within a community. They need to sit with a cultural group of people, which is PBCs and the 4A locally identified groups.

**The CHAIR:** Does anyone else want to make an opening statement? I don't want to miss anyone.

**TARA MERCY:** Yes.

**The CHAIR:** Thanks, Ms Mercy.

**TARA MERCY:** I welcome Reverend the Hon. Fred Nile's private bill, the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022. The protection of our Aboriginal cultural heritage as standalone legislation is long overdue. However, it does require amendments. Prescribed body corporates should have priority over determining who should be on the Aboriginal Cultural Heritage Council and who should provide Aboriginal cultural heritage services. This is because a determination of native title is a legal process, not a political process. It is a complex assessment of claimant efforts and an inquiry into the lore, customs, traditions and culture of the applicants and the country to which the applicants have a continuous connection. This is not the case for Aboriginal land rights. Land rights do not require a legal process, as I mentioned previously.

An Aboriginal land council can be established with ministerial approval. Memberships for Aboriginal land councils are not limited to people who might be regarded as traditional owners. It is open to all adult Aboriginal persons who live within the boundary of the Aboriginal land council. The method of becoming a member of an Aboriginal land council has the potential to allow Aboriginal people living within the boundary of an Aboriginal land council, if their membership is approved, to speak for a country which is not their birthright or cultural association. The NSW Aboriginal Land Council's core business is land rights. Native title traditional owners are recognised as the rightful custodians who are responsible for maintaining culture and country and all that entails. In the case of country where there is yet to be a determination of native title, there must be a discussion about who has cultural authority to speak for that country. It cannot be the default position that it simply goes to a local Aboriginal land council, for the reasons I raised earlier.

Another important issue that needs to be addressed is ministerial involvement. Aboriginal cultural heritage protection needs to be Aboriginal designed and Aboriginal led, not subject to political whim or priorities. Ministerial appointments can be controversial, as we have seen in the past. In closing, I urge the Ministers to listen to our aspirations for the protection of Aboriginal cultural heritage. Don't do what previous governments have done: Don't decide what is in our best interest. We know what is best for ourselves, as described in the UN charter on the Rights of Indigenous Peoples—the right to self-determination and self-knowledge. Thank you for allowing me to speak.



**The CHAIR:** We will now ask some questions, perhaps some directed and some open to whoever would most like to answer those questions. I think it is unanimous amongst you all that, from your perspective, the bill in its current form is clearly in need of some amendment. At the moment, the bill sets up a proposed regime of having an Aboriginal Cultural Heritage Council that sets the framework. From what I can hear, the current draft is problematic about how that council is constituted. Would anyone like to, firstly, provide a view on if a council is the appropriate overarching body? If so, what should the constitution of that council be in order to be able to then administer the operations of cultural heritage protection—and obviously decisions that are not favourable towards cultural heritage, if that position arises? If there is an Aboriginal Cultural Heritage Council, what do you think that should look like? Would anybody who has given some thought to that like to contribute?

**MISHKA HOLT:** We did have a discussion about this last night, and I'm not sure if you'd like me to talk through some of what that discussion was.

**The CHAIR:** Thank you, Ms Holt.

**MISHKA HOLT:** In schedule 1—I guess it's a trickle down. The first thing to note is that the Aboriginal Cultural Heritage Council then gets to decide who the local services are, so its composition is critical. One of the discussions we had last night was—it was noted by the representatives here that to be nominated to that panel, it only allows the NSW Aboriginal Land Council to make a nomination, or native title holders themselves. So there's a potential, for example, that traditional owners around the State who might not be known to native title owners who are located in Barkandji country or who are located on the North Coast—people who may be located in the Riverina or the Central West might not be known to them, and they don't then have the opportunity to be nominated. That, I think, is a shortfall, and one of the suggestions that was made was that NTSCORP could be included as one of the bodies who could make a nomination. That gives us at least the opportunity to raise traditional owners from across the State who might be people who are interested in fulfilling that role and have the requisite skills and expertise to do that.

The other discussion we had was just notably that 11 members—I think it says up to 11 members—wouldn't provide for the equal representation in section 4. It says there will be equal representatives of three parties, but you'd need another—we had suggested that perhaps that was better to be between eight and 12 to allow for that to occur. The other suggestion was that there should be the inclusion of a paragraph (d) in the parties to be included on the council, to include registered native title claimants. You've heard from quite a few of the representatives today that some of them have spent over 20 years in litigation—not just in an aspiration for native title or in collecting stories but actually in court for 20 years, litigating with the State to establish that they're the right people.

That means that there are a lot of people in New South Wales who haven't had the opportunity to put in a native title claim yet, because of the limited resources available to fund and support those claims when you're in court for 20 years but nonetheless have an aspiration to be native title holders. It also means that people like Ngemba, Ngiyampaa and Wangaaypuwan, or South Coast, or Widjabul Wia-bal—who have had claims on foot for a long time—wouldn't have the opportunity to be nominated because they're not yet a native title holder. That was the suggestion—to have four categories and between eight and 12 members, with equal representation. That might provide a good balance between Aboriginal owners, land council representatives and native title claimants and holders.

**The CHAIR:** Just on that point, you said there may be traditional owners and traditional custodians who aren't known to native title services at this point—

**MISHKA HOLT:** Sorry, I meant native title holders. The category for appointments is either the NSW Aboriginal Land Council or native title holders.

**The CHAIR:** Yes, but did I hear correctly that earlier you said there may be traditional custodians that are not yet known?

**MISHKA HOLT:** No, I just meant, for example—if I can use you as an example—Yvonne is from Byron Bay, but she might not necessarily know someone from Griffith who is a traditional owner there. She doesn't necessarily have that reach in that community to nominate. The suggestion was just that NTSCORP might have those connections across the State to be able to nominate people, although Yvonne's reach is far and wide. It just means that it is limited to the knowledge of a native title holder rather than—

**The CHAIR:** I understand, sorry. I misunderstood and now I clearly understand. Thank you. It did throw me a bit.

**MISHKA HOLT:** Yes, sorry.

**The CHAIR:** I think you guys know everybody at the moment.

**MISHKA HOLT:** Probably poorly articulated.

**The CHAIR:** No, that was great. Thank you.

**WARLPA THOMPSON:** Probably just to add to what Mishka is saying, if you have "Aboriginal owners" as a category, I do not think it would be well represented by the State land council to put forward that Aboriginal owner as a nomination. It is probably better left out of the custodians group, which meets annually. That is a representation across those 4A parks as well as other jointly managed and co-managed national parks from across the State that have traditional connection to those national parks.

**The CHAIR:** Are you suggesting that "traditional owners" is a more representative category than "Aboriginal owners"?

**WARLPA THOMPSON:** No, I am saying that both—we were talking about a piece of State legislation. Traditional owners have Commonwealth rights. What I am saying is "Aboriginal owner" is a local, autonomous group that would fit the Commonwealth definition of "traditional owner", but they are just called two different things because one is State legislation and one is Federal legislation. So it is the exact—so if you said, "Who are the traditional owners of Mutawintji?" The same group that call themselves Aboriginal owners under the Federal legislation would put their hands up, but the two bodies may not necessarily speak to each other. So because they have State rights under leases with the State Government and ownership and care, control and management of their cultural heritage on those national parks, there needs to be some sort of mechanism to allow those co-managed or joint-managed representatives to elect their own nomination rather than relying on the land council system, which also covers part of the Aboriginal owners legislation to nominate themselves.

**MISHKA HOLT:** Warlpa, if I'm understanding you correctly, you are raising a similar issue to what was raised about NTSCORP, which is if NSWALC and native title holders are the only two people who can nominate people to the council, Warlpa is saying, "Should NSWALC be nominating Aboriginal owners?" or "Shouldn't that come from the Aboriginal owners?"

**WARLPA THOMPSON:** That's exactly right. It is adding to what Mishka was saying.

**The CHAIR:** I have lots more questions, but—

**The Hon. PENNY SHARPE:** You're asking the same questions that I would ask, so that's fine.

**The CHAIR:** I am always conscious of sitting in the Chair role and hogging the space.

**The Hon. PENNY SHARPE:** That is alright. I will jump in.

**The Hon. SCOTT BARRETT:** The same from here but it is fine if you are asking—

**The CHAIR:** Please interject, otherwise I will just keep going. Can I just also ask you, with State significant development and State significant infrastructure, I am not trying to lead here, but am I correct to suggest that that is where some of the greatest harm takes place to cultural heritage and perhaps where we feel that we have the least say in the current system?

**WARLPA THOMPSON:** Yes.

**The CHAIR:** Ms Rotumah, you look like you are ready to pounce there.

**WARLPA THOMPSON:** I can give examples, if you want?

**The CHAIR:** Yes, please.

**WARLPA THOMPSON:** I will keep using Mutawintji because as an Aboriginal-owned piece of land we can enact native title rights on it under 47C of the Commonwealth Act. We have just purchased a property and added it to the park. It has pre-existing mineral interests in it, so we weren't able to gazette it as a national park; it got gazetted as a State conservation area. There is a sacred place that no-one has seen—one of the last people to see had passed away just before we'd bought the place, so no-one alive has seen it. One of our Elders who knows that story went back out and searched Nuntherungie until he found it. Because it has high gold interests in it, they can come and destroy the site. So there is a chance to have a Juukan Gorge in western New South Wales.

I have seen it play out when I was working for—I am an archaeologist as well. I have seen it play out when I was working for Forestry Corporation where the freeway up the coast went through a sacred mountain, to the objection of a local traditional owner, and because it is State significant infrastructure he had no right of veto. But there are some pretty old records about how significant that site was as a healing place with lots of sacred objects still intact and in place, but they just got ignored. Yes, there are probably countless examples. There is a land council signing off in western New South Wales for extraction of white sand out of a source border in June, which is where all our burials are in western New South Wales. So it was a non-traditional owner, an Aboriginal

representative, who also worked as a truck driver for the company who went and signed off on giving site clearance. That was reported through the State system and nothing ever came of it because it is an Aboriginal person acting out of the local land council, although they are not a traditional owner. It just got swept under the rug. And I know it got reported because I am the guy who reported it.

**The CHAIR:** We have mentioned the right to veto. That is something that the development world is always very concerned about. It is not something that is contained in the Western Australian or the Victorian legislation, but it is something that is being contemplated here, ultimately. Do you see the operation of a system where central to it is the protection of cultural heritage? How do you see the right of veto playing out? Is it something that would happen very early? Is that how you anticipate, if that was a desirable feature of legislation—which clearly it is in this context—and knowing how State significant development and State significant infrastructure work, do you have any views on how you think the right of veto could play out?

**MICHAEL BELL:** It would be all right for us to negotiate with the traditional owners and work out a manageable, suitable alternative. At the moment it is just what the developer wants, they get. Under current consent to destruct, it is about 99 per cent acceptance—I can't remember what the exact numbers are.

**The Hon. PENNY SHARPE:** We have never been able to find one, I think.

**The CHAIR:** I think it is higher than 99 per cent, it is so bad.

**The Hon. PENNY SHARPE:** We don't believe we've found one.

**YVONNE STEWART:** Some 450 sites have been destroyed over the last 10 years and every single one of them was passed to be destroyed. Not one got knocked back for preservation. Sorry to jump in there, Michael. It is in there and it is pretty clear that that part of the legislation is going to stay there. Why do we have a consent to destroy Aboriginal—the oldest cultural artefacts and special places to us? Why is that Act there? Why can't it be taken out? Why can't that be talked about to be eliminated? We don't walk around and go, "Can we go and destroy"—in Byron Bay—"your 1901 lighthouse?" Even the shipwreck, the piece of steel in the ground over there, has more protection than a 1,500- or 1,700-year-old midden site, that boats run over and economical development is giving back to the white community, and nothing is given back to us. There is a real struggle that this consent to destroy just continues to happen and it is pushed on us to accept it. The thing is that traditional owners won't, throughout processes now, agree to it, but there are other services that are going to continue to do it.

The thing that has helped is that once you become a PBC you have been given the rights to all your cultural heritage and the say. Before that, we didn't. We had to have 200 proponents to go up against, and then still we have that. Nothing very much is done. There's no funding for preservation or restoration of our sites that have been damaged. Sometimes we can't help that because we do live in a cyclonic area and natural disasters happen. But I just come back to the consent to destroy, which is very, very difficult for our people to swallow because we don't run around destroying white heritage, and we're not allowed to. It actually has bigger fines than Aboriginal heritage. I know a bit of bone or a bit of stone or a bit of landscape doesn't mean much to non-Aboriginal people, but it means a lot to us. Destroying our pathways is destroying our songlines, cutting ourselves from areas that we can't go to, telling us how many kangaroo or, for me, pipis, worms, whatever. It's the double layers. Anyway, the consent to destroy really needs to come back to the table and it really needs to be debated why this Government still allows consent to destroy on our country when we don't run around—we're not allowed to touch a doorknob on a heritage—sorry, I'll stop there for a min.

**The CHAIR:** No, don't be sorry.

**YVONNE STEWART:** But, you know, that's what's versus us here. It means a lot to us on the ground because we live it on the ground.

**WARLPA THOMPSON:** Just to add to what Yvonne was saying, part of the title of it is "culture is heritage", so mostly we are dealing with the heritage as if it's a dead culture.

**YVONNE STEWART:** Yes.

**WARLPA THOMPSON:** Those living bits of collecting pipis or scarring a tree, they're living parts of culture that people still practise. So it would be great if it dealt with having protection mechanisms in place so that we can still live the bits that we know.

**YVONNE STEWART:** Teach and learn.

**WARLPA THOMPSON:** It's a really good point that probably shouldn't be missed by the Committee—that those things need to be picked up.

**YVONNE STEWART:** I can't even look at this bill. I can't look at this bill in that respect because it still just wants to do major infrastructure and destroy Aboriginal cultural sites. There are ways that you can sit with the people on the ground and talk about ways how. The highway is allowed to go bend a little bit more that way or go that way or whatever. But, no, it's not; it's relocate or destroy.

**MISHKA HOLT:** Chair, if I could make just a very brief comment on that. In the first instance, I might just say I think everybody in the room knows how completely ludicrous it is that the largest projects, the largest developments, the largest mining is allowed to be exempted from the very minimal cultural heritage protections that exist in New South Wales. We've got the bare minimum in the whole country and State significant infrastructure and development doesn't even have to comply with that. So that's the first thing.

The second thing is just an observation. NTSCORP works doing a lot of cultural heritage agreements as part of mining agreements and exploration agreements and other things with our clients. By an observation, I would say that where parties have a more equal negotiating power—for example, if a native title group has had their native title determined; they're no longer trying to reach that point or having to reach agreements that are required to get to that point—all of a sudden you see people have a more level playing field. A lot of those big companies involved in infrastructure and development have the means and the capacity—specifically the expertise, with engineers and a range of other people—necessary to look at creative solutions.

My experience has been that Aboriginal people are always willing to sit down and have the conversation and to look at options, and sometimes perhaps go beyond a place where they feel comfortable, as a means to try to accommodate people in their local community and people who create employment. I think they go above and beyond sometimes to engage with those people in good faith. But those solutions are there, and it may be that it costs a little bit more. I don't think it's a time constraint. I don't think it would take a long time if there were proper surveys done, proper engagement and up-front sharing of information and equality of information to allow people to properly participate from the beginning.

**The CHAIR:** Ms Holt, can I just confirm that what you're suggesting there is that rather than looking at a right of veto, so to speak, what we're actually talking about is early, thorough, respectful, equal engagement so that harmful projects can be designed with proper participation so that cultural heritage is protected.

**MISHKA HOLT:** And that alternatives can be explored: Aboriginal people have a right to make a decision about that but a well-informed decision that has looked at what the options are, and that companies are required to look for creative solutions.

**MICHAEL BELL:** The cheapest alternative is not always the best, or the most expedient solution is not always the best. Aboriginal cultural heritage, protected properly, is a footpath to reconciliation. Knowledge and understanding and awareness of our culture, our sites, our people will enhance this community. It's as simple as that. But the more we bulldoze it, the more we are not going to have it to respect and pass on to the next generation. We're talking about 60,000-odd years of ongoing connection to country, culture and language, songline and story. We have to protect that. It's more than stones and bones; it's the intangible. It's about the connection. It's about our wellness. It all comes back to balance in our country and protecting country—the right people for the right country. That's what this legislation currently, in this form, doesn't do.

I don't want a Noongar person coming in here and telling me about my cultural heritage or a Yolngu man coming down just because he's Aboriginal and living in my area. That's what this current bill would allow. We need to have the cultural authority and the right people from the right country at the right table. That's what we need. We've already identified 16 groups in New South Wales that have passed those hoops. Every time you put up a hurdle, they jump them. Don't put up another hurdle. Work with us. That's all we're asking for—work with us. We can make the best—not better, the best. I don't care what Western Australia haven't got and I don't care what Victoria haven't got. I want to worry about what we can have, if aspirations can be better, and the best.

**YVONNE STEWART:** I think the respect—that the Native Title Act is there and it's in New South Wales. We want it to be respected just like the land rights Act. We're two peak bodies in New South Wales. Sorry, I do probably need to declare some interest here, but I'm not here for that. I'm deputy chair of native title services, but I'm here in the capacity of my people who sent me here today. This is what we're seeing. It's causing division and we just want the Native Title Act to be respected in New South Wales. Take it on; every other State has. We're not that bad. We're the same people. I'm a land council member. I'll go to a land council meeting. I've even worked for the land council, but I'm still a native title PBC. I don't work for my PBC anymore because the funding opportunities and prospects there aren't that good, plus the stress of it all.

But I think all we're asking is that we want to be respected as traditional owners of our country. We've proved—we were here before you. We were here before any legislation was put on the table in this country, and we're being put on the back burner and disrespected for something that—we're just following our traditional lines.

Our old people stood there. They've been fighting long before the land rights Act and the Native Title Act. But we just want to be respected as native title holders here. We believe that we've got more rights than anybody, even the Government. That needs to soften; the Government needs to soften. Like I said, there's that much legislation that needs to be reviewed. This one just makes—

**MISHKA HOLT:** It has come as a little bit of a shock, I think—

**YVONNE STEWART:** Yes.

**WARLPA THOMPSON:** —to native title holders in New South Wales that when you dig deep in this bill, at each turn native title holders are relegated to the bottom of a list of interested parties. In one case it actually says, I think, a "broad community approach" before you get to native title parties. It's disrespectful, but it's also a really big shock after you go through 20 years of litigation, which is affidavits from claim group members and evidence from claim group members, the loss of Elders along that way—and every group here experienced that. They did not have their applicants there to see native title determined on the day after they had led that charge for 15 and 20 years. They had anthropological reports done, historical reports done, put beyond question that they're the right people, and they've convinced the State Government—in some cases, the Commonwealth as well—but still get relegated to the back seat in cultural heritage legislation in this State.

It's hard to understand when, in fact, in other jurisdictions native title holders are preferred; they are prioritised. A lot of the reports that have come out have said one of the key problems is trying to identify traditional owners in an area, and they say that's the benefit of native title; that's the benefit of having prescribed body corporate. You come to these cultural heritage processes with a clear identification of who native title holders are, and for what area, and that they have a corporate arm to engage with and, still, they don't have that respectful seat at the table. It's hard to fathom.

**DIANNE CHAPMAN:** Can I lastly say something? I will read it from this: Yaegl people have a deep and abiding connection to the lands, waters and seas of our traditional country. That's under l-o-r-e. We live and breathe lore. In relation to legislation, my whole life has been the legislation, from a fringe dweller to a camp environment to being protected under the Aborigines Protection Act—all my life. I have been flora and fauna for nine years of my life and the legislation. At the end of the day, the bill directly affects sites of significance of Yaegl people, and in its current form does not adequately protect or empower Yaegl people to develop our cultural heritage and traditional knowledge. I know my people—my bloodline, my Yaegl people—can go out there and they can talk to people because they have and have been handed down lore; knowledge, and we are clever in that knowledge. But when we have other people come to our country talk about our significant dreamtime stories, it's very disrespectful under lore. Back in the old days, you got speared. Simple as that.

I think from a legislative perspective to a cultural perspective, we've now got our voice. We have been determined. We have been validated. We've dotted our i's, we've crossed our t's, and then we look at the legislation and we think, hang on, we don't support it in its form right now, but if you listen, we're here. We're speaking. We've opened our nganlgan—that's our ears—and we're talking yaalanly, through our mouth. We're saying, "Okay, yes, listen. Listen to us." Whatever we do in the PBC, we do it for the conduit—everybody. Every bloodline from our Elders who got us here in the first place, and a lot of them have passed away, right down to my kids, their kids, their kids, their kids, their kids. It's bloodline through everybody. Whatever we do, we don't do for one person; we do it for everyone. Whatever we say, we have a cultural obligation to do the right thing.

**WARLPA THOMPSON:** Just to keep adding, we've got a determination area but "positively determined" is only about 1 per cent, so it's 99 per cent extinguished in our country. To us, we haven't lost that country. Just whether or not a piece of paper was signed correctly, or something was worked out. We've still jumped through those hoops to show our continual connection to those pieces of country. New South Wales has got some of the most stringent tests, especially on Crown leases, and most of our country is governed by western lands leases. There is country out there that has been ploughed to make rows of soil to help catch water and to revegetate the place, and none of it gets cultural heritage clearance. So it's happening on a mass scale as we speak.

It's Crown land. There has been a slow process, and it has been a political process, of converting those western lands leases, so taking something that's a public asset and divesting it into property owners—

**MISHKA HOLT:** Private.

**WARLPA THOMPSON:** —that have been on those things for 100 years. We've been on it for 60,000. Lake Mungo in our country proves our long, continual connection to our country, and yet we're not even afforded the right to protect the heritage on those western lands leases. There are more creative ways through ecological means to protect the habitat of a bird, and that habitat just so happens to coincide with significant cultural heritage sites or songlines. So we're trying to use those other mechanisms. It's like we're hiding to try and find these creative ways to protect something that has been ours for a long time and we've proven that connection. The legislation

needs to make those things—especially around the sacred stuff—a conversation rather than farmers or developers hiding from us what they're doing to our country. There are some big rights that we are slowly losing in western New South Wales.

**MISHKA HOLT:** Warlpa has just described perfectly the value of—and you will see it in the submissions—the section 60 (10) modified consultation agreements. As Warlpa said, it could have been determined as native title holders for the entire area of country but for the fact there were western lands leases that extinguished that native title around 1921 and thereafter. But those 60 (10) agreements that a lot of native title holders have entered means that you can have exclusive consultation rights over the whole of that determination area, not just the area where native title exists. It's premised on the fact that you've established you're the right people for that area, but those agreements in this current bill are not reflected in any way and they won't have any status at the introduction of it. That is one of the biggest issues that native title holders have been raising, that their rights are diminished in this bill. For all of the positives that it has, native title holders actually go backwards from the current arrangements that they have under the National Parks and Wildlife Act and regulations.

**The CHAIR:** Do you read that because somehow NSWALC has been elevated into a different position? Is that how you read that?

**MISHKA HOLT:** Firstly, this Act doesn't have section 60 (10) arrangements. That's probably the first part, but certainly it has given it an equal status within our specs of this bill, and native title holders are saying, "If we're determined to be the right people, why wouldn't we be the ones making decisions about culture and heritage?"

**The Hon. PENNY SHARPE:** Thank you for coming in today. I acknowledge that this has been a conversation you've been involved in for a very long time. I recognise the frustration that you must have, having to deal with a range of different processes, and I want to ask you about that. I understand that the New South Wales Government has been through a number of consultations about trying to get standalone cultural heritage protection for the last 12 years. I had thought, although it was never resolved, that in 2018 there was a proposal that actually had what I understand to be reasonable support about going forward. I'm sure that you were involved in this, and I'm sure you continue to be involved in this. Where do you see that is up to? This bill is from an individual member of Parliament; it's not a government process. The Opposition hasn't been involved in it either. We're trying to work our way through it. Is there some guidance you can give from where you're at with the Government, particularly around the 2018 process, that would be helpful for us when we're looking at this bill?

**MICHAEL BELL:** This current bill derailed all of those conversations. Our focus has been to now look at this and put in all of these things that should have been put in in the first place, but it was poorly drafted and poorly considered. It has just simply derailed the process we were moving forward with under previous Ministers. The Ministers also changed when we changed our Premier. That was also a large disruption. This was going through COVID as well. We have always been ready to sit at the table. We are not going to compromise our position. But we want somebody to come and work on better legislation and protections. This has been nothing but a disruption.

As Yvonne pointed out, it is divide and conquer. This has been proposed with the support of NSWALC. You can see how far down the tree native title holders are in this bill. If we are not the last on the list, we are only just considered as "and/also", when it shouldn't be. We've got 16 determined areas in New South Wales with identified groups and large PBCs. They already have the approval at State and Federal level on how to speak and who to speak to for country. That is not recognised in this bill. This has been nothing but a distraction and has derailed a slowly progressing previous discussion with former Minister Harwin and now Benjamin Franklin. We haven't had a chance to meet with him properly because we've been concentrating on raising our objections and trying to clear up this abomination.

**MISHKA HOLT:** It's like asking someone to pick between their children. We engaged in good faith in that negotiation process, or what we had contemplated to be negotiation process, which turned out to be more of a consultation process. We were consulted. I can't say that a large part of our views were taken on board. We certainly did meet and we engaged in that process in good faith. The position that we are in is neither in the Government's process—were they willing to recognise the rights of native title holders to speak exclusively on their culture and heritage. This current bill provides the inclusion of State significant infrastructure and development. It includes a wider definition of culture and heritage, including intangible culture and heritage. It provides increased Aboriginal say, although we take the exception that it is not native title holders. But there is more Aboriginal decision-making and there is reduced ministerial oversight.

Michael explained at the beginning our key principles for Aboriginal cultural heritage reform and they are all on the list. If there were amendments made to this bill that have been suggested in the various submissions that have been made, this could be a bill that NTS could support and it would more align with the overall interests

of native title holders around the country because that's about better protection of Aboriginal culture and heritage and that's everyone's biggest aim. But it does need to be respectful. You can't have a culture and heritage bill without the culture that underpins it. In all of the other States and Territories, they have had that moment when they have said, "Okay, the Native Title Act was introduced in 1993. We're going to have to adjust how we do things." The Northern Territory always had a traditional owner-based land rights system, but the WA legislation has moved, the Victorian legislation has moved, the Queensland legislation has moved.

It is possible here, but it's going to take the will of people to say—I think some people might assume if you avoid the dispute it's not happening. But on the ground it is happening. People are talking about who should be speaking for country and people are talking about the disrespect. Bearing in mind that the tenor of what is being said is the people who know those stories, who have that knowledge are the ones who can speak on culture and heritage. You can't have people who don't know those things, who haven't grown up in those systems and been told those stories and shared that knowledge making those decisions. It makes for bad culture and heritage decisions. I think there has to be that real examination of saying, "This is not about creating dispute. This is about creating the best management regime for culture and heritage."

Once that's done, everybody will settle back into a position. That happened in 2010. A very courageous chief executive officer of heritage made the decision that native title holders should have exclusive rights of the areas where native title was determined. The whole system didn't fall apart and people's relationships didn't fall apart. It might have been tense for a little while. And that would happen if people were courageous enough to pass legislation that enshrines that respect.

**WARLPA THOMPSON:** With respect to the bigger governing body, I think part of the reason why the previous bill was met with so much hostility in the community is because we are centralising focus. It is assuming that all of us are a homogenous group, rather than made up of 70 individual clan groups from across New South Wales. If you go to any 12 people, you're going to miss the representation. One of the submissions that was made from western New South Wales was about the regional connection that people have. If people meet at a statewide conference, they'll sit with their regional group and then branch out there because they know each other's country and connections, but they also recognise where each other is from and who has the right to speak within that area.

Any statewide body will struggle as soon as you create one because it can't fairly represent the people that it is meant to represent. There is no way in the world I'd pretend to speak for anything outside of my country. We're going to create a body that's going to have 12 people persecuted, regardless of whether they are making good decisions or bad decisions. But at least if it's a regional body that's making those decisions, and they have a connection to each other, it's harder for them to make the wrong decision if they have got to go back and answer to their community. But, also, they'll have that collective support from out of their own region while they're making those decisions. So it's not 12 representatives saying, "Well, that's the South Coast, so you've got to deal with that," and leaving that person totally isolated and alone, and then they go back to their community. It's a regional basis to support each other while we make these difficult decisions.

**The CHAIR:** Our time has concluded. I don't think any questions were taken on notice but, if there were, they will be asked to be returned within seven days. The secretariat will contact anybody if I have missed anything there. Thank you all so much for participating. Can I just say, particularly to your point, Mr Bell, when the bill was being referred to this inquiry, Minister Franklin did say that the Government will be looking and listening, so the Government will take it on board. Please know that all of your efforts today and all of your evidence feeds in to what we are all working towards and hoping for soon, and that is effective standalone cultural heritage laws that protect culture and heritage on country. Thank you.

**(The witnesses withdrew.)**

**Mr BRENDAN MOYLE**, Chief Executive Officer, Darkinjung Local Aboriginal Land Council, affirmed and examined

**Mr DALLAS DONNELLY**, Councillor for the North Coast Region, NSW Aboriginal Land Council, affirmed and examined

**Mr NATHAN MORAN**, Chief Executive Officer, Metropolitan Local Aboriginal Land Council, before the Committee via videoconference, affirmed and examined

**Ms LEEANNE HAMPTON**, Councillor for the Wiradjuri Region, NSW Aboriginal Land Council, before the Committee via videoconference, sworn and examined

**The CHAIR:** I now welcome our witnesses. Would you like to start by making a short opening statement?

**BRENDAN MOYLE:** Absolutely. First of all, I would like to pay my respects to Aboriginal ancestors of the land on which we meet today, the Gadigal people. I also pay my respects to the Aboriginal people who have relocated to Gadigal country and who are now custodians of our ancient cultural connections in partnership with those with bloodlines. I also pay my respects to our Aboriginal ancestors and nations from across New South Wales, our Elders who fought for land rights and the recognition of our humanity and culture.

Current cultural heritage regimes do not offer the level of protection required to ensure that Aboriginal cultural heritage is being protected and preserved. Current regimes, as you have just heard, see more weight and emphasis given to the protection of contemporary Australian heritage than is given to ancient Aboriginal sites that are thousands and thousands of years old. But we also know that culture isn't static. We talk about sites and the things that we actually recognise within the bill. I know because Nathan and I do not represent NSWALC. We're here independently on behalf of our members. We actually made sure that the tangible and intangible is drafted into that as a staple-hold.

We, as Aboriginal people under the current regimes, can only advise, which means that we can be ignored. We, as Aboriginal people and legitimate Aboriginal organisations with cultural authority, do not control the protection or promotion of Aboriginal cultural heritage. This undermines the statutory functions of us as local Aboriginal land councils under the Aboriginal Land Rights Act. Further, the current approaches operate in a way that contradicts governments commitments under the National Agreement on Closing the Gap. This includes an understanding and acknowledgement of all signatories, including the New South Wales Government, that the strength of Aboriginal people in sustaining the world's oldest living culture and our cultures have prevailed and endured, despite entrenched disadvantage, intergenerational trauma, political exclusion and institutional racism. It also undermines and does not operate consistently with Priority Reforms, particularly Priority Reform one, which focuses on shared decision-making, on working in genuine partnership with Aboriginal people; and Priority Reform three, transforming government organisations including looking at how we embed and practise meaningful cultural safety.

Meaningful cultural safety goes beyond just doing a cultural appreciation course—spending half a day and feeling good. It actually goes to the systems of government which are underpinned by legislation, policies and processes. The independent member's bill—the Aboriginal cultural heritage bill, culture is life—embodies these principles. I know because people like Nathan and me, from the grassroots community perspective, helped the Reverend's office and the Reverend himself actually start some of the drafting on it. Absolutely, there's a lot of work needs to be done, but it ensures that Aboriginal people have ownership and legitimate control over the protection and preservation of Aboriginal cultural heritage. It ensures that local Aboriginal organisations with legitimate cultural authority are responsible for the management of cultural heritage at a local level.

I heard the evidence that was given by NTSCORP; some of my family were sitting here at this table. I don't disagree with them. Native title has an important role to play but so do land rights. There have been 16 determinations across New South Wales. That doesn't cover most of New South Wales and for many of us, as Aboriginal people, we are unable to prove native title because of historical policies around dispossession, forced assimilation and removal. That poses a significant challenge, so you can't have one solution. You need to have a tiered solution. We need to respect where we can prove that there are traditional connections and traditional linkages. As Di actually said, l-o-r-e is what we need to embody, and this is what this legislation can actually do and provides a foundation for. It also enables the ability for local Aboriginal organisations with legitimate cultural authority to generate revenue from the identification, protection and management of cultural heritage.

Current approaches to undertake cultural heritage assessments under the national parks Act basically apply an open market approach. Many of the issues you have heard here from NTSCORP, we share the same concerns about. We're seeing Aboriginal people and entities with no cultural authority undertake cultural heritage



and site inspections on country they have no connection to. We're also seeing people who do not meet the legal definition as being an Aboriginal person. They allegedly find a long-lost ancestor and suddenly they "commoditise" and they get in on the market. On the Central Coast, we have people who are making \$40,000 a month doing cultural heritage work where, if you believe their claims, they have not been Aboriginals; they have not identified or participated as Aboriginal for seven generations. Imagine a French person being authorised to undertake cultural heritage site work in Russia. How loud with the uproar be? Imagine—and I do apologise; there is no disrespect intended with this—people with German ancestry self-identifying as Jewish people and then undertaking cultural heritage assessments on significant cultural aspects for the Jewish population. Again, I mean no offence by these examples, but it highlights, from a European perspective, the outrage that would happen, but we as Aboriginal people have had to sit and endure.

The Darkinjung Local Aboriginal Land Council has seen many of these issues arise at local and State levels. Many of these issues have caused and continue to cause the destruction of ancient cultural heritage sites across the Central Coast of New South Wales, and it's not just the sites. It's the creation and Dreaming stories, it's the intangible that goes back over 65,000 years. The Darkinjung Local Aboriginal Land Council has watched our sites being desecrated and we've been powerless to do anything about it. On Darkinjung country, we don't have native title holders. We don't have registered Aboriginal owners. But we have a commitment as a land council. If someone can prove native title, we will work with them because, under lore, they retain the power. It is our obligation from a cultural perspective to deliver for our members, for the Aboriginal community, and to respect those cultural connections. As you would have seen by our submission, we've also seen sites desecrated by vandals. Again, we're powerless to do anything about it. Because of this, the Darkinjung Local Aboriginal Land Council supports the bill.

**The CHAIR:** Thank you. Is there anyone else who would like to make a brief opening statement before we head two questions?

**LEEANNE HAMPTON:** I have a brief statement, thank you. Good morning, everyone. I'm a councillor for the Wiradjuri region. I'm a proud Wiradjuri-Ngiyampaa woman and I have spent many years working towards Aboriginal cultural and heritage protection in New South Wales. I worked for 13 years as CEO of a local Aboriginal land council so I understand and respect the needs and wishes of the people at the grassroots level, and I understand that the bill will actually help these people achieve their goal.

I firstly would like to acknowledge and pay my respects to the Gadigal people of the Eora nation on whose land the Committee is meeting today. I would also like to reiterate the words of my brother who has just spoken prior to me. I absolutely 100 per cent agree with a lot of what Brendan has stated and I really thank you for putting forward your case. Nathan, I'm sure your words will touch on a lot what we are speaking about today.

The NSW Aboriginal Land Council supports the bill and urges all parliamentarians to support its passage through the New South Wales Parliament in this term. The bill represents significant improvements on the current, outdated, flawed and defective laws that are primarily contained in the National Parks and Wildlife Act 1974. The bill meets the NSWALC's long-held key reform principles, aligned with the key principles outlined in the hundreds and developed following engagements with the Aboriginal communities. New South Wales is the last jurisdiction in Australia without modernised Aboriginal cultural heritage laws.

The bill represents a significant opportunity for this Parliament to finally deliver long, overdue meaningful laws, in the making for over 40 years, which have been repeatedly promised over and over again. Now is the time for you to uphold that promise. We also note that the bill provides for community consultation on various policies and procedures. This is a positive element and will assist in facilitating self-determination by allowing the ACH council to make decisions rather than overly prescriptive legislation set largely by non-Aboriginal people on matters that are for Aboriginal communities to determine. We support increased penalties, increased compliance and enforcement and increase in section powers. These are significant improvements and should be commended.

We note that both the Government and the Opposition made bipartisan commitments to reform in the New South Wales Parliament in 2010. I don't think I need to remind anyone that this is more than a decade ago. We urge the Government and the Opposition to make good on their commitment by supporting this bill. Now is the time to act. We know that this bill has been supported by cross-party members. We thank relevant members for their work and bringing much-needed parliamentary attention to this important matter. We also acknowledge the significant contribution of the many Aboriginal communities across New South Wales that continue to fight for the protection of our living cultural heritage for all of us now and for the future generations. We have the oldest living culture in the world. Isn't this something we should all be proud of as Australians? Isn't this something that is worth protecting? We welcome the opportunity to discuss any points of clarification or concerns about the

bill. We stand ready to work in partnership with all parliamentarians to support Parliament to leave a positive legacy for the protection of Aboriginal culture in New South Wales. Thank you.

**The CHAIR:** Mr Moran, you were going to go next.

**NATHAN MORAN:** As I stated, my name is Nathan. I am representing Metropolitan Local Aboriginal Land Council today. Firstly, I would like to acknowledge that I am gathering on Gadigal country, just like the parliamentary inquiry. The Metropolitan Aboriginal Land Council, established under the Land Rights Act 1983, is providing, preserving and protecting the Aboriginal cultural heritage. Indeed, I start by acknowledging that in our land council we have a unique background. We are one of the first local land councils. But as of 2022, as I sit here today on 23 September 2022, I affirm we have no registered, verified native title holders, no Aboriginal owners, registered or verified, within the boundaries of Metropolitan land council. In the absence of having those cultural people, the Metropolitan land council has, certainly since 1983-84 and formerly was funded by [inaudible] land rights, been preserving and protecting all cultural heritage.

The background but I want to start with is to acknowledge all the beautiful Kooris, Booris, Murris, Murdis who have spoken here this morning and participated in this process. Much deep love for all the First Peoples or Aboriginal people in the State of New South Wales. I acknowledge the dear lady who spoke earlier. Certainly one of my responsibilities is to acknowledge in regard to Di—Di is and always will be connected to me through family, culture, kinship and community. So much love to the Yaegl community. I am of Dhanggati. I am one of Australia's first native title holders. My people received native title in November 1996, credited in being the first determination of native title in Australia.

My background is that I have worked as a CEO. It used to be called a coordinator back in the Dark Ages of the dinosaur period of the 1990s. I started as a coordinator at Birpai land council in 1998. I have over time worked for over 13 years as a local land council coordinator, now CEO. I have been at Metropolitan land council since June 2014 as the CEO at metro land council. My first premise is to call for the establishment of an identified Aboriginal cultural heritage bill; to thank the Reverend Nile, the Christian Democrats, and all those who have openly supported the proposals to have an Aboriginal cultural heritage bill in New South Wales. My local land council, Metro Local Aboriginal Land Council, believes that it is a requirement that Aboriginal people should be in charge of Aboriginal people's culture, heritage, identity.

We feel that the current existing arrangements of having a sub-committee within the existing National Parks and Wildlife Act is not significant. It is not actually doing anything to benefit Aboriginal culture and heritage, let alone the Aboriginal culture, the Aboriginal community, the people, the place, the environment. The Metro Local Aboriginal Land Council, we stand to support this proposed bill. We acknowledge up-front that this is an attempt to establish a culturally appropriate framework whereby culturally appropriate knowledge holders, native title holders, Aboriginal owners are the first pre-eminent people and, in the absence of those that local land councils serve, as the local communities' representative bodies to perform the preservation and protection of Aboriginal culture and heritage, as per the New South Wales Aboriginal Land Rights Act.

I acknowledge that there is sometimes and yet to be a great synergy between native title and land rights. I believe that's a systematic fundamental of Commonwealth laws and State laws fighting rather than colluding or collaborating. As someone who holds native title, who has worked for land rights, I want to acknowledge that it's about making both of those systems work for the best possible outcome. I certainly as the CEO of a land council acknowledge local land councils are required to work with Aboriginal owners and native title holders. I am not aware of a local land council who is ignorantly or deliberately ignoring a registered native title holder or a registered Aboriginal owner. I can attest myself we would never do that at Metro land council.

As a Biripi, Dhanggati, as a native title owner, as a Dhanggati person, as an Aboriginal owner through Biripi heritage, I acknowledge that the various systems in play are all there to preserve and protect our culture and heritage. But in some cases, like Metro land council where you don't have native title, where you don't have Aboriginal owners, we must have a role for local land councils to serve as authority to preserve and protect as a safeguard, as a safety net. That is to address the current situation where, under the current legislation, Aboriginal parties can register to be included on cultural and heritage projects and are not required to verify their Aboriginality. That is a great, abysmal nightmare. In fact, it is culturally sacrosanct.

But in acknowledging Metro land council's boundaries, we deal with currently and in the past a number of cultural identity frauds who are operating their businesses fraudulently, presenting as Aboriginal owners, not registered, because they are not Aboriginal. I call out anyone who feels that native title or Aboriginal owners or land councils don't know who the appropriate cultural knowledge owners are or knowledge holders are. Wake up to themselves. Because what we are dealing with is outright fraud. By not testing and verifying one is Aboriginal, under the laws of New South Wales we are allowing open cultural fraud to be committed, we are allowing people

who are non-Aboriginals to pass off, gain commercial benefits, to trade fraudulently and gain commercially. This is abysmal, guys. In Metro local land council's area, that is a fundamental we do not want to have.

The second layer is having Aboriginal parties who may be Aboriginal but extend themselves from a thousand kilometres away to work within the boundaries of Metro land council to garnish a commercial income. It is not culturally appropriate, culturally respectful or, dare we say, at the end of the day, the blackfella way. But the current system has allowed this. It has allowed Aboriginal farmers to register and become predominantly all about the dollar. The system itself, those who approve the consent-and-destroy applications and/or take-up fines for the destruction or desecration of sites, primarily sits with non-Aboriginal people. This is not okay. The Metro land councillors have the indignity of having the New South Wales government utilities pass through registered Aboriginal sites and be fined by the State Government twelve-and-a-half-thousand dollars, when the maximum fine is a quarter of a million at that time in 2012. We've had the theft of cultural sites at Undercliffe, where culturally registered sites have been desecrated. In fact, the hand stencils have been carved off and stolen. Most recently in Hunters Hill, we had an ochre arch site desecrated by a neighbour, a private landlord, deciding to set up a pigpen. That person was not subsequently prosecuted nor even fined in 2016. For us, these are the examples that we give—and we have hundreds more—whereby our culture is in great danger. In fact, at this very point, we are fearful that there is a great array of destruction and desecration occurring because we don't have the appropriate systems in place.

We generally are allowing anyone and everyone to register an interest without even testing that they're Aboriginal, which is for us sacrosanct. To think that there are non-Aboriginal people out there who—I'm not sure if they're mentally ill, but I question why they pass off as Aboriginal with no Aboriginal ancestry—set up trading companies and garnish incomes as Aboriginal. That is the issue why I feel we need an Aboriginal cultural heritage bill in New South Wales. I'd also point out that we're the last State. What an abysmal register of reality check for the New South Wales Government and society as a whole that we, being the first part of Australia colonised, are the last State to have a cultural heritage bill appropriately identified as Aboriginal standalone. I think that if New South Wales claims to be the first State, it has got a lot of catching up to do, and this is one of the opportunities that sits in front of them now.

I'd also like to pay my respects and love to all of those who have been calling for cultural heritage Aboriginal standalone bills since 1977—or at least that's my understanding as a child of Wilma Moran, Wilma Holton or her married name Wilma Hurley. My mum, with Uncle Dallas, Uncle Badger, Aunty Evelyn Crawford, those who still remain with us as the original team, my great Uncle Bing Morris, and those who remained as the first culture and heritage Aboriginal employees of the State Government of New South Wales identified the need for cultural heritage preservation and protection for a culture heritage bill. I just hope we can achieve it because I'm very fearful that those people will no longer be with us in the next forthcoming decades or lifetime ahead.

It's time for New South Wales to catch up. It's time for New South Wales to act on the advice of our people from over 40 years ago recommending this be needed. I acknowledge there will be concerns from those who feel that somehow setting up an Aboriginal committee could in fact be problematic, but what I'd suggest is that is Aboriginal self-determination. Aboriginal people should be in charge of their culture, heritage and identity. We should not allow non-Aboriginal people to speak for us, act for us or, at the end of the day, determine our cultural heritage for us.

**The CHAIR:** I just want to go to the point about the fact that this bill includes State significant development and State significant infrastructure basically giving the Aboriginal Cultural Heritage Council and the local services really the right—it's often referred to as the right to veto. Do you have a view on that and the way the bill is currently drafted in relation to that? Perhaps, sorry, just bear in mind that it's been raised to the Committee that this New South Wales bill pioneers that way. That doesn't exist in the Western Australian, Queensland or Victorian legislation.

**BRENDAN MOYLE:** Absolutely I'm supportive of it. It was interesting hearing NTSCORP's evidence, and they certainly picked up on this, but the bill is so much more than just major infrastructure. It is so much more. But having the inclusion of State significant, State infrastructure has to be critical because quite often when the assessment is made about what is important it is being made through a non-Indigenous lens. With Juukan Gorge we saw the destruction of caves and art that were 46,000 years old for mining. We have faced the same challenges, and Nathan actually articulated and I think I put in our submission as well, for powerlines and infrastructure that society needs that a decision is made that it's okay to just desecrate something that is thousands upon thousands of years old.

With a lot of our rock engravings, it's almost impossible to actually date. They could be five, they could be 10, they could be 30, they could be 40,000 years old. At what point do we actually start to realise Australia's

national identity is actually founded in the ancient Aboriginal cultural heritage that is actually here? When you go to New Zealand there is a broad societal push to not just actually preserve but to embrace Māori culture. It's something that New Zealand itself as an identity actually does really well but we don't do here for us as Aboriginal people, as First Nations people here in New South Wales, let alone across Australia. It's easy to shift a road; it's easy to shift a bridge. It's near impossible to actually preserve and protect something once it has been desecrated or damaged, particularly when it goes back thousands of generations—not thousands of years, thousands of generations.

**DALLAS DONNELLY:** Just further to that, I worked in the mines for seven years or whatever and some places were good. They acknowledged the Aboriginal custodians of that particular area, but they got out and they planned that sort of work in the first place by working with the local mob to find out what sites are of significance and that were there. You plan your future mine around that. Local governments used to do that years ago where they tried doing their local government area heritage studies. That got knocked on the head; that was back in the eighties or something. If you know what is there beforehand, whether it's a European heritage site or an Aboriginal heritage site, you plan accordingly. But we get, "We've already started this work on this mine so were going to have to take this particular site out anyway." And then we get the old, "There are 50,000 jobs in this thing," and then we're sort of pushed up into a corner there to do nothing about it. That's historical stuff.

I don't know whether people understand about Aboriginal heritage and culture, and I only talk from my North Coast area. There are five PBCs up there. Three of them were in the room today; two of them weren't. There is going to be another two by probably the end of next year. There's another determination coming up for the Widjabul Wia-bal probably by the end of this year. Great, they're all the same mob and that, but for NTSCORP to say that they haven't been included in this bill is wrong. You can see that what NSWALC is trying to get to is that self-determination at a local level. There are land councils that could be the only organisation in one community. But basically set up a State body and then that State body goes out and talks with that local mob in the Grafton area where I come from and you work out the appropriate people. I have aunties and uncles that are not members of the land council that could have been native title claimants within one of the ones from around the area, but they're not involved in heritage and culture.

**BRENDAN MOYLE:** Can I add to that, particularly bringing it back to what your question actually was in terms of the veto rights for major infrastructure? Sorry, Councillor Hampton.

**The CHAIR:** We'll come straight to you after Mr Moyle.

**BRENDAN MOYLE:** The veto right is essential to preserve and protect an asset. It has to be Aboriginal people with legitimate cultural authority that actually makes the determination as to what needs to be protected and preserved and how it needs to be protected and preserved. The challenge we've actually got, and it goes towards what Councillor Donnelly is talking about and what my brother Nathan is talking about and what I mentioned, is right now we have people coming out of the woodwork through the Registered Aboriginal Parties process, as RAPs, under the national park Act. They're not from country. I used to live around Canberra. I know Ngunnawal and Ngambri country. We have a registered Aboriginal party on the Central Coast that's Ngunnawal. That is like putting a Belgian person in the middle of Portugal and saying, "Can you tell us about culture?" It is not going to happen. And that's why I used those examples.

We also have people who illegitimately claim Aboriginal identity without ever actually proving it against legal tests. What's happening under the current system is that—and this is where for me it works in partnership with the veto rights—right now we have no veto rights. It becomes like—I'm going to use the old John Laws term—"cash for comment". People who are responsible for developing infrastructure can shop around to see what's going to be the cheapest and best answer that aligns with what their needs are. That doesn't mean that those people have cultural authority. This is where Darkinjung comes from. Darkinjung and Metro are working particularly with the Reverend's office to make sure that three bodies are recognised in that.

For us native title is the gold standard. I will never be able to prove native title. My great-grandmother was born on the Barwon Mission and then forcibly relocated down to Gulargambone, and then was married into the Bakers and Barkers and then ended up all through northern New South Wales and South East Queensland. We were forcibly relocated. I can't prove native title. Many of our mob are in that same kind of boat. But where people can prove native title, we under a cultural lore—as in l-o-r-e—perspective need to respect that. Short of that, Aboriginal registered owners who have gone through a legislative process to actually prove who they are and then for us as land councils to be able to work where none of those exist or work in partnership where they do exist—that is the intention from Darkinjung, and that's our interpretation of the bill. But that lens has to be applied with the veto rights because it's not just someone saying, "I don't want this to go ahead." It has to be the people with the legitimate cultural authority who actually exercise that veto right. So I just wanted to close that, if that's alright.

**The CHAIR:** Thank you. That's great. Ms Hampton.

**LEEANNE HAMPTON:** I don't know if it will answer your question completely, but I'm a big believer in compromise. I don't think that any Aboriginal person would actually step forward and, hand on heart, say that they don't want Australia or any sort of statewide significant project to be undertaken if it was of great importance. But we do need to respect that Aboriginal people are the ones that have the knowledge for the area that the work might be taking place on. I just believe that there is always a way to work through solutions where you can come to something that's going to appease both parties. It may be a long, hard road to get to that compromise. But it is allowing Aboriginal people sit at the table and make those decisions and have those conversations rather than having bureaucrats make those decisions for us.

This might be digressing a little bit, but I recently was overseas, and I had the opportunity to see the Colosseum in Rome. It was amazing. It was just incredible. I find it appalling, actually, and astounding that we as Australians do not hold our own historical Aboriginal culture in the same esteem as people overseas hold their own culture and their own history. I just find that amazing. They talk about the Colosseum being a couple of thousand years old. Yet we have culture here that is over 65,000 years old. Why are we not thinking that that is just as important as any other historical infrastructure that's only 250 years old? I just wanted to make that point. Thanks.

**The CHAIR:** Thank you. A point very well made and taken. Ms Jackson.

**The Hon. ROSE JACKSON:** Thanks so much everyone for making time to be part of this important conversation. I want to ask for some reflections from any of you about the importance of and protection of intangible cultural heritage. I think a lot of traditional Australian cultural heritage—it's sandstone buildings. That's the way that our traditional European framework views heritage. But I've heard a little bit of evidence already from others about how important those intangible cultural heritage and cultural assets are. So I wondered if you could just talk a little bit about that and then also how we might protect them and how that is going to be properly included in the bill. Because, again, the traditional understanding is you find a sandstone building, you slap an order on it, you slap a plaque on it—done. Box ticked. Obviously, that can't work in the same way for those intangible assets. So I just wanted to draw out any more reflections on how we might better reflect that traditional Aboriginal understanding in what is, to be honest, a Western legislative framework.

**BRENDAN MOYLE:** If you don't mind, I might jump in quickly. We were quite specific for Darkinjung—and I'm not going to speak on behalf of Metro, but Nathan and I had a lot of conversations. Some of the draft amendments that we actually put forward during the original drafting was to make sure that intangible was there. I might highlight our creation story. Our creation story is Baiame. Baiame came down from the Mirrabooka—from the stars and from the sky. He actually came down to what we now know as earth, at the back of the Central Coast. It is a place we now call and know as Mount Yengo. He created the mountains. He created the waterways. He brought the spirits down that became our totems—our animals. When native title spoke about it, one of the people was talking about the fact that we preserve the flora and fauna. The flora and fauna are intrinsically part of our intangible cultural narrative and story.

When Baiame created life, he then lived amongst the people. He gave us lore—as in l-o-r-e—culture, kinship. When he left, he left his spirits down here that stayed as our totems. He left from Mount Yengo back to the Mirrabooka. The importance of these stories is weaved within the songlines today. The sites that you see are only a physical representation, quite often, of the intangible. Why it's important, though—I want to give a shout out to what Nathan was talking about; it's something that Darkinjung and Metro had been working quite closely on about fraudulent cultural identity. And it is fraud. Under the Crimes Act, if you receive a benefit by deceit, that's actually fraud. What we've got is some of these people trying to recreate the intangible culture. I've read reports that Deerubbin—the Hawkesbury—was created by the Rainbow Serpent.

Now, oral history is right throughout the majority of New South Wales. I'm a Gomeri man. I was always taught that Baiame was also the light-giver because when we look east—the sun rises in the east—that's where Mount Yengo. The first colonist records through the Hunter and through what is now the Central Coast—Darkinjung Country—recognise the Baiame creation story. But what we have is people who are trying to illegitimately commoditise, and they are desecrating those creation stories that are thousands and thousands of years old. So there is the importance under this bill of having the intangible, but also having the actual authority to maintain, protect and preserve. As councillor Hampton said, it's up to us to determine. It's up to Aboriginal people to determine how that is.

There are going to be some concessions. We were the first miners. We were the first town planners. People talk about us being nomadic. Sorry, but people have holiday homes now down the beach, don't they? That's pretty much what our mob did for 65,000 years. Trade has shown that there have been sandstone axe heads, carved in the Central Coast, found in the Pilbara because of thousands of years of trade routes. We were the first planners. We were the first farmers. What we are asking for is that we—and I say "we" as Aboriginal people, but where

people have cultural authority—have the right to determine how that is preserved and protected, both the tangible and intangible. I hope that gives a bit of a response.

**The CHAIR:** I think the legislation is seeking to find a way to protect through l-a-w, as inadequate as it is, that intangible. So perhaps the disputes and the fraudulent claims dissipate because the authority is protected. I think that's the aim.

**BRENDAN MOYLE:** You're absolutely spot on. That was the approach. I'll be quite straight with you, not to be critical of the Reverend and his staff. When Nathan and I first became involved, we were highly concerned about what was drafted in. That is not to have a crack because I have to congratulate the Reverend, his office and everyone else who is getting behind it, and also the good faith that they worked with us within. But when we saw it, it actually de-legitimised the many entities that had cultural authority. The first thing that the Reverend and his staff did was work with us to make sure that we tackle the authority. If we tackle the authority, everything else falls in. Because under the legislation, with the entity, you've got policy development and you've got all those things to start operationalising it. But without the authority, then we have nothing.

Right now the only authority we've got under current regimes is we can advise, and quite often we're actually ignored. That's what this bill starts to re-base. It's not perfect. Any piece of legislation changes over time. I often say the land rights Act looks different today to what it did in 1983. Very rarely does legislation not change. But without something that's tangible and meaningful, it gives authority to people with legitimate cultural authority at the local level, overseen by Aboriginal people. But we have nothing and our cultural heritage isn't being protected. I might see if Councillor Donnelly had anything to add.

**DALLAS DONNELLY:** Are you sure? I got a bit off track. Sorry, Brendan. I'll give you a little example of something that I perceive as intangible. Back up in my country in Bundjalung, in the old days you had certain people who done certain things in the community. You'd have your main dance man, your main storyteller, your main artist, your main lawman and your main medicine man. If you want to open your mind, this is exactly what we've got here now, where each peoples basically have a portfolio of how you operate in society. Back up in my way there—and I'll say this openly without divulging too much stuff—I've been initiated to the third stage marugan. That was done outside my tribal group because there were no old fellas left there to be able to do it in my country who wanted to do it.

Back up my way, there are five stages of initiations. It starts off at a local level. When a boy reaches puberty, they do certain ceremonies at their local area. All the clans would send their boys to the first bora ring—the big one—where you had to go through certain things to prove yourself. Say, if there were 100 there and 80 got sent through to the smaller ring after doing their ceremonies, they go back to their own clan country. Then a period of time later, bang, second one, third one, fourth one, backwards and forwards. That's basically the way the education system in Australia goes, from infancy to primary to high school to university to postdoctoral or professorship and all that. So Australia is benefiting.

After invasion, colonisation—I'm not going to enter into that at this stage—they started putting fences up. Aboriginal people got cut off from accessing certain important culturally significant sites and that broke down the initiating system, which involves discipline, teaching that young fella—I don't know about the women side of things—how to be disciplined and productive in society. Where do we sit some 200-and-whatever years later? That's why we've got the consequences of high incarceration rates of Aboriginal juveniles and whatever. We have juveniles of all colours and nationalities who just don't respect any sort of authority. We probably wouldn't be able to return to the old initiation days because some of the things that you had to undergo were a form of what we would now call child abuse. You would get one person—anyway.

One of the other interesting things there is at a certain point through those times, backwards and forwards getting initiated, as I said, you come back, you send about 80. Then after the second ring, instead of 80, there might only be 60 people. By the fifth ring, that might be over a period of 10 years or whatever, there could be only two or three people that actually passed that final test there. Even in my area—again, I can only speak for that—for some of it, and I won't say what parts, you have to take a leap of faith in your initiation process. I won't say what that is. I don't know what religion, my apologies, but when people undergo baptism and they duck their head under water, that comes out of Aboriginal culture—bora ring.

**The CHAIR:** I have a question about how you see the inclusivity of the Aboriginal Cultural Heritage Council. I know we had a conversation about this a little bit. Do you think that in its current form, the way the bill is drafted—obviously, you heard some of the discussion from the witnesses earlier—do you think that part of the bill would be improved with some reform or whether you think the constitution of the Aboriginal Cultural Heritage Council and the way it becomes constituted is in good form or perhaps needs a bit of review? I would love to hear from any of you on that point.

**BRENDAN MOYLE:** I might defer to Nathan first.

**The CHAIR:** Mr Moran, you are on mute.

**NATHAN MORAN:** I would first say that the proposed model is a bringing together of those appropriate, relevant cultural knowledge holders. In the event of establishing such a committee, yes, it will take time to be adapted and implemented. But I would suggest that that is, in my sense and experience, the best bringing together of all those appropriate bodies of native title holders, Aboriginal owners and land councils. It is something that I would say will occur. All things, when being established, take time. But I believe and perceive that that is the most appropriate way to do it, and then try to develop the procedures necessary to address matters raised by [inaudible] powers. I believe there are great examples in every other State and Territory of how this works and why New South Wales shouldn't be too fearful of these proposals.

**BRENDAN MOYLE:** I would add to that as well. I do think it could potentially be strengthened a little bit in retrospect, making clear that both land rights and native title have explicit representation actually drafted within that. In hearing some of the concerns, the reality is that it is that body that then makes the determination of the agreement. Out of the three options, who is going to be the local cultural authority organisation? For me, it would be a minor tweak, but I would look at having it explicitly written in in terms of representation, both from land rights through the NSW Aboriginal Land Council and for native title through to NTSCORP. I think you need to have some other parties part of that as well for balance, because not everyone is going to be a member of a land council, not everyone is going to necessarily be a native title holder or an applicant. But we have to pay our respects to both legislative regimes.

**The CHAIR:** That's a really interesting point. How do you think the bill could capture that other voice or those other voices?

**BRENDAN MOYLE:** For me, it's through that overarching board. A local Aboriginal heritage provider has to have authority, and you've got two legislative mechanisms: You've got the Native Title Act 1993 and you've got the Aboriginal Land Rights Act 1983. The Aboriginal Land Rights Act, as Nathan actually explained, has both registered Aboriginal owners—which is an inclusive process managed independently of us; it's managed by the registrar of Aboriginal land rights—and then you've got land councils. What I would suggest is that hypothetically—if you had, say, eight members of an overarching board—you might allocate two or three places each to NSWALC and two or three places each to NTSCORP, which would allow you to capture it. And then you actually enable or provide an opportunity for the remaining places for people who meet specific criteria—being able to demonstrate cultural lore, connection to New South Wales.

The point that was made by NTSCORP we actually agree wholeheartedly with. We do not want people from other States or other jurisdictions coming and exercising their rights, and cultural authority is given. I spent 20 years on the board of Ngambri land council, 12½ years as chair, and people used to say to me I wasn't a traditional owner. I'm a Gomeroi Kamilaroi man. How did I maintain that? I said, "Because the way that I was brought up from a lore perspective was to recognise the cultural authority of the people and the ancestral connections of where I was standing". There would be times when, as Nathan does now as the CEO of Metro and I do as the CEO of Darkinjung, we exercise our power and authority under the Land Rights Act, but we do it always applying the cultural lore in terms of how we do it.

It's not just what we do; it's how we do it, and I think that's the critical thing. If you get that overarching body, the overarching committee, right in terms of the balance that recognises the legitimacy of both legislative instruments and both legislative movements, and then you provide another mechanism through that where people can actually self-nominate, I think that's the best balance. Sorry, Councillor Hampton.

**The CHAIR:** Apologies. Sorry, Councillor Hampton.

**LEEANNE HAMPTON:** No, that's fine. I was just going to agree with your words there, Brendan. I was also going to just reiterate that, from a NSWALC perspective, we have always continuously advocated for inclusivity. We have not once ever said that it should just be all NSWALC or it should just be all NTSCORP; we've continued to say that both legislations need to be recognised. We absolutely 100 per cent recognise those that have cultural authority, and we recognise that native title holders are the ones that need to be making decisions on the ground for their parcel of land that they hold that authority for.

It also needs to be recognised—I have read the submission from ACHAC, and I'm very disappointed with some of the words that have been written in there. I've sat on ACHAC as an independent member for four years prior to being elected as a councillor. I'm not going to play tit for tat, but I would like to reiterate that NSWALC—we have 30,000 members on the ground. We are the State's largest membership body for Aboriginal people, and we represent those 30,000 people to the best of our ability. I think having that stand on inclusivity is

how we include all Aboriginal people across New South Wales, and I think getting the balance right and having the right conversations at an overarching level is paramount. Thanks.

**The CHAIR:** Just on that point, would the current voices within ACHAC be captured by the system that is currently in the legislation?

**BRENDAN MOYLE:** They could apply. If you've got opportunities for people to actually apply for it then it's the same kind of process. It's just shifting that process to a body now with actually strengthened authority—where Aboriginal people lead the development of responses to protect and preserve Aboriginal culture, not just provide—

**The CHAIR:** Rather than the bureaucracy—the current National Parks and Wildlife systems.

**BRENDAN MOYLE:** Exactly.

**The CHAIR:** I see.

**BRENDAN MOYLE:** What they do is they provide advice. Like Councillor Hampton said, I've got family members on the current ACHAC as well—distant cousins—and, to be honest with you, it breaks my heart that they actually give their all to try and protect and preserve and then that advice can be ignored quite quickly.

**DALLAS DONNELLY:** We don't get 90 per cent turnout there at our elections, and that's one of the criticisms of ACHAC. But the elections for State councils are voluntary. We don't get people fined like normal elections. But I was also NSWALC's representative on ACHAC until we withdrew from that organisation. I still say that ACHAC is appointed by yiralis—non-Aboriginal people, Government people there. NSWALC is appointed by Gooris. It's a step there from self-determination at a local level, voting us in as councillors up to the table, and then we basically—in the model that's in the Reverend Fred Nile's bill, NSWALC has only got part participation on that first statewide panel. There's no reason, say, in the five-year review or something that that panel mightn't come up with something completely different, saying, "We're not getting that total inclusivity of all Aboriginal people". But that's their self-determining right.

NSWALC never wanted to be the big daddy of all this; we've got enough stuff on our plate there. But like I said, if a local mob sit down and work out who speaks for their country at a local level—you could have the most senior Aboriginal person that comes from Grafton living in Tweed Heads, but he or she can come back and be part of that Grafton group. It's that opportunity there that the local mob decide. If you've got Brendan Moyle coming from Ngambri land and saying—he might get a job in Grafton—"I want to have the right to talk on culture in this area of Bundjalung Gumbaynggirr", sorry, Brendan, but—

**BRENDAN MOYLE:** It's alright.

**DALLAS DONNELLY:** —you'd just be ning there; you're not saying anything about it. But it's the local mob that are determining for themselves.

**The CHAIR:** We're coming to an end. Mr Mallard has one final question.

**NATHAN MORAN:** Dallas, I've heard a lot of that. I wanted to confess to say with regard to ACHAC, that is a Government-established body; it is not an Aboriginal body. I feel that ACHAC could be much more strengthened if it represented Aboriginal people and was a 100 per cent authorised Aboriginal body whereby it was empowered in the principles of Aboriginal self-determination. To those ACHAC members, I just say I don't want to rock up to a site where non-Aboriginal people buy back an Aboriginal culture and heritage site to meet the ACHAC committee. That's the reality: ACHAC works for government. It doesn't work for the Aboriginal community; it doesn't even work in collaboration with us, guys.

At the recent buyback at Cromer, private individuals bought a registered cultural site that I asked the Office of Environment and Heritage to consider buying back, but it said that it didn't have the resources. But when I rocked over for the announcement of the purchase by a private family, who should introduce themselves? ACHAC, claiming to speak for the culture and heritage—something that they should never do. They are a government body. They should work with the local people, work through those local prisms. What I would say is we can do this—State significant projects. Metro land council worked on the Pacific Highway upgrade for the M1. We re-diverted the M1 so it protected a culture and heritage site just around Cowan. Much love and respects to RMS, now Transport—some people know how to do this properly and respectfully. We hope to do the same at Wakehurst Parkway with the new tunnel to ensure that there's an appropriate space between the registered cultural sites and the infrastructure. If we work together, we can do anything, guys—as long as we're included at the design stage and not sent along to cut the ribbon at the end.

**The Hon. SHAYNE MALLARD:** That's a very encouraging submission. Just in conclusion, Mr Moyle—this is open to everyone to comment—your fairly strong engagement and support of this private member's



bill, I wonder how that reflects upon your view of the process, which has been extensive. There have been at least two Ministers, maybe three, involved in this—Don Harwin, currently Ben Franklin and probably Sarah Mitchell before that—and working on a bill like this. It's so complex, and there are so many stakeholders. Does your support of Reverend the Hon. Fred Nile's bill, as well intentioned as it is, reflect upon the relationship you had and the consultation with the Government over that period of time? Is it a reflection of frustration or that you don't think it's going fast enough? What does that say about that?

**BRENDAN MOYLE:** I can answer personally, if that's all right. I have to commend the Government for actually trying to do it. This is a complex space. But it was noted that various draft legislations tried to be negotiated for the last 12 years; it's actually 40 years that we've been having conversations about this. Part of my primary concern—I'm going to speak individually—I am a child of land rights. Anyone that knows me and knows Nathan knows that we are land rights through and through. I live it; I breathe it. I have done for decades and generations as well. I have family who are native title. To be honest with you, I worry that previous processes—not because of the fault of the Government—become a pissing competition between the two major authorities. Nathan, without speaking on your behalf, if I can relay our conversations, I know that this wasn't a slight on Ministers. This wasn't a slight on governments.

We have to have a circuit breaker because we, as Aboriginal people, are leading this. Unfortunately, to be honest with you, quite often the advice that Aboriginal people are getting around these pieces of legislation are coming from non-Indigenous people. It's really easy to read a piece of legislation or to read a draft piece of legislation. For everyone that comes here and presents, some I am concerned about that they haven't necessarily understood the bill or they haven't necessarily taken the time to be able to have a conversation about what we're trying to accomplish, but it comes from the heart and soul of who we are as actual Aboriginal people. In the absence of anything—like I said earlier, no piece of legislation is perfect. None. Times change. Societal norms change. Culture changes. But in the absence of anything, we have nothing, and we are seeing thousands of sites desecrated and destroyed. We have no power.

We are seeing legitimate people with legitimate cultural authority, whether they be there as custodians, as Nathan and I are. We see ourselves as custodians. I see myself as a custodian. I'm not a lore holder on Darkinjung country. I'm a custodian of trying to protect and preserve ancient cultural heritage, but it's the journey that we follow to do that rather than the destination. When people don't understand that heart and soul, people look at it through a legislative instrument, and I think that's where some of the failings have actually been because some of the entities that have been involved in that process are very strong and they are very passionate. I don't want to denigrate them, but it becomes a competition about who has more power and authority, whereas, as Di said earlier, Yaegl people need to have cultural authority on Yaegl land. In the absence of Yaegl people, where does the authority sit? This is what we are trying to do here.

**The Hon. SHAYNE MALLARD:** I think the concept of a circuit breaker was quite helpful.

**The CHAIR:** Yes, very powerful. I'm afraid we are out of time. Councillor Hampton, are you able to sum up in a quick moment?

**LEEANNE HAMPTON:** Yes. Thank you. I was just going to [inaudible] say that we have a really good opportunity now to seek better laws and to seek better protection for Aboriginal people. As NSWALC—not that I want to speak on behalf of my brothers here—I'm sure that we would be willing to work with any parliamentarian to get this across the line. The longer we leave it, the more sites are being destroyed. So I just want to reiterate that this is very, very important to us as NSWALC and very important for our 30,000 members across the State as well. We are happy to work with anyone who is willing to work with us to get this across the line. Thank you.

**The CHAIR:** Thank you very much, and thank you very much for all those wonderful emojis on the screen. If there is further submission you would like to make, the Committee naturally is welcoming and open to that. I don't think there were any questions taken on notice. Thank you very much.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Mr PAUL CARR**, Chairperson, Three Rivers Regional Assembly, NSW Coalition of Aboriginal Regional Alliances, before the Committee via videoconference, affirmed and examined

**Mr GEOFF MAHER**, Deputy Chairperson, Illawarra Wingecarribee Alliance Aboriginal Corporation, NSW Coalition of Aboriginal Regional Alliances, before the Committee via videoconference, affirmed and examined

**The CHAIR:** I now welcome our next witnesses. Mr Carr or Mr Maher, do you have an opening statement you would like to make?

**PAUL CARR:** I would like to introduce myself, if that's okay with you guys.

**The CHAIR:** That would be wonderful. Thank you.

**PAUL CARR:** Firstly, I would like to acknowledge country. No matter where we're hearing in from or where you guys are today, we're calling in from or sitting upon Aboriginal land—always was and always will be. I'm out here in Wilay, Wiradjuri country, in Dubbo, New South Wales, home of the eight clan groups—"Wilay" being a Wiradjuri word, which is the [inaudible] for a possum, which was the totem of the eight clan groups back in the day. My family are direct custodian descendants of the Dundullimal clan. I represent today myself as an Aboriginal man and my family, and as the independent chair of the Three Rivers Regional Assembly. We represent 12 communities out here in western New South Wales.

My footprint starts just off this side—when I say "this side", I mean the western side of Lithgow—out to Nyngan across to Gilgandra and across to Parkes. That's our footprint, and all the little communities in between. We're known as the Three Rivers Regional Assembly, and that is because we outline the Wiradjuri nation by the rivers—which are the Lachlan, Macquarie and Murrumbidgee rivers—which were, like, boundaries, I suppose sort of, through Wiradjuri country. Three Rivers Regional Assembly cover three different nations: the Weilwan, the Wongaibon and the Wiradjuri country. Thank you.

**The CHAIR:** Thank you. Mr Maher, did you want to say any words in opening?

**GEOFF MAHER:** My family originally came from the Nambucca-Taree area, Biripi and Gumbaynggirr country, but I'm also part of the Eora nation. We moved down here when I was 10 years old. Before I moved to Wollongong, I never lived in a house with running water or a toilet. To me, my family has actually come a long way, but there's a long way to go as well. Anyway, that's me. I not only fight for [inaudible] but for every Aboriginal person in this country. Thank you.

**The CHAIR:** Thank you. We've just got some questions for you from members of the Committee to help us inform the inquiry into the bill. This bill is proposing a new regime to have an Aboriginal cultural heritage council that is constituted to then oversee the operation of the cultural heritage laws. Do you see that this is a strong and good way forward for cultural heritage laws in New South Wales?

**PAUL CARR:** I think putting the lens on the cultural heritage is a good start. I think that's been a long time coming. You can look at all that's been happening with the bushfires and that type of stuff in our communities now, there is a real need to really look back at cultural heritage. We've been here for more than 200 years. We've been here for tens of thousands of years, and no-one knows the country better than our people. In saying that, I represent a local decision-making governance body. That's where you're really got to concentrate. If you're going to have an Aboriginal council, it can't be made up of the peak bodies that are in government now and that don't represent the people out here.

We need people that live inside the levee banks out here—for smaller communities to have a voice because we continue to fall through the gap. When you're considering forming the council, we don't need the Aboriginal people that are protecting their supers and that to be having their conversations around this. You really need to engage with the real Aboriginal people—the people that I represent out here. If you want cultural knowledge, you can't learn cultural knowledge in one room talking to half a dozen people looking over their glasses. You've got to be out here among the gum trees, as they say, up along the riverbanks and really, really engage with the community, and you'll get your best outcomes.

**The CHAIR:** Mr Carr, are you referring to members of the community that you work with and represent that are not part of a land council or a native title claim or a native title body? Are you referring to other people?

**PAUL CARR:** No, I'm referring to those people exactly. We're made up of land council working parties and traditional owners, out here. A lot of the voices are just probably one or two people that continually tend to sit at these tables and have their discussion around culture and heritage. They wouldn't even know half the cultural spots out in my region. We need to stop thinking that there's people that are in positions that know culture. The

real cultural people are out here with me. I walked this country with my Elders. I've done the cultural accreditation, I suppose, with TAFE. But the real stuff out here is walking with your Elders and really, really feeling the country and having the knowledge. You can't get the knowledge from your Elders out of a textbook.

**The CHAIR:** What is your current experience in relation to the current cultural heritage laws and applications and projects, those sort of State significant projects that are looking to harm or destroy cultural heritage? Is that something that you and your organisation and people are having to deal with?

**PAUL CARR:** One of the biggest challenges to our culture and heritage out here is that a lot of decisions are made well before the Aboriginal communities—or us out here—get the opportunity to put up a case for why not to go where they're going. There's a lot of decisions already made. There's an example here, and I won't go into too much detail, but the Government is pretty aware of it. There's a new bridge that's being built out here. Where it's going, there's really significant cultural connection to the spot where they want to put the new bridge. I can't really talk to it, of course. It's to do with our women and it is women's business. Again, that's the type of stuff that needs to be brought into this conversation.

When you come into the community to do consultations, you've got to understand we have men's and women's business. Back in the day—here again, in Dubbo, there's a place about 20 or 30 kilometres out of here where the boys were taken and turned into men. And then there's places in town where the women are giving birth and that type of stuff. They are really significant places. That's the type of stuff, if we brought it to the table early, we can bring it to the conversation. Don't come here with a plan and a bulldozer ready to go, if you want to consult the community. It just doesn't work. You've got to understand that the cultural business of Aboriginal people cannot be decided by one or two people.

**Reverend the Hon. FRED NILE:** Thank you very much for taking part in our hearing. I was just going to ask you for your opinion on the bill that we are considering at these hearings. As a person who had a major role in drafting it, our aim was to restore the authority back to the Aboriginal people, away from government committees, government bodies and so on. Do you feel, in your opinion, that the draft bill does that; it is on the right track? Or do you have some criticisms that should be answered?

**PAUL CARR:** Thanks, Reverend Nile. I thank you for putting a focus on this, mate, on behalf of the Aboriginal people. I really feel that—like I said earlier, when I first started—the bill is probably a long time coming. But how we do it, it's all right for the Aboriginal people to take a lead role. This is no-one's opinion other than mine, so I want to make sure that is expressed. This is my opinion, not the opinion of anyone else. I glanced through the bill, and you've got to look at the services and permits and management plans. That all needs to be considered. How we get into that stuff will take a bit of doing. Honestly, you've got to have the Aboriginal people sitting at the table leading this.

Reverend, we have non-Aboriginal people continually thinking that they can make decisions on Aboriginal people and communities on our behalf, and not us having an input into what is being done. You certainly know the hardship that our communities are faced with—the Stolen Generation, the Aboriginal deaths in custody, all that type of stuff. That all has impacts on our family. We are just not there to add our say when these decisions are being made. We really need to be there, sitting at the table with the decision-makers, not the people that's going to come and engage with community. We've definitely got to be there with the decision-makers.

**Reverend the Hon. FRED NILE:** As I said, that was the purpose of the bill. Do you have any suggestions on anything that should be done to the bill, or added to the bill, that would make you even more supportive?

**PAUL CARR:** Reverend, like I said, I've only glanced at it this morning, but I will give it the time that it needs, to have a good look over it. Just the protected areas, that's going to be a challenge on its own. How we're going to—what's the word I'm looking for—itemise protected areas because to us the whole country is a protected area. I agree that there's a need for bridges and that type of stuff to go ahead. But let's be part of the planning and do it right.

I think there needs to be a focus on the harm that's done to the sites—serious harm. I think the other word that they used was "material" harm. Again, are you categorising that stuff; I'm not sure. It depends who you're talking to. You could be talking to our Elders being women or our Elders being men. You know, there's a lot of Aboriginal influence that needs to go into this bill.

**Reverend the Hon. FRED NILE:** That's right. Thank you.

**The Hon. SHAYNE MALLARD:** Thanks for your contribution today. One of the sticking points on this bill and I understand one of the sticking points on the work being done on the Government's bill—I'm a

Government member, although not involved in that level of work on the bill—is the definition of cultural items. Mr Carr, you just touched on it then when you talked about protected areas as far as Aboriginal people would be concerned, and certainly you—the whole of the country is a protected area and I acknowledge that. But we have heard it before and I have heard it previously in other inquiries I am on—I am on the inquiry into the Warragamba Dam wall-raising—about songlines, landscapes, story-telling and things that Western people have more difficulty grasping as a tangible heritage item. My colleague the Hon. Rose Jackson talked about sandstone buildings before in that context.

Given that that is a sticking issue on this bill and on work going on in the other bill in terms of the breadth of the definition, how would you work through a compromise on that? You mentioned compromise. What you talked about in Dubbo—and my family is from Dubbo—the notion of secret places, that's understood. That can be defined and understood and protected, but the broader thing of the river is a different issue. Do you want to just flesh that out for us and explore how we could find a compromise there?

**PAUL CARR:** Let's go back to the start. Australia has 250 nations, right? So there's 250 people or groups who need to be considered because we're all different. When it comes to Dubbo, we have eight clan groups here. My clan group—I'll give you an example; we are known as the Dundullimal clan. There is one tree in this whole community that's a sacred tree to us, which is a healing tree. All my Elders have all sat around that tree, but there are other clan groups that don't recognise that tree, right? That's a challenge for Government decision-makers on whether you're going to cut them trees down or not. Are you going to listen to one group, or are you going to listen to the whole groups? That in itself is the type of challenge when you are dealing with community; we are very different. Aboriginal people change from street to street; they don't have to go from community to community. If anyone knows Aboriginal people who's fair dinkum, we're different people.

You might have seen back in the day there's a lot of headlines about Dubbo when one part of Dubbo was always in the news about where the Aboriginal people were playing up but that was a government decision to bring two different clans groups into the one area. They couldn't get along a hundred miles apart, let alone next door to each other. Well, it was all in the news. This is the stuff that's got to be considered when you're considering Aboriginal culture and heritage and putting mobs together. You've seen our old people crying when the river has dried up. The river is sacred to us. It's like a mother. It's very sacred to the Aboriginal people. Life comes from the river. You see that when the old people—when I'm talking about the old people, they're in their eighties and nineties—they were sick and sorry when the river dried up there. You would have seen them on the news. They were sitting on the riverbank crying. That was because they were crying for the river. That's the cultural connection we have to these places and it's not just because the river dried up.

For some of the Aboriginal people, the Aboriginal totems may be the fish or something that is living in those rivers. That's the connection we have to country and to rivers. It's very hard, even though I'm an Aboriginal person, to understand the connection to country. I had a white fella ask me why are we so—what's so special about a yarning circle? I said, "But when you go with your non-Aboriginal mates, how many times do you sit around a camp fire and hardly talk and just stare into that fire?" He said, "Yeah, we do it often." I said, "Then you're in a yarning circle, mate," and that's the wellbeing that you'll get from just looking into a fire. Well, when you talk about our health and our wellbeing, sitting on the riverbanks—you can just sit on a riverbank for a day and not talk. It's just the wellbeing that we get. It's something that's been handed down for tens of thousands of years. I can't explain it on behalf of everyone. I can just explain what it means to me. I'm a young Aboriginal fella. I'm only 60.

**The Hon. SCOTT BARRETT:** It's obviously a clear issue. First of all, there's no doubt we need to do something in this space. I'm also enjoying, I guess, highlighting the non-tangible heritage as well. So, yes, we need to do something. This bill is a step forward. There's other work going on. We've seen this conflict. Obviously we don't want white fellas making decisions for Aboriginal people. In the last session, if you listened to it, having people from different areas make decisions on behalf of that bloodline. I guess, Mr Maher, you're probably a good example of this. You have really good strong connections up the North Coast and where you are now, on the South Coast. I just wonder how we navigate through that very tricky space. I don't want to say "ownership", but I guess it's a belonging space.

**GEOFF MAHER:** Well, I'm like Paul Carr. We could go back—that's why our LDMs were set up by the Government. Now they want to go away. I'm sick of the big cities making decisions for us. We've been down here—my family moved down here. My mother and father moved us down here because there was not much work up there. Well, it's a great thing we did but I can still see the difference because people in the city make decisions for people in the country. Paul's right. They don't know what's going on for Dubbo. They don't know what's going on in Taree or Nambucca. They don't even know what's going on down the coast. They just assume they do and I'm afraid you have to go to the inconvenience to find out.

I know—and Paul will tell you too, I'm pretty outspoken about my culture and everything. So our people don't want white people doing it because they can't understand. No matter how sympathetic you are, if you're not black, you don't understand, right? My great-granddaughter is as white as any white person in this country so I'm not saying this from a racist point of view. I'm saying that you can't understand just like I can't understand your ways, right? I've probably got a lot of white friends but I can't tell you how your life is, you know. People have said, "Oh, well, we'd have nothing if white Europeans never come here." Well, neither would they. They would have had nothing, either, so to me, I want to stick up for my culture. I lost my culture. I commend people like Paul because I grew up on a mission with a manager—not 100 years ago but in my lifetime, so I can tell you the manager today. It was Mr Thomas. I don't want to go back to them days and we've got to find a way to work together.

The changes in this bill—I see a lot of kids. I don't know whether you're aware of that Kimberwalli out in the western suburbs. My grandkids go to that. By going there, I can see the big changes in my grandkids because they're more connected. Once they got connected with the culture, they got connected with their schools and that. I can see it. I was approaching the Federal Government to see if we could get one up in the Illawarra. Culture means everything, you know. I am appalled. We can't make them in the cities, can't make it for another town. Each town is different, you know. I like to go to visit in all these other places, even though I'm not from there. I find it interesting, the different ways.

I went up to the Northern Territory to set up these respect items, the local decision-making. You can see the difference up there, you know. The way that they're treated up there is completely different to the way we're treated. Like I said, I'm right on board with Paul about we have to go to them areas, and people from the city can't tell people from the country about their culture and heritage. It just can't happen. That's what governments are doing with Closing the Gap. They don't know when to steer what's going on in the country. If they take the fellas from big [inaudible], workers from the city up to the country and no-one in in the country did any work. So decisions have to be made at the local level. That's why we can't be involved in local decision-making.

I even told Jason Ardler—it was jovial—about this working. He says, "How do you see this going?" I said, "Mate, I see this as generational. It won't happen overnight but it's a step in the right direction. But let me tell you, I've got grave doubts whether the governments want us to succeed because when they funded us they give us \$48,000 for the year. Now, mate, if you can run anything for \$48,000, you're a better man than I'll ever know in my life, because you can't do much with that." Even what they give you now—two hundred thousand—how can Paul and them, with all them talks of getting [inaudible], go around and make their communities right with \$200,000. We asked for 1 per cent of the Aboriginal budget when I first started and they said "No". Unfortunately for the Government, I know what Aboriginal people get in this State and it's [inaudible]. I can tell you now, it's a crying shame. At least let us get our culture and heritage on, because I can tell you now, it's the biggest injustice with the amount of money that the governments spend and what we get, I tell you. Like I said, that's talking from someone who lost his culture but I am trying to learn it back now. I am 68 years old, so that's why I'm involved with it.

**The CHAIR:** Thanks, Mr Maher. Can I ask either of you, Mr Carr or Mr Maher, a constituted Aboriginal cultural heritage council, if it is made up of nominees who are appointed from the Aboriginal land councils or their native title holders or their Aboriginal owners, do you think that that body would be appropriately constituted to have the overarching responsibility for making Aboriginal cultural heritage determinations across New South Wales?

**PAUL CARR:** No.

**The CHAIR:** Can you elaborate, Mr Carr?

**PAUL CARR:** The first one you named was the New South Wales State land council. They cried about having thousands of members. I can only give an example of the last land council meeting—the last in Dubbo, 9,000 Aboriginal people counted in our local land council area. Right, 9,000. At the last meeting I attended there were 22 people—they needed 22 for a quorum. I think there were 17 people. So we didn't have the community. They didn't take any notice in the State land council or the local council. One or two of them might operate well but the biggest thing against the land council at the moment is the inactive members. You ask the land councils how many inactive members that they have. Again, I will use ours as an example. There's probably 400 members here but there would be half or more inactive. How is 400 members a good percentage of 9,000? So they're not a reflection of the community. People like the alliances are on the ground in different communities. If we need to reach out to those people, they are already part of our alliance movement. They are sitting at our table. So you've got to stop thinking that the State land council and the likes are the go-to people for Aboriginal business or [inaudible]. They're not.

**The Hon. ROSE JACKSON:** Can I ask a follow-up? If the structure that is contemplated under the bill and Ms Higgins mentioned is not one that you would not be well constituted, for the reasons that you have outlined, what would be your alternative decision-making framework? How would you articulate who should make decisions?

**PAUL CARR:** Local decision-making should be made with local people. If you want to come out into our region, into our communities, like I said, you come to Dubbo, there's nine Aboriginal groups here—I'm sorry, 18 groups. Then we have an Aboriginal working party. We have Degan, which is the Aboriginal lore organisations. We have the local land council. There's how many groups there that you've got to consider. How can one body, like [inaudible], speak for all those people?

**The Hon. ROSE JACKSON:** Absolutely, but what we are trying to do is think about how to articulate what you just described into our law? I appreciate that we're trying to translate something, you know, into written legislation. Something like local decision-making, unfortunately, I don't think, would be clear enough in terms of making decisions. I am trying to think about how we might capture that sentiment into something that is clear. I don't know if there's another body or framework that might do that?

**PAUL CARR:** You're probably going to need to revisit the whole—you can see the voice is trying to form up some kind of voice to Parliament now, and it's not going to work. The first question I ask is: Who's voice? Again I reflect the number of people who want that voice. How can someone in Tasmania speak for New South Wales? That's not going to work. It needs to be regional and local. How do you formulate a regional and local body? The train wreck is already there. I said there's the opportunity to have representation of our people really from the ground up, and that's what is always forgotten. They're trying to do things from the top down, and it just doesn't work.

**GEOFF MAHER:** Can I just say something to what you were saying before? You say what framework we need. You've already got a framework there. Local decision-making is the framework. While on that fact, each member of the local decision-makers draw on them to make their decision. The Aboriginal way is elders in that community. Not me, even though I am 68; there are people older than me in this community. They can make decisions. That's the Aboriginal way. Not these desktop, I'll call them desktop leaders, because they haven't got Aboriginal ways entrenched in their thinking. I'll ask you this. Can you guys explain to me how Closing the Gap can start again, when for 30 years they couldn't close it in a heartbeat? Our people are still dying young. Our people are still unemployed. Our people are still uneducated. I [inaudible] if government thinks Closing the Gap—it's like me being a bank robber. I rob the bank several times and you keeping giving me the chance to rob it again. You haven't been out in the community. Ask them in the community what they think about Closing the Gap. They wouldn't even know what it is.

**PAUL CARR:** I'm trying to find a way to explain how LDM works really good in the community. The only one I can think of trying to get your head around it is when the pandemic was in our community out here. Government shut everyone down. Everyone that was delivering services have had to close their doors. The only person that was available to help Health and those guys out in our communities was our local Aboriginal volunteers.

I'm part of the regional emergency management committee, so we reached all the way from Lithgow all the way out to Wilcannia at Broken Hill. Out of all those communities in between, we had 100 or so people attend a regional emergency management committee and we put them in touch with the Aboriginal volunteers on ground, and a lot of them made up the LDM. If you talk about the new lot, they were delivering food packages that were donated by Coles. The people are out there, you've just got to find a way to bring them together. I think the Reverend Nile there would like to—we're not going to solve all the social issues that are facing our people, but cultural heritage is one thing that you can develop to do this right and really [audio malfunction] consult and [inaudible] people [inaudible] for the people out here, because they just don't.

**The CHAIR:** Mr Carr, can I just ask, when you are referring to those local response teams, particularly I know they were happening through COVID—I was aware of the Dharriwaa Elders Group, and they were part of their local area response—are we talking about groups at that local decision-making level that do also speak to cultural heritage? Are they the cultural authority?

**PAUL CARR:** Cultural authority is another area that I'm not game to start the conversation about because I don't have cultural authority. Cultural authority comes from Elders and Elders of all different groups, so I wouldn't dare to try and even answer that question. But, getting back to the people that stood up in our community, everyone talked to [inaudible] when COVID hit. We had I think it was the major general that coordinated the response for the country come out to Dubbo to see how we were doing it better in our Aboriginal communities so he could try and duplicate that in the rest of Australia. That's how well we pull together out here.

It was led and driven by the Three Rivers Regional Assembly and the staff and community seeing the need to all pull together, and our community really pulled together.

**The CHAIR:** If I can just go back also to the example you gave earlier about the river being culturally significant to all, yet perhaps a sacred tree, the cultural knowledge of that sacred tree being held by one clan and not necessarily by the other clan. From where you sit, would your organisation, the Three Rivers, know who speaks for which bit of significant cultural heritage amongst the clan groups?

**PAUL CARR:** Yes. Cultural protocols for each of our community is something that in our region I'm aware of. If there was a bid for anyone to come to any event in our communities, I could put them in touch with the right people, and that's very easily done. You need to be coming to the communities and talking to the right people, bringing all of those groups and those different opinions to have their say. That's what you've got to do.

**The CHAIR:** When you refer to cultural protocols there, can you just elaborate on that a little bit?

**PAUL CARR:** Say if you were coming to my community and you say, "Listen, can you give me someone who can do a welcome to country?", there are people out there that can come into communities and do a welcome to country that don't even associate to that community. So I could point you in the direction of the Elders that are not only recognised in our community but endorsed by our community to do that type of work for you. I will make sure that the cultural protocols of our community were followed, and you wouldn't be getting into trouble by having them—they might be acknowledging the wrong country. You don't how they will do it, but the Elders that I'd put you in touch with are Elders that are not only recognised but endorsed by our community.

**The Hon. SCOTT BARRETT:** Can I follow up on that, Sue?

**The CHAIR:** Yes, Mr Barrett.

**The Hon. SCOTT BARRETT:** In possibly what might be an offensive question, and I'm sorry if it is, but—

**PAUL CARR:** They're the best ones.

**The Hon. SCOTT BARRETT:** First of all, would anyone challenge your authority to know that?

**PAUL CARR:** Most probably.

**The Hon. SCOTT BARRETT:** Is there anyone else who would say, "No, don't go to Paul Carr; he doesn't know. Go to this other bloke."

**PAUL CARR:** Yes and, like I said previously, I don't speak or represent everyone. I wouldn't dare to try and say that I do.

**GEOFF MAHER:** I'd just agree with Paul. Water is everything and that for people, whether you're inland or on the coast. My family used to catch 100 pipis. Now I've got to have a licence to go down there to get them. We made a living from doing it, and they go, "You've got to get a licence." We didn't get a licence. I learnt to catch worms when I was six years old because me mum and dad and grandparents all done it. Now we can't do that. When I moved back to Wollongong here from Victoria, I used to walk from—I don't know whether you know Wollongong—Dapto to the beach, catch worms, sell them and then walk back out to Dapto pushing a pram. It was a way of me feeding my family, but that is taken away from us. That is culture. My family on the coast were fishermen. Because you put all these big, "You've got to get a licence for this," we ain't got money to get big licences and pay it every year. Most of our people who are on the coast feed themselves on what they get out of the ocean. I don't agree with people just going in there and taking it. That's not the Aboriginal way anyway—taking everything so it can't grow back.

Like I already said, Fisheries has got no jurisdiction over Aboriginals. How'd they get around that? "Yes, you can get it but you can't sell it." Isn't that a restraint of trade? We've been doing it for centuries, tens of thousands of years—40,000 years—we've been doing this sort of cultural stuff. When we came down here, because me mum and dad and the rest of the family had come down, we used to cut corkwood to make a living. You can't do all this stuff now. They put obstacles in your way of why you can't do it. They've taken away our culture. They've taken away the culture. Paul said, "How many lines can I have in the boat when I go fishing?" What about the fact you can have more [inaudible] because there is no restriction on how many lines you have? The only thing that Fisheries got over us, we can't sell anything. What did Aboriginal people do in the old days? That's what we did; we traded to keep our families alive. I see all these obstacles put in our way, even with cultural heritage that way.

I'm a believer, and I'm always asked to welcome to country here, and I said, "No, I don't do that." I said, "There's older people in my community. That's their job." Isn't that the Aboriginal way? We listen to our Elders. They said, "But you get money." I said, "I don't care about the money. It's about our way." I just think a lot of our

stuff was taken away because people think we're going to go out and rape the oceans and rape the rivers, take all the resources, but ain't that what white people done? I was in a conference in Coffs Harbour and she goes, "But you're only 3 per cent of the population." I said, "Yes, we're 3 per cent but you're 97 per cent who raped and pillaged this country since you've been here." I said, "We don't get the benefits."

When you look at the billions and billions of dollars governments give Aboriginal people, they've set up the gravy trains. Gravy trains are just taking our money. Even when I was in the Northern Territory, they just couldn't understand. By going back to your [audio malfunction], we can actually train people up in our own areas to do all the building, and that gives them work in our communities. Big companies—why do governments give Clive Palmer and Twiggy Forrest and the lady one, why do they get our money?

They get billions and billions of dollars of their own. They call up their corporate partners. Oh, my God. Shouldn't they have a right? They're taking Aboriginal products over to her. Haven't they got a right then to look after it? I know for a fact that it's tens of millions of dollars. It's sad to me. Where is their corporate responsibility? That's my thoughts on it, anyway.

**The CHAIR:** Thank you, Mr Maher. We are running out of time. Mr Carr have you got a final thing you'd like to say?

**PAUL CARR:** I have. We're talking about culture. I think it was 1967, the referendum. You talk to most people and they think that was when the blackfella was given the vote. It was when we were recognised as human beings. I was four years old before I was even counted as a human being. I was flora and fauna. This cultural bill needs to reflect that Aboriginal culture. I can see you've got a lot of work in front of you and a lot more, I hope, will go into this because our culture was beaten out of us, raped out of us, bred out of us. Whatever you could do to get the culture out of us, that's what they tried. But you know what? We're still here, trying to get it back in. If people like yourself have got the opportunity to make a wrong right, I just hope that we really do look at all the possibilities before you start going for the same old, same old. I represent my community. I'm not protecting my superannuation or my job. I answer to community. That's what I wanted to say. Thank you.

**The CHAIR:** Thank you both for your time. Your evidence has been really important. Thank you for your time, and we'll conclude this session there.

**(The witnesses withdrew.)**

**Luncheon adjournment**



**Mr PAUL KNIGHT**, Representative, Aboriginal Cultural Heritage Advisory Committee, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Welcome back, everybody. I welcome Mr Knight.

**PAUL KNIGHT:** Thank you for the invitation and allowing me to be part of this important item. I'm here to represent ACHAC, the Aboriginal Cultural Heritage Advisory Committee. I'm a Dharawal Yuin descendant and representative of country in that area.

**The CHAIR:** Do have an opening statement you would like to make?

**PAUL KNIGHT:** I do. Can I start by acknowledging country and all those who have gone before me today and in the decades passed. Country is the very reason that we are here today. It is what provides us with our identity to place. It is what holds up our values, our knowledges and our practices. In our current worldview, these things are often referred to flexibly and, in my view, simplistically as culture. This is what defines us as Aboriginal people and it is what should define all people within a place. As custodians of country for millennia, it is our role to ensure that the embodiment of country is well recognised, respected and celebrated. Everyone within country takes on the obligation to embrace the structures of land, community and relationship that country is. We need to recognise and strongly reflect on the traditions that allow Aboriginal people to live in harmony with a place without leaving any noticeable impact. We need to reflect on the mechanisms that have upset and removed the focus on country and holistic ways of doing and being to our individualistic and self-serving actions today. I acknowledge country and all those that have already and will in the future carry the values, knowledge and practices of country.

So on behalf of the Aboriginal Cultural Heritage Advisory Community, ACHAC, I would like to thank the Committee for the opportunity to speak today. ACHAC has provided the Committee with a submission in response to the ACH reform bill. Without going through the detail of that, I will touch on its main points. ACHAC recommends to the Committee that the primary objective of the ACH reform ahead of any other objective must always be better protection of Aboriginal cultural heritage. We also advise that whatever ACH reforms are legislated, if they are unable to attract a critical mass of Aboriginal community confidence, they will fail. Central to Aboriginal community confidence is that the administration of ACH must be overseen by a representative Aboriginal organisation—that is, an Aboriginal board constituted by independent members that have cultural authorisation within New South Wales whose first loyalty and accountability is to New South Wales Aboriginal custodians.

The requirement for representative cultural authority extends to the formation of the ACH administrative bodies at the local and regional levels. As we have heard today, this is very important, whether these bodies are called ACH local panels as in the draft ACH bill in 2018 or ACH services as they are called in the 2022 ACH bill that we are looking at today. There has been no consultation of Aboriginal communities or a culturally authorised Aboriginal custodian on ACH reform since 2018. It is unthinkable that any ACH reform would proceed through our Parliament before exhaustive consultation of those primary Aboriginal ACH stakeholders is completed. The summary recommendation of ACHAC is that the ACH reform culture is identity bill substantially fails on all these tests and should not be supported by the New South Wales Parliament.

ACHAC's independence and representative cultural authority have been brought up today. On that note we would like to respond with the following. As you know, ACHAC is an independent statutory advisory body of government on the management of ACH in New South Wales. It is there through the national parks and wildlife legislation. NTSCORP, NSWALC and the Heritage Council can all nominate one member of ACHAC. There is no requirement that any of these nominated members demonstrate a representative association with Aboriginal custodians of ACH. So we do bring in those other parties too and they are allowed to be members of ACHAC. However, under the Act the remaining 10 ACHAC members, which is the vast majority of the committee, must be nominated by Aboriginal Elder groups, native title owners or claimants, registered Aboriginal owners—that is, they must all be able to show an authentic credential as an ACH custodian or as a nominated representative of ACH custodians. A fundamental concern for ACHAC is that there is no such representative requirement ACH council provided for by the ACH reform culture is identity bill. That approach contradicts all standing policy on the concept of a representative Aboriginal organisation and will not be acceptable to Aboriginal custodians.

The second point that I ask the inquiry to note is that ACHAC is the only New South Wales statewide Aboriginal body that has nothing to gain for itself through ACH reform. ACHAC has always understood that whatever ACH reform is legislated—good or bad—at that point, ACHAC will cease to exist as a statutory entity. From a ACHAC's point of view, that is not a bad thing. In fact, for the last 12 years, in our advocacy for strong ACH reform that will better protect our cultural heritage, is what we have worked towards. As the inquiry considers our submission, I ask you to recognise ACHAC's unique standing as an independent statewide

Aboriginal body, whose core businesses is ACH reform, and which approaches that task entirely free of any organisational ambition or conflict of interest.

**The CHAIR:** Members of the Committee have some questions. Is it a proposition, perhaps, that ACHAC would support these reforms and this bill if the Aboriginal Cultural Heritage Council was a differently constituted council? Is that what you see as part of one of the primary problems of the bill?

**PAUL KNIGHT:** Thanks for that question. I am getting feedback. Before starting to get into further responses, I will foreshadow taking questions on notice for a collective response from ACHAC. It is the matter that has not previously been discussed by the committee. To provide a personal response, I clearly indicate that this is both such, and I will seek a collective response from ACHAC to make that clear. Sorry, I'm actually hearing myself from about a minute ago when I was giving the affirmation, for some reason.

**The CHAIR:** Hang on a second, Mr Knight. Is it possible that you may have the webcast on in a different tab on your system?

**PAUL KNIGHT:** I will have a look. Yes, actually it is. I forgot to close it from before.

**The CHAIR:** That's absolutely fine. Thank you.

**PAUL KNIGHT:** Sorry. Back to your question, would we support this? For that I would need to go back to ACHAC. But, from my personal perspective, I will take that question on notice and I will provide a response from the committee. I believe that there is an opportunity to support this bill, providing that recognition and that diversity of membership of the ACH council is possible and achieved, and that that isn't locked in to one group or another. From my personal reading of the bill, I believe that there is the potential for that to happen. But it's not spelt out and it's not clearly defined, and I think therein lies the problem.

**The CHAIR:** On that point, do you think the system that we're operating under now with ACHAC is a good representative system? I recognise that ACHAC is an advisory body. If ACHAC perhaps was the decision-making body, do you think, based on the experience of ACHAC, that that would be a good system as the overarching body under legislation?

**PAUL KNIGHT:** I think ACHAC provides an interesting structure around membership. Clearly, for a statewide body, it does provide a diversity of views and perspectives, including from the legislative entities. ACHAC is there by legislation, but so is NSWALC. The NSW Aboriginal Land Council is a legislative instrument and so is NTSCORP, through the Federal system. So we all have our roles to play within that and those memberships are reflected within ACHAC. We also have independent community members that are drawn from communities with that cultural knowledge. As I have watched today's hearing, one of the things that has come up time and again is really focused on the local determination and that local content. ACHAC doesn't really provide that, but what we do is provide a good cross-section of State interest in Aboriginal cultural heritage reform. I think there needs to be those two things. This bill does provide an opportunity for that. So did the 2018 bill, which was supported by ACHAC.

**The Hon. ROSE JACKSON:** Firstly, I will follow up on the response that you just gave to my colleague, Ms Higginson. As you have touched on, there has been quite a bit of evidence that the idea of any kind of statewide representative body, no matter how it's constituted and whoever is providing the membership of that statewide representative body, is never going to be able to capture the breadth and depth of local knowledge and local capacity. Again, based on your experiences on the currently existing statewide advisory body, how might we reflect in law, if we were to pass new laws, appropriate levels of decision-making, consultation or engagement with those local bodies? How could we describe in our laws the effort that we would want to happen to ensure that those local voices were properly captured? As you say, it's almost impossible to do that in any kind of statewide body.

**PAUL KNIGHT:** Absolutely. I think the position that needs to be looked at there—again, the 2018 bill, and it's the same with this bill that we're looking at today, factors in a local representative council or committee to advise on those situations. It's imperative that that happens because the knowledge that's required to understand and interpret Aboriginal cultural heritage is at that local level. To really achieve that, there are also going to be different perspectives and different views on what's culturally appropriate. I think there needs to be flexibility in those local committees. They couldn't be completely prescriptive. A term could be made up or a committee could be formed from time to time to look at specific issues. That may work, but I think that really needs to be determined at that local level. It's really creating a breadth of possibility within the legislation for the definition and the constituency of those decision-making powers to be determined locally.

**The Hon. ROSE JACKSON:** Some of the evidence we have heard today, for example, has been that in the 16 areas where there has been a legally recognised native title claim, those native title owners—traditional

owners—would be, in a way, the local decision-makers. In areas where there was a claimant action on foot that hadn't been finalised, they might be local decision-makers. In areas where neither of those things was the case, obviously land councils could play a role. That's some of the evidence that we have received. We are trying to put this together in a Western legal framework of writing laws. Does that capture in a way what you're saying or do you think it should be more flexible than that?

**PAUL KNIGHT:** I think there needs to be a fair degree of flexibility in how they're constituted. They will need to change at different occasions because there may be representatives required from different knowledge holders for different areas. Across native title jurisdictions or land council jurisdictions, in my personal experience not everybody will have the full knowledge of those areas. So you're going to have to look at who are the knowledge holders in even those smaller areas within those locations.

**The Hon. ROSE JACKSON:** You mention this concept of ACH knowledge, of cultural heritage and cultural custodianship knowledge, as this recognised thing. Could you elaborate on how that works, how an individual or a group of individuals are recognised as having that particular cultural knowledge?

**PAUL KNIGHT:** That's a very good question, and probably one of the biggest challenges for any piece of legislation here is actually going to be identifying the knowledge holders and really, as we say, who speaks for country. That in itself is the difficulty, and that's really what we need to be focusing on. From my personal perspective, when I look at ACH reform, we can look at the overarching legislative frameworks. But until we can get down to who really speaks for country and that inherent capacity within communities, and we've worked with that and developed those skills and those knowledges for community themselves, it's really going to be challenged all the time from different perspectives.

We need to almost step back in some aspects of legislation. One of the biggest things that's required here is investment in Aboriginal communities to build that capacity. None of the legislation or none of the discussion that we really talk about is really focused on what's the investment required to actually deliver a suitable outcome. One of the biggest concerns that I personally have in this space is that a lack of investment will lead to failure. A lack of investment is why land councils really struggle to get traction within communities, and get a lot of pushback—because they don't have the resources to deliver it on the legislative frameworks that have been handed to them and said, "You need to do these things". Until we can really go, "Okay, we're going to do this properly; what's it going to take in terms of an investment?", we could actually be just setting Aboriginal communities up once again to fail. We kind of have to really step back sometimes and go, "Well, hang on, what do we want to achieve here?"

**The Hon. AILEEN MacDONALD:** My question is to do with Aboriginal cultural heritage with the meaning that is in the bill in its current form and the Aboriginal Cultural Heritage Advisory Committee. Do they align with what you're thinking Aboriginal cultural heritage should be—the intangibles, the tangibles? If not, what would you see changed?

**PAUL KNIGHT:** Absolutely, intangible heritage needs to be included within the bill or any legislative framework around Aboriginal cultural heritage. It is, from my personal perspective, the most important part of it. If you build a brick wall, you can see all the bricks. But if you don't have the mortar, the whole thing falls down. It's that mortar that is the intangible. It's the thing that really makes the wall safe. Until we can actually appreciate, highlight and celebrate the intangible heritage, we're going to really struggle to recognise Aboriginal cultural heritage in its entirety. Hopefully that answers your question.

**The Hon. AILEEN MacDONALD:** As a follow-up, how do you define the intangible—or is it not definable?

**PAUL KNIGHT:** Yes, I like to talk about intangibles as what are the story, the principles, the values, the behaviours? What are the things that really create identity? They're those value constructs that say, "This is the way we need to act. These are the things we need to do. These are the practices we need to enable." Because those are the intangible aspects of what makes us who we are. Regardless of whether you're looking at an Indigenous culture or any culture, it's those things that determine what you do and how you do it.

**The Hon. SCOTT BARRETT:** Mr Knight, we were talking before about trying to find out who speaks for country. How have you dealt with that in your deliberations on the advisory council? What has worked and not worked, in your experience?

**PAUL KNIGHT:** I guess because ACHAC is really that statewide body, a lot of the local decision-making in terms of cultural heritage does not come to ACHAC. We heard earlier about AHIPs, Aboriginal heritage impact permits, and consent to destroy—or I think they're called consent to injure or something now that's wildly changed the terminology around that. Those things are done under delegation through Heritage; they do not come to ACHAC. We don't make decisions around those things; they're made through local

heritage representatives through Heritage NSW. I guess the reality is we don't have to deal with those things. We deal with some of the largest items—so when there might be an Aboriginal place declaration, for instance, that will come to ACHAC.

One of the things that we'll note around that is what is the local support for this? What are the local perspectives? What are the submissions that we're getting from those groups around the support for an Aboriginal place declaration, and what's their cultural connection to that place? We will take that into consideration. We do not have legislative authority, if you like, to really change the course of cultural heritage outcomes. We're only an advisory committee; we're not a regulator. I think that's one of the things a bill such as this brings to the table—it actually puts the regulation of our Aboriginal cultural heritage in the hands of Aboriginal people. That is not the case today.

**The CHAIR:** On that, Mr Knight, in terms of the operation, the bill is proposing that you have this overarching State body. Let's say it has voices that are appropriately positioned to know, or at least find out, who at the local level can actually speak with cultural authority in relation to cultural heritage—whether it be to protect it or whether it be to possibly consider it being impacted. Do you see that as a sound, workable structure across the State? Again, you have this overarching body, but it would then find that localised service that can then feed the ultimate decision.

**PAUL KNIGHT:** I think, from reading the bill and reading the 2018 bill, my interpretation of the way that would progress is that the decisions would actually be made at the local level. Really, the only time that it's elevated up to the State body, if you like, is if something is disputed—if there's a challenge to that decision-making process. It would be my view that, if there was a challenge around that, it's really around process. Were the right things considered by those local communities? Was the process adhered to? It's an administrative function more so than a "We're going to make the decision for you because we don't agree", and I think that needs to be really understood.

If that's the case, I think Aboriginal people would generally support this process, because it's saying, "Well, the decision's still kept local; it's still kept by those custodians of knowledge". The only time it gets elevated up to the State body is when there may have been some misrepresentation or something wasn't done right. In my view, it'd go to the State body and the State body would go, "Oh, we need to look at that again", and would send it back and maybe assist or support the local body to go through the right frameworks to get the result at the end of the day.

**The CHAIR:** If you saw that system being properly resourced, are you saying that you think that would be the effective system or an effective model?

**PAUL KNIGHT:** I think it is but, again, that's a personal perspective on that. My challenge would be the resourcing around that, given, from my understanding—and I could be wrong on this—there was a bit of a view that the 2018 bill, which had that structure in it, was too expensive, hence why it wasn't progressed. Whether that's the case or not, I'm not making a judgement on that. I think the resourcing around this is really vital; otherwise it will lead to failure.

**The Hon. ROSE JACKSON:** I think one of the concerns that has been raised in evidence from, for example, representatives of some of the land councils was that they sort of suggested sometimes at that localised level—this goes back to your question of who speaks for country—that there were genuine instances of fraud, particularly if there are resources involved, to be honest; particularly if people are able to make money from being responsible for local culturally significant reports or determinations. They suggested in evidence to us that they believed that there were examples of people, who were not the right people to make those decisions or give that advice, who were doing that fraudulently. I suppose, first of all, is that a concern that you would share? You've been working in this space. Is that something that you have seen? Secondly, again, if we were to significantly resource this and say, yes, we know that to make this work we need to put substantial money behind it, how do we avoid that in future? How do we ensure that the system is robust enough to get around that problem? Obviously, it's going really to undermine the legitimacy of it in any future model.

**PAUL KNIGHT:** Yes, absolutely. Really, that comes back to that position of who speaks for country. Would I support the view of Aboriginal land councils that there's possible fraud being committed? Absolutely. I don't know that there would be a single person that would suggest otherwise within this space. That's for sure. The issue is the way the current legislation is being enacted around—and we heard the term before—RAPs, or registered Aboriginal parties, where basically anybody can put up their hand and register as an Aboriginal party. There is no validation requirement around that; there is no way of ensuring that the person has capacity or the knowledges of the background. As I said earlier, I'm Dharawal Yuin. I would not speak for most of Yuin country because I've never lived on Yuin country. That's my mother's family clan, that area. But there are plenty of

Aboriginal people or even non-Aboriginal people that would not do that. They would actually say, "I have a right to speak on that country."

People that have grown up with an intrinsic link to that country are quite often pushed aside because maybe that person is more articulate, maybe they are just easier to deal with or they are not going to say no to the project progressing. The consultants that are working in that space, most of their role is to actually get a proponent across the line so they can progress their project. The easier that you can make that process for yourself, the more likely you are to take that position and support those people that are going to make it easy for you. We really need to get that balance right. There needs to be a structure of validation in whatever occurs in this space. In my view, there also needs to be investment back into developing the capacity within communities to pass on those knowledges, to support those communities in delivering those cultural frameworks for the betterment of cultural heritage overall. We've got to remember that Aboriginal cultural heritage doesn't just belong to Aboriginal people; it belongs to all of us because it is something that if we lose, we lose it forever.

**The CHAIR:** Mr Barrett, I know you had another question.

**The Hon. SCOTT BARRETT:** I do, but I just stumbled across another one in what you've just said then. Did I infer from what you've just said that you wouldn't feel comfortable speaking about your mother's country despite bloodlines, yet you think others that have lived there for a while would be able to speak to it, even if they didn't have those bloodline connections?

**PAUL KNIGHT:** I think that's a really interesting question that you pose. I think if they've grown up—and this is what I was talking about before around mechanisms for validation, I guess, which really need to be held by communities. I do have that bloodline, but do I have the knowledge about those sites? Do I have the knowledge about the stories of those areas? I would say no. Personally, I would say no. There are others that may have different views. But the reality is, from an ethical and moral perspective of my values to Aboriginal culture, I personally wouldn't do it. What we need to do is make sure that communities have the power and have a mechanism where they can go, "Hang on, Paul, you're not going to come down here and talk. You might have that bloodline connection here, but you haven't got the cultural values knowledge that sits within that and, therefore, until you get that and you come and spend time with us and we can validate that you have embraced that knowledge, you don't speak for country. I'm sorry."

**The Hon. SCOTT BARRETT:** The question that I was going to ask is about the consultation. I'm referring to the submission.

**PAUL KNIGHT:** The opening, yes.

**The Hon. SCOTT BARRETT:** This isn't the consultation, just to be clear. This isn't the government consultation on it, which you do sort of refer to in this. But you're also saying there—and I don't know if Reverend the Hon. Fred Nile is in the room—that the proponents made no attempt to consult in a culturally appropriate way. This isn't a government bill, so I wasn't involved in this, but I suggest that the proponents would strongly disagree with that as did the land council that we had in here earlier this morning. I just wondered if you could elaborate a little bit more on that.

**PAUL KNIGHT:** I heard my brothers there, and I will admit to [inaudible]; I know very well. I actually support their cultural authenticity in this space and their ability to be able to advocate for Aboriginal people. The position of ACHAC has been that the 2018 bill had been widely circulated. There was a lot of consultation around that. The community knew what was being proposed. This bill wasn't circulated in the same way. It was basically just landed in Parliament and people weren't aware of it. A lot of people weren't even aware that it was being developed. It was a very small and exclusive group that was part of that consultation process to develop the bill. I do note that it had drawn quite a bit on the 2018 bill, but there are always nuances in these things that aren't necessarily understood. I think, from that perspective, this bill needs to be more widely circulated. That's the challenge, and that's the position that ACHAC has taken, which is that we need better consultation around this with a broader cross-section of the community.

**The Hon. ROSE JACKSON:** I think you've referenced this a little bit to the extent that perhaps this is a role that some kind of statewide body could play, but I think there have definitely been instances where at that local level there has been dispute about what should happen—I'm thinking specifically of the issue recently in relation to the Mungo remains. As legislators, we don't want to write laws that are going to make that more difficult or set systems up to fail. Thinking about examples like that where there is dispute even at the local level about what action to take or not to take, what sites have significance and what do not, is it your view that, if we are trying to write laws to resolve that, that those types of things would be referenced to the statewide body? To be honest, there is no perfect system here, but if we are trying to capture what might be a path forward, is that your view about how to resolve those types of things?

**PAUL KNIGHT:** This is again a personal perspective on this. I think, really, that the statewide body's role in that situation is actually to go out there and work with those local community groups to say, "Hang on, what's the way forward here?" And it may be a slower process, but that's the reality of dealing with Aboriginal cultural heritage: Nothing happens straightaway. On a similar note—and it's something that you've actually just reminded me from some of the earlier discussion—I gave evidence to the Juukan Gorge inquiry around Aboriginal cultural heritage and ways of better managing that. This has already come up today, and it speaks to that notion of better investment in this space. What we really need to do if we want to get Aboriginal cultural heritage reform right, one of the big things that needs to be invested in, is setting up the knowledge base early so that when projects or issues come to light, we already know what we're dealing with.

I've been in numerous situations with developers where they have already spent all their money on purchasing property and they just want to keep progressing their project. They have spent that money based on what they expect the yield from that project to be. When Aboriginal cultural heritage pops up, they go, "Hang on, I can't develop all that now." They get very upset—potentially rightly so, to some degree. I don't necessarily agree with it, but, from their perspective, rightly so. If there was investment that was there right at the start with the Aboriginal community to go out and start mapping the areas and saying, "Here's the areas that are completely non-negotiable. We will not allow any development in these areas. Here, we'll talk about it. Over here, yes, we don't think that's going to be a problem." Things may still pop up, but it's less likely and everybody knows what the playing field is.

This is where we always fail with Aboriginal cultural heritage because everyone starts down a path and then, "Oh, we've got to consult with the Aboriginal community." Then you start backtracking and the Aboriginal community is made out to be the baddie. They're made out to be, "Oh, you just don't like development." That's not necessarily the case. We just want our culture to be respected. We want our identity not to be challenged. We've had enough challenges around our identity. We don't want you to keep doing that. We don't want you to keep ripping apart who we are as a people because you want to put your road through or because you want to build your housing estate. We need to get that right. In my view, the easiest way to do that is to start investing in the Aboriginal community, mapping cultural heritage early.

**The CHAIR:** Thank you, Mr Knight. We are nearly out of time. Can I ask for one point of clarification from you? When we were talking about cultural authority and you spoke about mechanisms for validation, is it fair to say that that would be similar if somebody was referring to cultural protocols? Do you think we're talking about a similar thing there? We heard some evidence earlier where somebody was saying that they would know what the cultural protocol is—i.e., who to go to in the local community to ask about a particular part of cultural heritage. Are you referring to a similar thing or something different?

**PAUL KNIGHT:** It's very similar because it's about understanding that process of what the local values construct is for cultural heritage. Yes, it is very similar. It's probably thinking about the protocols. I talk about it in terms of values frameworks: What are the values? For me—obviously, again, a personal perspective—the notion of culture is a bit of a nebulous idea in some respects. It's really a set of values constructs that determines a behaviour and a way of doing and practices and principles that sit behind that, and you express that through language, dance, song, art. But they all form part of culture. That's where culture comes in: it's how you bring all that together. I think we forget that. We put so much emphasis on one particular aspect over another, rather than the whole.

This is where intangible heritage comes into play as well. Even though we're running out of time, can I just give you a bit of an overview summary? There is no doubt Aboriginal cultural heritage needs reform. We all know that and I think everybody agrees. The issue that I have, and many have, is what does that look like? Is cultural heritage just a thing of the past? It was interesting because I've heard this brought up today as well. The "stones and bones" Western-scientific view and analysis of heritage is definitely where we're at, at the moment. That's all we are seeing. The question is, "What does this add to our knowledge of Aboriginal people and the way they lived?" It actually forgets that we are still living. It is the oldest living culture and it's still moving forward, and it's still there.

So, because we take that Western-scientific perspective, we continually destroy and desecrate sites because it's in the interest of science. It's not in the interest of the values of Aboriginal people. We need to consider that. We need to consider: Is Aboriginal cultural heritage about the here and now as well? Is it about giving Aboriginal people recognition of their connection to this State—the State we call New South Wales? Is it about celebrating and connecting and informing a dislocated and disconnected people with the identity that they need to enable us to move forward? Is it about re-establishing customs, practices, values structures in a modern context to give them relevance in this changed landscape? These are all questions that I don't think the current bill really addresses and I don't think we look at when we are considering Aboriginal cultural heritage.

Is it about the past, is it about now or is it about the future? How do we make sure that those values and customs and practices still have a place in another thousand years' time? What's the artefact we're dropping today that's going to ensure everybody can embrace that identity? I personally don't know if the reform that I've seen proposed or discussed really encapsulates these aspects. If we can look back and protect the sites and objects, are we worse off? If we don't protect them, we are, because we've lost something. If we can't celebrate, promote and resurrect the values, practices and belief structures that actually created those things in the first place and provide that identity back into Aboriginal people, which is all part of our cultural heritage, are we worse off? Absolutely.

If we can't determine who we are today and how we bring these structures into the here and now, what does that mean? We, as a society—not just Aboriginal people, in my view—all need to come together, look at these belief structures, the relationships that enabled them and enabled us to thrive in this place for tens of thousands of years. We can look back and go, "Hang on, this is the past." Actually, there's a lot of good values and information and practices in there that allowed Aboriginal people to survive on this country without really leaving anything of substance that looks like desecration—a few grinding grooves here, some artworks there. But it was that connection to place, that connection to country and the values that are inherent within that space that makes us who we are—which are those intangibles. Those things are super important and we really need to focus on that. Let's say, "Perfect is the enemy of the good." What if the good isn't good enough? Maybe, in this case, the good is what we need. I don't have a view on that. But I think we need to be really thinking about what it is we're trying to achieve here. How will we be recognising and celebrating and developing the identity and inclusivity of Aboriginal people in the future we all need? Thank you.

**The CHAIR:** Thank you very much for your valuable evidence, Mr Knight. If there were any questions taken on notice, the secretariat will be in contact with you to receive those within seven days.

**(The witness withdrew.)**

**RACHAEL CHICK**, Senior Solicitor, Environmental Defenders Office, affirmed and examined

**SCOTT FRANKS**, Wonnarua Man, Client of the Environmental Defenders Office, affirmed and examined

**KAZAN BROWN**, Gundungurra Woman, Client of the Environmental Defenders Office, before the Committee via videoconference, affirmed and examined

**SCOTT FRANKS:** I am the CEO of Tocomwall Pty Ltd and also the appointed native title applicant for the Plains Clans of the Wonnarua People in the Hunter Valley.

**The CHAIR:** Would any of you like to make a short opening statement?

**RACHEL CHICK:** Yes, thank you. Firstly I acknowledge that we are currently on the lands of the Gadigal people of the Eora nation and I pay my respects to their Elders, past, present and emerging. The Environmental Defenders Office welcomes the opportunity to appear before the Committee in relation to the Aboriginal Cultural Heritage (Culture is Identity) Bill. EDO is a non-Indigenous community legal centre. We work alongside First Nations around Australia and the Torres Strait Islands in their efforts to protect countries and cultural heritage from damage and destruction. The cultural heritage of First Nations has not been adequately recognised, respected or protected by Western laws since Europeans arrived. Western laws today are still failing to provide the necessary respect to First Nations and protection of their cultural heritage.

This failure is in breach of our international law obligations, including under the United Nations Declaration on the Rights of Indigenous Peoples, which Australia has adopted. EDO strongly supports standalone New South Wales legislation that deals with the protection of Aboriginal cultural heritage designed by First Nations for First Nations. Standalone legislation is long overdue and it's unacceptable that New South Wales laws continue to facilitate damage and destruction of heritage at all, let alone under flora and fauna legislation. For standalone legislation to be effective, it must reflect Australia's international legal obligations and be co-designed by First Nations from across New South Wales. First Nations must lead the development of a consultation process to ensure that it is conducted in a culturally appropriate manner and the views of all New South Wales First Nations communities are heard—not only those who have the means to attend two hearings in Sydney CBD.

EDO has a diverse range of First Nations clients across New South Wales who have a diverse range of views on these critically important and personal issues. There needs to be space made in this law reform process for a plurality of First Nations voices to be heard. To this end, two of EDO's clients—Kazan Brown, a Gundungurra woman from Warragamba, and Scott Franks, a Wonnarua man from the Hunter Valley—have generously agreed to speak to the Committee today about their experiences with current legislative frameworks and their thoughts on the bill. EDO considers that this time is best spent by the Committee hearing from our clients. I am happy to take any legal or technical questions from the Committee on notice. Thank you.

**The CHAIR:** Thank you. Mr Franks or Ms Brown, is there anything you'd like to say before we start asking questions?

**SCOTT FRANKS:** If Ms Brown wants to speak first, I'm fine with that.

**The CHAIR:** Great.

**KAZAN BROWN:** My name is Kazan Brown. I'm a Gundungurra woman currently living in Warragamba. My family lived on country in the Burragorang Valley prior to being dispossessed by the building of Warragamba Dam. We were the last Aboriginal family to be trained out of the valley when the dam was built. Current legislation, built upon the falsehood of terra nullius, continues to desecrate our sacred sites like they have since invasion. The sacred site is not independently isolated artefacts but is a larger story that traverses the country now called Australia. Our sites form part of the country. For us, that's an entity. Country is our mother.

The Warragamba Dam wall project is the perfect example how legislation has failed: from the contractors doing the least they had to do to meet current requirements, knowledge holders being excluded from surveys and contractors having their work and findings carefully edited to favour proponents. Legislation has failed to protect a large part of my remaining heritage. Furthermore, we are routinely denied access to the area. My children and grandchildren do not have the chance to learn about their heritage on country before it will be destroyed. I welcome the recognition in the bill of the United Nations Declaration of the Rights of Indigenous Peoples for country and the application of those rights.

Free, prior and informed consent entitles Indigenous people to [audio malfunction] the outcome of decision-making that affects them. It is not merely the right to be consulted about projects that others will ultimately make decisions about. However, the bill will create bodies—the ACH Council—and local ACH services will give the power of decision-making to people who are most likely not directly descended from the



land in question. This goes against [audio malfunction]. The bill seems to be shuffling the responsibility of decision-making from one Government department to another bureaucracy and does nothing to fix the problem that produced this. The bill does not give me a voice and it assumes that the ACH bodies will represent all communities. It doesn't go far enough in protecting intellectual property and gives land councils and other Aboriginal corporations too much power.

The decision around cultural heritage should be made by the community that lived, or have lived in the area, and has cultural knowledge of that lineage. Land councils and other Indigenous organisations do not speak for every community. In general, Aboriginal land councils are organisations fed by Government money. This puts them in direct conflict with traditional decisions. My local land council is made up of a few truly local families and then many others who left, moved off country, and settled here. While so many of them may have grown up here, they have no real local cultural knowledge or connection to the area. These people should not be able to make decisions about my cultural heritage. Indigenous people should not have to be a member of a land council or an organisation to have a voice.

Like many other Indigenous people, I have no desire to become a member of a land council. However, I have been forced to become incorporated to be taken seriously, have a voice and gain insurance just to access my country. We shouldn't have to do this. I think the ACH bodies proposed by the bill will throw open the doors of corruption and fraud and further destruction of culture rather than protecting it. This bill does not empower communities and will fail in the protection of Indigenous heritage. Current laws and legislation need to change, but this bill is not the answer. Thank you.

**The CHAIR:** Thank you. Mr Franks?

**SCOTT FRANKS:** I'm glad I waited. Being a native title applicant, it's an important community-appointed role and I just want to clarify—we always hear this word "community". When I hear it, though, I don't hear "community"; I hear "Wonnarua". Everyone else uses the word "community", which has no bearing in our Wonnarua country because we are the community. We've sweated, we've bled and we've died on those lands and it's hard to sit here. I welcome the opportunity to speak in front of the Committee about this bill. Being involved in Aboriginal archaeological work for over 15 years and being an ex-chairperson and being on this committee and that committee and watched several bills float by like a rollercoaster, I have never ever seen anyone really land on the true understanding of what it means to be an Aboriginal person in this country—except for an Aboriginal person who's confronted with a dire position of trying to protect their law and culture.

From what I've seen, even today—and I had to have a bit of reflection this morning when I overheard a conversation with my middle daughter, Molly, and her mum, Sarah, when she said, "Mum, the kids at school are telling me I'm not Aboriginal because I'm not black enough." Today! My wife said to my daughter, "How do you feel about that?" She goes, "Well, I know I'm Aboriginal." And I thought, instead of me jumping on my bike and ripping down to the school, it's time to let the kids move on. But, as an appointed representative, a native title applicant and once a registered native title claimant, one thing I've seen in our country—and I'm only going to speak from Wonnarua country because I think this is what this bill doesn't get: I'm not authorised to speak on any other mob's country. I'm just not; culturally, I am not. Even in my day-to-day work, if I take a contract on as an archaeological firm or an ecological firm, I always seek permission from the traditional owners before we start the project. If I can't get it, I won't do the work. Where the bill is deficient is using this shy word of loosely committed to "community". It has no bearing in our people. It doesn't. It's a white person's word that really cuts to the core of our law and custom.

I'm sitting here today to talk about a bill that's asking an organisation to give authority to make a decision that could ultimately change the way my people are treated into the future by our creator, Baiame. Baiame gave me and my people law that I must respect. My skin tag is a koala, yarra. We can't touch them yet other mobs hunt them. I am going to be confronted by someone from a lands council, probably from over the ranges—there's a few over there without a doubt that would give a poor old yarra a tap on the nut. That doesn't sit right with me, and it can never ever sit right with us here as First Nations people because I think the biggest thing that everyone has forgotten about is Australia is much in the sense a mini-Europe.

We have all these different countries, borders, languages, laws and customs. You drive across Europe, the speed limits change, you get booked by different police and you're chased all over the place. That's how you've got to look at Australia. In the Hunter I've seen the absolute desecration, decimation and annihilation of my people's country for profit. I've seen it every day, including today. I just got an email from a mining company, which sat down with a group of people, not Wonnarua, who basically gave a position that they support an open-cut coalmine. If you can imagine that—I don't know if anyone has been to the Hunter Valley past Pokolbin but it's not pretty vineyards. After that it is big holes in the ground like the dark side of the moon. If you could imagine

someone coming in and putting a wall up in Sydney Harbour and draining all the water out of it, I've seen that, times 37 in my people's country every day.

When I go to the local lands council and ask them to defend me and my people as the claimant, the appointed claimant, mind you—I've been put in this position, along with Robert Lester, by advertised meetings over five years to appoint the right people to speak. We then went through genealogical process to prove we are—we had one of the first missions in my country, the St Clair mission. It decimated our people in the sense of—it introduced smallpox, chicken pox, polio—you name it. Everything was tested up in my mob's backyard. My ancestry comes from the First Fleet. My European side was here on the *Sirius*. He came over here. He then moved to the Hunter Valley. My white side was brought here as range riders to take the lives of First Nations people.

I sit here today with a heavy heart in front of all these people, elected by this State to speak on their behalf and hope that you hear me being elected from my people in my State, Wonnarua country. This bill fails exponentially—it's really hard, it's really emotional for me because I had a big couple of weeks. I noticed the earlier discussions and some that I've just heard. I just want to reflect on what we do. Archaeologists—that's what the 2010 community guideline relies on. But I need to say that archaeologists are not suited or even qualified to deal with Aboriginal heritage. Their discipline is designed to find clues to prove human society was in an area in question in a point of time. The 2010 community consultation guideline even states in section 3: To be able to understand both the intangible and nontangible you have to use academia discipline of anthropology. So, we've got two things going on here. We've got Indiana Jones, because that's what archaeologists are: cowboy hat, whips, run around the paddock, being chased by big spiders, trying to determine that First Nations people lived here.

I've got a room full of them in my office. I can see them at any time. Yet, what they are showing us is something we don't need to be taught. We all know the First Fleet turned up here. We all know terra nullius. We all know this land was inhabited. We all know that our First Nations people are here today in front of our second nations people. I'm here alive, living and breathing. But the problem with archaeology from a commercial setting is that it's designed to find remnant artefacts, stone tools, markings on trees and so on to show that society was here. We know we don't need that. The true element to understand culture in law is not those stones and bones that we heard spoken about a minute ago; it's about what I'm trying to tell you that's coming out of my head right now that was passed down to me from my father, his father and his mother and his mother. Archaeologists can't do that; they never do that.

If you look at some of the environmental impact assessments that are coming out of my mob's country, you'll see I've got an archaeological, discipline-trained person who is actually an Egyptian archaeologist, running around Wonnarua country talking to 110 registered Aboriginal parties, being paid \$660 a day by a mining company to tell them what they want to do. The only group that can provide any ethnographical evidence or anthropology for what actually happened there is sidelined. That same group is the only group that has tendered and provided depositions and dispatches from the Crown that settled this country in the 1800s. I sit here today absolutely confused with a private member's bill that has had such limited consultation, such limited working within the community—as in the traditional owner community—that has been presented and hurriedly and hastily thrown through the same way that a longboat came off the *Endeavour* post haste to the shore to convince the traditional owners that we were here to look after you when they had no intention of doing that. They were here to steal our culture—not just our land, our law and our customs, but our culture.

You cannot place a Wonnarua man in a position to accept a white man's culture in the guise of a bill that's never ever been put out there for any other mob to discuss. The timeframe is unacceptable. I have got a lot of notes, I'm not going to focus on them because I'll probably get a bit teary. We've been working on a change to the Aboriginal heritage management plans legislation or consultation for a long time. I walked into a meeting one day in Redfern and I was shocked when I walked in there because I knew 99 per cent of the firms in there weren't Aboriginal; mine was the only one in there that was Aboriginal. I asked a very important question. I said, "How many of you fellas are blackfellas?" Honestly, if corporal punishment was still in play, it would have been delivered that day on me. I then demanded that if you weren't an Aboriginal person, you should leave the room.

The Government at the time then decided, yes, let's split the room. There was me and about five people sitting left in the room and everyone else went down to another room. What we were confronted with was archaeologists trying to negotiate a new bill to protect their own job. That's all this is all about. The archaeological association of Australia is a committee that will fight hard to protect the interests of its own discipline that has no relevance or wealth in dealing with people that still exist. We are still here, and I do not need an anthropologist to tell me that. What I do need though is a government that hears me when I say we need an anthropologist, not an archaeologist, sorry. We need an anthropologist to join the dots so that this House and every House moving forward not only truly understands the *Burra Charter* but the United Nations declaration to First Nations people in hearing our voice and accepting it.

This bill does not give us that. The bill gives us a finite industry, archaeology, which just like mining coal in the Hunter Valley: It's going to run out. You can only take so many artefacts out of the ground until we get to a monolith, which is a very small fracture of a piece of silcrete, which is going to add more value than the harbour bridge. Is that what we're going to as a society? This is the only place on earth that doesn't have a treaty with its people. How can it be? Yet, we have a lands council attempting to put together and support a voice, without traditional owner voice. To me that flies in the face of the New South Wales land rights Act.

When I was chairperson of the lands council, we were restrained from signing off on and/or supporting the destruction of Aboriginal culture. We were encouraged to negotiate agreements with traditional owners. That's what happened when I was there, but it seems to have taken another path where it has turned into a developer. We are seeing that now play out in the last few weeks in the media. We have got parks that have been obtained under the land rights Act and people have been locked out—not just First Nations people but second nations people have been locked out without any permission. It doesn't make sense to me. I will close on this because I know I waffle a little bit; I know we haven't got much time. It is important to understand that when you are speaking "community", you are speaking to that community. If you looked at Australia right now and New South Wales—and we are focusing on New South Wales—you would find that around 60 per cent to 70 per cent of the State of New South Wales is currently covered in registered native title claims and several withdrawn native title claims—not dismissed but withdrawn. For those organisations to get to a level of registration, the bar is so high to prove who you are. Under white man's legislation, it is near impossible to get a claim registered.

It has happened to me. As a registered native title claimant at the time, I was told by archaeological firms and the Office of Heritage and Environment and a couple of other government departments that even though we've got a native title claim registered, we have no more authority than a person responding to a registration of interest in a paper who has provided no evidence that they're even Aboriginal let alone a First Nations person or a second nations person. We could effectively, under the current 2010 community consultation guideline, take a person out of Villawood, have them send an email to a consultant saying, "I want to register my interest as an Aboriginal person," and rest assured under current policy they would be registered and they would be consulted. If not, they could walk over to the Land and Environment Court for failing to consult. It's a problem.

How much more do we have to say to get our voice back? Because as I sit here today and as I reflect on this bill, what I'm seeing is the same legislation that was introduced I think in 1901, and it was called the inland mission legislation—someone speaking for me. Everyone deserves their own voice. Every community deserves their own voice. Every child and every unborn child has their voice. In traditional law and customs, even our babies on their way have their voice. They are protected.

Where I come from, we have a mythological side of a being like a bunyip. I think the only way to end this is to tell you some stories where our women would go to birth. I can share this story. It is a woman's story, but it goes to the beginning of time—if I fumble a little bit, it's because I'm trying to translate something that an aunty has told me—where this pond had this being like a bunyip that would come out of the water at night and walk the lands where the newborns were, because they all came to this pocket. If the other mob across the ranges, the Gamilaraay or the Wiradjuri or the Darkinjung or anyone, stepped foot in that area and raised threat to the babies, this thing would drag them back into the pond and there they would stay forever.

An archaeologist can't tell you that. What that archaeologist can tell you though is, "There are a lot of spearheads laying here. What happened?" And if he looks a bit harder, he might find some 50 millimetre musket shot from a Betty Brown from where the British turned up this month in 1830 and slaughtered 26 of my people at Ravensworth. That is what archaeologists can prove today, how my people were shot, hung and impaled. It can't tell me or anyone here what it means to me to look up at Baiame today and hear his story echo in my mind from my father and his father and what it means to me to be a descendant brought here by Baiame. I think I'm going to finish on that.

**The CHAIR:** We heard some evidence a little bit earlier, which was very similar I think to what you were saying, Mr Franks, with regard to cultural authority or authority to speak to culture, that the native title system is presenting a gold standard. Am I right with regard to your view towards that as well?

**SCOTT FRANKS:** Yes, it is, and to qualify that—and I'm only going to speak on Wonnarua because I think that's all I'm authorised to speak on. The plains clans of the Wonnarua people, we got together and formulated a process to test native title, even though it's a white man's law. It was the only way we had to figure out who was who because we'd had enough. What had happened, when we'd lodged the original claim covering 6,500 square kilometres, it went through a registration process. We were required to call public meetings advertised to have every man and their dog turn up, and everyone we all then established, "Yes, we believe we're Wonnarua."

We needed to then engage an anthropologist, so we asked the Federal Court to give us a list of anthropologists, which we did. We first initially appointed Frank McKeown; he's number one on the list. He ended up becoming ill and couldn't do it. We then engaged Dr Neale Draper; he was number two or number three. Why we had to do that was we had to convince a tribunal of experts, both archaeologists, anthropologists, ethnographical individuals—these are specialists—not about stones and bones but: Are we dealing with the right people? That resulted in a positive outcome for the whole-of-country claim.

That level of getting registered is far beyond anything else than anyone else is expected to do. To get on a heritage job now, you've just got to respond to an ad in the paper. To become a member of a lands council, you just need to—and I actually put it in my notes—turn up at a general meeting and have a member know you or admit to knowing your family, and if they get the vote, they're in. We've even seen right now—I think in the media you've seen a lot of high-profile Aboriginal people being named as not being Aboriginal because research is now coming out through anthropology. That's why I'm saying the National Native Title Tribunal in my mind is a gold standard for two reasons. The native title legislation here in Australia—you have a Federal native title and you also have a New South Wales native title that everyone seems to forget about, and they mirror each other. Don't underestimate how important that legislation is.

We actually withdrew our claim because after several months of anthropology and everyone being involved, we opened the doors then through mediation and we'd actually discovered that we had an issue with our authorisation with one of our lines. We had a meeting and the end result was we by consent withdrew the claim and then prepared to resubmit but obviously COVID kicked in. Just to qualify what happened, me and Robert as the applicants tried to sneak one past the goalkeeper to get it done again, and they picked up on that we didn't have a duly authorised authorisation. We didn't have a physical meeting so it was rejected. That's how important it is. At that meeting, you are then appointed. It's not me. I wasn't saying, "I want to be appointed." I'm pretty shocked that I was because of how old I am to be honest. But they put me and Rob together. Rob is in his eighties; I'm in my late fifties—good mix, we even each other out. And it's up to the people there, and it's those people who are asserting to be the traditional owners from that specific area that make that decision.

**The CHAIR:** On that, are you aware of, and what do you say about, traditional custodians who may have been locked out of a native title process? I acknowledge and respect that you're saying you speak for your country—

**SCOTT FRANKS:** Yes.

**The CHAIR:** —but I also know you've had a lot of contact across the whole State. Are there people that you're aware of that may have been locked out of that process or it hasn't worked as well?

**SCOTT FRANKS:** Yes, I am. What had happened with our claim, because there were some changes under the native title legislation, we were then fortunate enough to be allowed to set up a prescribed body corporate for the Wonnarua people. That's a standalone organisation that's registered under native title to protect the interests of Wonnarua people. But there's a trigger in there that if anyone else over time comes up to be Wonnarua or is proven, they automatically have a seat opened on the board, so that voice is automatically brought into it. We have no control over that. That's the constitution; we can't change it. It's a far better way.

Just leading away from that, Chair, we then looked at, under the Lands Rights Act, the traditional owners list. It's a nightmare. Not only is there an attempt to buckle together traditional owners in one melting pot; there's no clear definition of which family comes from this creek line or that creek line or that range, so you're always going to get arguments. But we've even seen firsthand here I think—I've read the submissions—where a traditional owner registered on the traditional owner for the Guringai people has effectively had their rights under the Lands Rights Act system revoked. Their standing as a traditional owner under the Lands Rights Act, the management of that has been negotiated and given to a local lands council where this traditional owner, who is identified, can't even gather wood on his own land by the local lands council. I just don't understand the sense of this bill.

**The CHAIR:** The bill is proposing a State body. If that body was appropriately constituted and was a body that had the right representatives to be able to work with and empower the already empowered local cultural authority to make decisions about whether it's cultural heritage nomination, protection, intangible, tangible and, of course, what happens, that is, impact or harm, and if that overarching body was a body properly constituted to make contact and be the conduit to empower the local decision-maker with cultural authority, is that is a system that could work with regard to cultural heritage?

**SCOTT FRANKS:** I'm going to answer that but also if Kazan could, because she has got her mob to speak for. So I'm just going to briefly say that the land rights system can never work with a traditional owner. They are geared up to be a developer under the land rights Act—simple and short. What you're going to be stuck with is what we're seeing today, which is a minority vote system playing out in community. Where I come from,

as I said, there are 110 Aboriginal registered parties. They are there because we have 36 mining operations, and they know that they can gang up on us. Look at what's happening now playing out in the Hunter Valley with Glencore and everything. We've got substantive evidence to show a massacre site, unquestionably identified, yet we've got a mining company saying, "No, they're only one of 100 people." And that's what's going to happen, I think. So I think the right way is that the lands council does have a place for a voice but not here. Sorry, I'm going to finish and let Kazan speak.

**The CHAIR:** Ms Brown, did you want to make comment on any of the questions I've been putting to Mr Franks about the Act and how we can manage the structure?

**KAZAN BROWN:** It's very complex. I am a local Indigenous person. My family lived in the valley for hundreds of years. I'm not part of the native title claim at all. There's an ILUA here over the land. The problem with that is that that's not open to community. So I can't go to a meeting. I have to be invited. There's no communication with community. So we don't know what they're doing. If these bodies came about, they could sit there and they could be speaking to me. But at the end of the day, I don't know what they're doing.

**The CHAIR:** When you say "they", who are you referring to specifically?

**KAZAN BROWN:** The ILUA board or the ILUA council. I'm not sure what they call themselves. They're there to apparently speak for all community but they have no communication with community.

**The CHAIR:** But is that an ILUA set up through a native title process or is that separate?

**KAZAN BROWN:** No, it's set up through native title.

**The CHAIR:** Excuse my ignorance but are we perhaps now hearing of a system where the native title system hasn't performed as a gold standard in this particular instance?

**KAZAN BROWN:** No, it hasn't here.

**SCOTT FRANKS:** Are you finished, Aunty?

**KAZAN BROWN:** Yes.

**SCOTT FRANKS:** I'm actually very familiar with that ILUA. It's out at Pheasants Nest. You don't need a native title application or a claim to negotiate an ILUA. We've seen that very clearly with the pistol club four years ago just outside of Sydney, where a group of people had got together with the pistol club and negotiated an ILUA. We've seen then the rise of the National Native Title Tribunal and the registrar of Aboriginal land rights lodge objections to the tribunal, saying this ILUA should not be registered. It hasn't met the native title standard. And they were basically silenced, because under an ILUA—an Indigenous land use agreement—you just need both sides agreeing to it. They don't care who's who. We have an ancillary agreement in deed 31, which has now expired because of the claim's withdrawal, over a mining company in the Hunter Valley.

But I think there have been changes now to the New South Wales lands legislation where if a native title claim is now registered, New South Wales lands have to negotiate Indigenous land-use agreements with those registered native title applicants. If that happens, this debate we're having today here goes away. And that's what I think this bill doesn't understand. That is, if native title is determined, which is highly unlikely in New South Wales because of the disruption from the First Fleet and missions and that, everything we're doing today—all that it has done is separate people.

I'm just lost with it, because I'm born and bred in Singleton, and I turned up a week before the AGM at Wonnarua lands council. I'm just going to give you an insight into what happens in a community. I sat down at the post office that night and as everyone walked past I said, "How are you going? My name's Scott Franks. Would you like a cigarette?" And I started talking to them. I had the majority vote ever cast at a lands council for me to be appointed as the chairperson. I just tested the system. And then I have never seen those people again.

I've seen on submission 8—I read that. I've looked at the stats. I then cross-referenced them and it's pretty obvious: The lands councils have a problem with justifying their quorums. What is going on? Why are so many people members? I'm a non-voting member of Wonnarua lands council. I moved to Sydney and became a member of Tharawal Local Aboriginal Land Council. I then moved to Miranda. I made an application to La Perouse Local Aboriginal Land Council. My membership is still held in abeyance after seven years because I took on the lands council over a first contact site that should never have been destroyed. That's the problem with the lands council. One of the aunties at Lapa, whose oldest great-great-grandfather is the guy who gave Cook the boomerang, has had her membership cancelled because she speaks her mind. She is a Bidjigal Elder. It is her country and here she is told she cannot speak in a building that is run by the lands council. What a joke. I'm sorry.

**The CHAIR:** No, don't be sorry. I want to ask you this, particularly because you've raised that your country has been so impacted by State significant development: Two things this bill seeks to do that have caused some controversy in some submissions are that it includes that State significant development and State significant infrastructure would be subject to this bill and it includes what is often referred to as a right of veto. Is that something that you see as being a positive aspect of potential cultural heritage laws stepping forward?

**SCOTT FRANKS:** With the utmost respect to the Hon. Fred Nile, he's not a blackfella. My culture doesn't have a price on it, and I've seen firsthand now the systematic destruction of 97 per cent of my peoples' country. I've got one birthing site left in our country. We have eight grinding groove pads. The Bulga Bora ceremonial sites have been impacted. The only Bora sites we have left you can only find by satellite imagery because the land has been so scarred. We have one of the most well-recorded massacre sites in New South Wales, recorded by the hands of the British themselves, gloating about how they slaughtered our women and children. And at that same meeting, when I'm trying to voice that, as, at that time, a registered native title claimant for the Plains Clans of the Wonnarua People, I've got a non-Aboriginal CEO at the Wonnarua lands council standing up telling everyone I do not know what I'm talking about. He knows more culture than me.

This bill is poorly conceived. It's not from the mind of an Aboriginal person, let alone a First Nations person. It's reminiscent of the inland mission legislation where, with the utmost respect to the senator and his cultural beliefs in his creator, Jesus, God or whatever he wants to call it—he needs to keep in his wheelhouse. If he wants to learn about my culture, I'm happy to take the Hon. Fred Nile up to the Hunter Valley. He can have a look at Baiame. He can keep his holy water to himself, but he can have a look at Baiame. And then I'll take him up and show him the god that—I don't even know what to call them. The god that is being supported in my country is called the dollar. It's the dollar from the mines. They have all got the same logo. It doesn't matter if it's Glencore, Rio Tinto, Yancoal—whoever. There's one thing in common—the mighty dollar. That's their god. I was a Christian a long time ago, when I was young and naive before I went to the army. One thing that I learnt being a Christian was forgive those if they seek your forgiveness. To date, nobody has asked my people if they can be forgiven or if we want forgiveness. We're denied that. We're not even heard.

The mission had a system where our voice, our language, our dance and our culture—and I heard that talk here today—was taken. We weren't allowed to do it on the mission. I'm in a very unique position because my ancestors were brought over here not to pacify the First Nations people but to take them—the European side. This is how close it is. My grandfather Charles Henry Franks' wife was Sarah Smith. She was an Aboriginal woman from Scrumlo, Bowmans Creek. He was up there with his father. He wasn't up there to take her a cup of tea. He was up there to leave lead behind. That's what was going on. They somehow miraculously fell in love. They got married and that's our family today.

The properties where our people were massacred were owned by Dr James Bowman, the surgeon from the First Fleet, and the property next to him was Lieutenant Lethbridge, an officer from the First Fleet. My ancestors were there because they were on the ships with them when they came here—on the First Fleet. My great-grandmother Matilda was given to her British husband by Lieutenant Lethbridge because he made her pregnant and the local mob booted her. I went down a pathway with my family where we had—forgive the expression, but I'm going to say it—half-castes, where my European side from Muswellbrook, where we had land grants, shunned my mixed-blood heritage and we moved to Mount Olive. We bought and were given property grants across the road from the St Clair mission. The bill has only heard one voice here and it's a developer's voice. That's what I think. The question really is back to him. What would happen if the same committee was given a position to make an authoritative decision over the redevelopment of the Opera House? How would he like that?

**The CHAIR:** The bill in its current form does propose what is often referred to as "the right of veto" for those with cultural authority in relation to State-significant development, State-significant infrastructure and other forms of development. Is that something that you would see as a progressive step for cultural heritage laws into the future?

**KAZAN BROWN:** I am a rep on the Warragamba Dam wall project. We're set to lose over 12,000 sites if this goes ahead. If this bill is in place, the Warragamba Dam wall would already have been up and we would have lost everything. This doesn't give communities a voice and that's the problem. We need to be talking to community, not land councils, not organisations and not people who claim to speak for the whole community, because they don't. I just think the whole thing is a waste of time. You've got patriations going back to these bodies. Why aren't they going back to family? I've got family, unfortunately, in a museum in Canberra. If this bill were in place, they would come back and they would be buried under whatever the council decided. It shouldn't be like that. They should be coming back to family. They should be coming back to community. I just don't agree with anything from the bill, other than the UNDRIP, the United Nations Declaration on the Rights of Indigenous Peoples. That's the only thing that I think is good.

**The CHAIR:** What about the notion that it's seeking to acknowledge and protect intangible as well as tangible heritage? Is that something positive?

**KAZAN BROWN:** It's positive, but I don't know how. I've read this bill. I can't remember what it said. Something about it not being able to—intangible—I can't remember what it was. Basically, I could have read a book and got that information out of a book, and then went and started some sort of tour. It doesn't protect our intellectual property and our intangible culture.

**The Hon. ROSE JACKSON:** I think there has been a sense that the concept—forget any of the detail of this bill—of standalone legislation to protect Aboriginal heritage is a good concept.

**SCOTT FRANKS:** Without a doubt.

**The Hon. ROSE JACKSON:** Obviously, you've been really clear about the top to bottom problems with this proposition. We're all white people in the Legislative Council. We're stuck in that situation where we want to, in a way, do the right thing and make law in our framework that protects that, but we're always going to be limited by those things. If we just started again, with all the bills that have been put forward, the reference groups and the meetings that have happened, how can we fix this? How can we, as white people in the Legislative Council, try to come up with a system that suits our Western legal framework that delivers on the aspirations that you've described for your people? I guess I'm asking, in a way, about a consultation process. I don't like that word, and I'm sure that you're sick of it too because it's just talk, talk, talk. I know that consultation, in a way, is the answer, but I want to go deeper than that. I want to look more at what does that actually look like? What are you looking for in that?

**SCOTT FRANKS:** When I sit in front of my mob, there are a few things that I always hear. It is food on the table, education and acceptance. Unfortunately, when this land was taken, in my mind there was never this foresight to understand different mobs, different laws and different customs. In a perfect world—I agree with Kazan. These organisations that are propped up under the Aboriginal associations Act 1976—I have one, it's all my family. There are three or four in my mob's country who don't represent the Wonnarua people and they're actually not Wonnarua. I've seen organisations with millions of dollars. It's all on the public record. Some \$4.2 million in one organisation in the Hunter Valley yet one of her aunties has passed and is gone now. She was always being pulled up her stairs backwards on a wheelchair because she couldn't afford to get a ramp and she was a founding member of the organisation. We had to go to the mines with hat in hand to get her buried.

Community-run organisations are not the answer with this, nor are LALCs or anything like that. We've had this discussion for 10 years. Draw a line in the sand. Come with us on country and understand culture and what it means to those people, not the flash ones like me turning up here in a suit and talking to you about what's best for my people. I'm here speaking on behalf of my people but I'm always going to be compromised by what I want. It's a hard one, it really is, for you guys. But, you know what, you guys have responsibility to deliver this. You're elected, not me. Not by your government or your laws, I was elected by my cultural laws. This wouldn't be happening here back in the day. You come into our country, I don't think you'd be going home back in the day. There is a lot of archival history that proves that through anthropology but not through archaeology.

**KAZAN BROWN:** I want to say that you said that you wanted a system that fits in with your white law system. That's never going to happen. You're going to have to change your laws to suit us. It's time that you started listening to us and changing things to suit the way that we live, our culture and our tradition.

**The Hon. ROSE JACKSON:** What's the first step in doing that?

**KAZAN BROWN:** You need to talk to community. You need to come into community and sit down and talk to the people who live here, not the organisations and the land councils. You need to come and talk to the people who live here on the ground and are fighting every day to save their sites.

**SCOTT FRANKS:** I can make a recommendation. There is over \$7 billion currently sitting in this State's coffers out of my mob's country for rehab. How about you go and open those purse strings up. Pull a million out of that, \$2 million—pull a billion out of it. Set up an organisation that clearly can look at the anthropology and ethnographical research, and do it properly.

My country has bled for this State, Wonnarua country. The majority of the royalties that we're all seeing here today wrapped around us come from Wonnarua country. Why can't I, as a representative of Wonnarua, insist that this Government use those moneys now for the benefit of all First Nations people in New South Wales and put this argument to bed once and for all? But in the interim, stop the destruction. Stop the destruction because we, as First Nations people—I said something very profound the other day that I still haven't got over, and I'm going to tell you what it is. It was, "As I cry"—because I had a sulk out the front here at a protest. Sue, you were there.

**The CHAIR:** I was.

**SCOTT FRANKS:** Sorry, Chair. I had to stop and pull myself together because what was ringing in my ear, as I started to blubber a little bit, was that every tear that falls from me paves the way of reconciliation. It's a profound statement but it's a true statement, because our people have been crying since that tall ship turned up here. If you want to stop us crying, give us a hand up, not a handout. Take some of the royalties from Wonnarua country and, mate, I will call a meeting with our mob and have that supported to the hilt. Billions of dollars sitting there right now in rehabilitation—take a billion. Get this done right for the sake of our people, not only in New South Wales but nationally. If a billion dollars can't do it, a lot of us need to go home. Because that's what it comes down to, and I'll tell you why.

Just recently the registrar developed—he's doing it all over the place—these traditional owner lists. The one that's been developed for the New England Hunter River, I don't even know what it's about. I had a very esteemed anthropologist peer review it, and he said, "Scott, what's this junk you sent to me, done by an historian? We've got different mobs together; we've got no law and custom; it's spread all over the place." It's a bit of a funny thing in my country—when we have community meetings with different mobs, I always stir up the Gamilaroi people by saying, "You're back here again because our women are better looking and you want to steal them". This is what the traditional owners list for the registrar is now showing in the Hunter Valley. It's this melting pot of rubbish. So take the billion, please. Open the coffers if you can. It's sitting there doing nothing. The mines aren't rehabilitating the land up there. One of them's making their nice pictures, framed properly, so take the money. Let's do it properly for once and work together. I'm sure if you can't get the right people with the right skills to give you that answer, we're all doomed. So is our culture.

**The CHAIR:** Thank you, that takes us exactly to our time. Unless there is anything further now, we will close this session. I don't think any questions were taken on notice. I thank you so much for your very valuable evidence, Ms Brown, Mr Franks and Ms Chick.

**(The witnesses withdrew.)**

**(Short adjournment)**



Mr ROY AH-SEE, Co-Chair, Uluru Dialogue, before the Committee via videoconference, sworn and examined

**The CHAIR:** I now welcome our next witness.

**ROY AH-SEE:** Thank you, Madam Chair, and thanks for the opportunity to be a witness and give evidence today. I think it's a really important discussion and parliamentary inquiry. I'm off my country and that means I'm on someone else's country, so I'd like to acknowledge the traditional custodians of country that I'm calling in from and pay my respects to all Elders both past and present. Equally important, we shouldn't forget and mustn't forget our brothers and sisters who've gone before us. Without their inspiration, aspiration and determination, I certainly wouldn't have the opportunities that I've been afforded today.

**The CHAIR:** Mr Ah-See, would you like to start with a brief opening statement?

**ROY AH-SEE:** Yes, sure. Again, I just wanted to thank the Committee for this important piece of work. The evidence that I'll be providing today, or my witnessing, will be based on lived experience rather than a framework through an academic lens, and I think that's really important. I just want to share with the Committee a quick story. There was this young Aboriginal boy who grew up on a reservation in the early sixties. His mum was a single parent; she had eight children. They lived in absolute welfare dependency and absolute poverty, and they lived under policies that were basically segregating her family from the general public. He had five sisters and two brothers. He went to a little school on the reservation, and he didn't know who his father was. He never met his father until he was well in his twenties. He went from that school to a high school. They were all Aboriginal kids at his school, and then he went into high school in year 7 and all of a sudden there were 400 non-Aboriginal people. It was very daunting for this kid.

This young Aboriginal boy had dreams, aspirations and goals, despite coming from his background of absolute poverty and welfare dependency. Thank God he had a guide in his life, which would be his uncle. His uncle played a role in his life. He went into high school and he started to learn about history in 1788, and he started to learn about Captain Cook. This young Aboriginal boy was confused, because he was going home and listening to his uncles talking about a culture and a heritage and a history that were 60,000 years old. It created a lot of conflict for this young Aboriginal boy. I think in year 9, or third form, he bucked against the system because he spoke out. He told them the truth about the real history of what happened in this country that was handed down through generations after generations.

He left school, and he got himself into a lot of trouble. He mixed with the wrong crowd and he ended up in custody in many cases—got in trouble with the law and experimented with drugs, alcohol and gambling. Two months after he turned 18, he woke up in prison. He was looking at a long custodial sentence, and his uncle intervened and said, "It's alright to be angry, but you've got to turn that anger into advocacy." And so this young Aboriginal boy—who had dreams, aspirations and goals—listened to his uncle and went out and got himself educated through the University of Western Sydney as a mature age student. He then went on to represent his people on the NSW Aboriginal Land Council. He got elected to the council. He served as the deputy chair on the council and then eventually the chairperson on the council, and spoke in international forums in Geneva and New York on five separate occasions on behalf of all Aboriginal people in this country. Madam Chair, that young Aboriginal boy is giving evidence today, and that's my story.

**The CHAIR:** Thank you very much, that's a very powerful story. Mr Ah-See, are you happy to take some questions from members of the Committee about the bill and the possibility of what future cultural heritage laws look like?

**ROY AH-SEE:** Absolutely.

**The CHAIR:** Thank you. At the moment the bill provides a structure of an Aboriginal Cultural Heritage Council that is constituted by various members from some of the peak organisations, the Aboriginal land councils and native title holders. That body appoints Aboriginal land council services that assist in the protection but also where cultural heritage is proposed to be impacted, possibly negatively. What's your view in terms of a system that is structured in that way?

**ROY AH-SEE:** I commend the bill. In its infancy, I was approached to champion the bill. I said I will do that on one condition—actually, two conditions. Fred Nile, who is the father of land rights, was a very staunch supporter for the New South Wales Aboriginal land rights legislation, which—mind you, at the time we had prominent people protesting against the legislation. Them people were the ones who marched on the streets, and then they turned around and became fierce advocates of what is now known as the New South Wales Aboriginal land rights legislation, which, mind you, is the most powerful legislation internationally and the most powerful legislation in this country. What it basically does is it gives back; it returns vacant Crown land back to land councils and it transfers over as freehold title. I reckon the structure is fit for purpose. It engages at all levels. It

gives people an opportunity to be represented either at the council level at the top or at the regional level where information, in terms of culture and heritage, can be fed up.

The structures were already there, and the fact that the bill has incorporated or encompassed all the different structures and groups, I think, can only improve the protection of culture and heritage. Madam Chair, it's an indictment that the biggest population of Aboriginal people in this country are in the State of New South Wales, and we don't have the protection of culture and heritage through legislation. We are in 2022. We are having this conversation at the national level for a voice. We are not even recognised in our founding document, the Constitution. It's well overdue. I think it's fit for purpose. More importantly, if it's not, then you get to work that out. Similar to the New South Wales Aboriginal legislation, you get a review every five years and you can put some amendments in.

I'll just close by saying, Madam Chair, that this division of native title and land rights—you've got people in this country or in this State that want to use native title because they've got an axe to grind against the land rights legislation. The land rights legislation has 25,000 members. It's the largest member-based organisation in the country. By the way, if you're an Aboriginal person in this State, you are a traditional owner. End of story. It doesn't matter where that place is; I don't really care. If you're an Aboriginal person in the State of New South Wales, you are a traditional owner, and that's what I love about this bill.

**The CHAIR:** Some of the evidence we have had today perhaps goes to a more specific point to the operation of this proposed bill, and it goes to the point of cultural authority or authority to speak for cultural heritage. That has been presented as there's quite a complex protocol that can be involved in really going to the appropriate source for cultural authority. Do you see a way that this bill can grapple with that?

**ROY AH-SEE:** Yes, absolutely. Great question. Our people know who speak for country, Madam Chair. We've got Elders that are passing away that haven't seen legislation to protect culture and heritage, and our Elders know who speak for country. I grew up on a reservation, a reserve. We would walk up the street, and then people would walk across the other side of the rail because they say, "Here come these blackfellas." Now we've got some people that are coming out saying that they—it seems like it's in fashion now to be Aboriginal. It wasn't back then. We knew who the Aboriginal people were. I think there is a process. We've got prescribed body corporates in New South Wales, and I think it should be about eight or nine. They've been through the native title process. They've proved their registration and ongoing connection to country. That's your first point.

Local Aboriginal land councils, I believe, is the system and the structure that really has cultural authority because they're the ones that have the protection. What you've got to remember, the land rights legislation came in 1983 and Mabo's legislation around native title didn't come in until 1994. For that period of time, we worked out a system where if you're an Aboriginal person and you wanted to have a say over what happens in your community, you go and join the land council. Obviously, there was a structure and a system that incorporates your membership. Once you become a member, then you get a say over what happens in country. Now, that's a fair process. Again, I think the bill is pretty much close to being fit for purpose—actually, it is fit for purpose. You're not going to please everyone, Madam Chair. Blackfellas, we all disagree. Come to the next land council meeting if you want to see a disagreement. And it's okay. We don't all agree with each other. You don't agree with the Liberal Party sometimes, and the Liberals don't agree with Labor.

**The CHAIR:** Not ever, I don't think.

**ROY AH-SEE:** It's a democracy.

**The Hon. SCOTT BARRETT:** I should have written down exactly what you said then. You said something like the land council is the voice for Aboriginal people or something similar to that.

**ROY AH-SEE:** Cultural authority.

**The Hon. SCOTT BARRETT:** Yes, cultural authority. Now, we've had other evidence today that not only slightly disagrees with that but entirely contradicts that. People are saying the exact opposite to that. How do we find a middle ground on that?

**ROY AH-SEE:** You introduce the bill, you pass it, and then let us have the debate and discussion like we have been having. In 1983 we had the New South Wales Aboriginal land rights legislation. How fair is it when if you want to be a member of the land council you have to be 18, be accepted as an Aboriginal person in the community and become a member? That is the most open, transparent piece of legislation that I've seen so far. Others are closed shop. I would go as far to say that these other people that have got an axe to grind are protecting their little incomes and the money that they get when it comes to native title.

**The Hon. SCOTT BARRETT:** Again, we've heard two different people say the exact opposite—that it's about that if you're about the bloodlines versus where you live sort of thing. If you have bloodlines for certain

country, you sort of dismissed that a bit before and you said everyone should have a say on whatever country they are on.

**ROY AH-SEE:** Scott, I don't know where you're going with this.

**The Hon. SCOTT BARRETT:** I've got no agenda in this. I'm just trying to find some ground somewhere.

**ROY AH-SEE:** Well, let us sort it out, brother. You just vote on it. Either vote for or vote against it, then let us have the say.

**The CHAIR:** Mr Ah-See, at the moment the bill is presenting what is often referred to—and I think I realise it's more often referred to from the development industry—as a right to veto. I think we should probably stop using that term because really what we are talking about is the right to protect cultural heritage becomes higher in a particular instance than the right to destroy cultural heritage. What do you think about that and the way the bill proposes that at the moment?

**ROY AH-SEE:** Our communities don't want to stop industry. When I was the chair of the NSW Aboriginal Land Council, we had occasions where acquiring authorities either wanted to build a road or wanted to do some type of State-significant infrastructure project or developers. I don't know where this misnomer is coming from that blackfellas want to halt development. We don't. We want to empower our people to make decisions and work with industry so that we protect the culture and heritage. We want to create jobs and employment opportunities for future generations. We can't do that by ourselves. We have to work with the industry. It's an opportunity now to work together and start to heal this State. Because if you heal country, heal people, together we heal the State. That's what I reckon the bill can do. The bill can start a healing process. The "us against them" mentality, I think it has to stop. But we need to have protection for culture and heritage.

**The Hon. SHAYNE MALLARD:** Mr Ah-See, thank you for your evidence today. I want to talk about protecting cultural heritage. I have asked this question before. As a preamble, before we get to the discussion, you have a sort of sliding scale, in my thinking—I might be wrong—of heritage. You have, say, your stone flints to country the whole and then different components of heritage. We heard today of sacred places where men's and women's business occur—I think it's very important to preserve that—historical trees and so on, through to a river landscape or a delta or an island or a shore or a mountain range. I don't feel we can apply absolute cultural heritage protection across that entire spectrum.

**ROY AH-SEE:** No, I agree with you, Shayne. Keep it—

**The Hon. SHAYNE MALLARD:** Not the same heritage protection goes across the whole spectrum. I'm thinking it needs to be graded. What's your feedback on that?

**ROY AH-SEE:** I totally agree. Again, we have a system and a structure that's been doing it since 1983, and that's the land councils. They deal with it on a daily basis. Obviously, you've got prescribed body corporates; you've got native title groups that also have a role in the protection of culture and heritage through that native title process. I'm not disputing that. We have to somehow try to work together to ensure that that protection is there. And it is conversations. I see the bill as a means and a way to bring people together to start having them conversations about, well, okay, what is of maximum significance—the Timber Creek decision, for example.

I done some work with the Valuer General at the moment. We can't find anywhere—there's research being done right around the world where they can't put a price on spiritual attachment. We have to talk about spiritual attachment as well. I think it's a great question. However, let's get this bill in the Parliament. Let's get it debated. We can answer some of these questions along the way. My concern, Madam Chair, is that the bill is going to be killed before it even gets a chance. We have had consecutive governments that have failed, failed, failed our people to protect culture and heritage. We've got 36,000 claims undetermined, not even looked at, in the system. It's going to take 95 years to resolve, seriously.

**The CHAIR:** Your point in terms of the timing of this bill is really relevant and important. We noted earlier on in the proceedings that everything that happens here on this bill and all of the evidence will be on the table for the long term, whether the bill successfully gets through in this term of Parliament in the short period of time that we have had, since Reverend the Hon. Fred Nile introduced it so late in the term, or possibly will carry forward into the new Parliament. I think it is important that we all acknowledge that this is very important and this evidence is coming forward. Unfortunately, we can't change the term of Parliament, and the time is the time. We acknowledge that. The Committee understands that that is seen as problematic in some ways.

Could I ask you a bit about the detail in terms of the constitution of the Aboriginal cultural heritage council? As I said earlier, at the moment it is proposed to have members of the Aboriginal land council, a holder of native title rights and Aboriginal owners. Do you think that the council could be open to other representative

groups or bodies or persons? Or do you think the way it is constituted would have to stay like that for any particular reason?

**ROY AH-SEE:** I support its structure now. If you have to make changes to it later on, then you could possibly do that, surely, through an amendment process of some sort or regulations. If you have to change the composition to make it more inclusive, or whatever the case may be, then I think you cross that bridge when you come to it. Again, it's a good starting point. I think it's a really good starting point, and the guys at Fred's office have done a great job in getting it to this point.

**The CHAIR:** Thank you. I take that point.

**The Hon. PENNY SHARPE:** Mr Ah-See, thank you for coming today. How are you?

**ROY AH-SEE:** I'm very well, thank you.

**The Hon. PENNY SHARPE:** That's good. We have heard a lot of evidence today. You rightly point out that governments of both types have committed to standalone legislation for a long time and have failed to deliver it in any meaningful way. My understanding is that there was some pretty extensive work done—and I'm sure you were probably involved with it—around 2018. In terms of learning, from that to now, why did the wheels fall off the 2018 process?

**ROY AH-SEE:** From memory, Penny, we might have had a change of Ministers. I'm not quite sure. That could have been a contributing factor, and the momentum was lost. We were so close. I thought we were—

**The Hon. PENNY SHARPE:** Yes, that's why I'm asking. Today there has not been a lot of consensus around this bill, but I had understood that in the lead up-to 2018 there seemed to be more consensus. Obviously, from Opposition I wasn't close to it; I'm not sure. I'm just seeking your insight, given that I'm sure you were much closer to it.

**ROY AH-SEE:** The council, we endorsed it. I was the chair at the time, and the councillors were very, very happy with the bill in its current form back then. Then the wheels fell off, like you said, quoting your terms. And it was really disappointing. It was so disappointing. Again, Aboriginal people have to invest in this process and then the carpet is pulled from under us again. The balance of power is with the parliamentary MPs and not with Aboriginal people themselves. That imbalance is really frustrating. Again, we are at an election in March. We don't know what we're going to end up with in terms of government. We get a change of government, we get a change of Minister, and then we've gotta start all over again.

It's so frustrating, Penny. I'm preaching to the converted. I've got faith in the system. You—every single one around that table—delivered us land rights. For that to be delivered to our people, I think, is the greatest. It's one of the greatest things to happen for our people in the country. New South Wales has led the way. I think the wisdom and the leadership is there. It's about the timing. Hopefully we get a good government after March that can make this a priority in your first 100 days, like Albanese did with the Uluru Statement from the Heart, and show some leadership. This is above politics. It's about doing the right thing. Do the right thing, please.

**The Hon. ROSE JACKSON:** Thanks, Mr Ah-See. It's Rose Jackson here. I think one of the challenges that we face, obviously, is there has been other evidence today from other organisations whose view about the right thing is either "Don't proceed with this legislation" or "Only proceed with substantial amendment", so we're sort of trying to chart a path forward in that circumstance. I feel as though, from the evidence that you've given so far, your view would be that if there are issues they can be worked out later—but, I suppose, respond more specifically to people who have given us evidence today who've sort of said that they would really insist on seeing either substantial amendments to this bill before it is passed or the bill not passing in its current form at all.

**ROY AH-SEE:** Well, yes. I respect that. I said earlier, during my opening, that, you know, all blackfellas don't agree with each other. I was given the opportunity to give my evidence as a witness and I've given my evidence. Basically all I can do, under oath, is tell you basically how I feel in relation to where this is heading. You know, I come from experience—lived experience—you know, growing up in poverty, absolute poverty. You know, my poor old mother, she struggled, and we've got many, many families and communities that are out there. But by no means am I a victim. I'm not a victim. I'm a survivor and I'll fight and I'll continue to fight for what is the right thing. It depends on who you ask, I guess, whether or not you want the right answer; and if you don't, you'll just get it from somewhere else. I take that on board. You as politicians or parliamentarians or people that have to work in this space, you know, have to be seen to be doing the right thing and whilst it might be the right thing for you, it could be the wrong thing for me. What could be the right thing for you could be the wrong thing for me. So, yes, I've worked in this place for a long, long time and the wheels turn slow so I guess I'm just providing my evidence today.

**The Hon. ROSE JACKSON:** And just in terms of, say, if the bill was passed, a sense of local views about, for example, what site of cultural significance—if there were differing local views about how significant a site was, or whether it was significant at all, I suppose—what's your reflection on the framework within the bill for resolving those disputes at the local level? Do you think that's robust enough?

**ROY AH-SEE:** No, it's a good question. It really is. Again, we have the Elders in the community and the majority of the time, the collective wisdom of our people don't get it wrong. You know, when you go to a prominent Elder in our community that speaks and has authority, then we wouldn't disrespect that. I know I wouldn't. Others may if they've got a hidden agenda, but I know I wouldn't.

**The CHAIR:** Thank you. I think we've asked all our questions. Mr Ah-See, is there anything further you'd like to finish on?

**ROY AH-SEE:** Madam Chair, I think you've made the point that the bill won't be introduced to Parliament now until next year. Is that correct?

**The CHAIR:** No.

**The Hon. PENNY SHARPE:** It's tight.

**The CHAIR:** The time frame is very, very tight. We will absolutely produce our report and that will be tabled in Parliament and then it will really be a matter of the business of the day and whether the bill will be tabled again and whether it will be debated further. But it is very, very tight.

**ROY AH-SEE:** I'd like to go on the record, Madam Chair, to thank Reverend the Hon. Fred Nile for his leadership and his support for Aboriginal people in this State for many, many years. Fred, if you're listening, I just wish there were many more people in Parliament like you, brother, because, with your leadership, mate, we've come a long way. So thank you very much and I hope others will take a leaf out of your book.

**The CHAIR:** Thank you, Mr Ah-See.

**ROY AH-SEE:** Thank you, Madam Chair. Bye-bye.

**(The witness withdrew.)**

**JOSH PALLAS**, President, New South Wales Council of Civil Liberties, affirmed and examined

**The CHAIR:** I now welcome our next witness. Mr Pallas, would you like to commence with a short introductory statement?

**JOSH PALLAS:** Yes. Thank you, Chair. Let me start by acknowledging the traditional custodians of the land on which we are gathered today, the Gadigal of the Eora nation. I pay my respect to their Elders, past and present, and extend those respects to any First Nations people present today. The NSW Council for Civil Liberties acknowledges that this land always was and always will be Aboriginal land. Thank you, Chair, and thank you to the Committee for inviting us to give evidence before the Committee today.

The NSW Council for Civil Liberties supports the principles behind the Aboriginal Cultural Heritage (Culture is Identity) Bill 2022, namely, the need for standalone cultural heritage protections and the need to ensure that such protections are subject to First Nations control. In our view, the bill goes a long way towards implementing Australia's obligations under the United Nations Declaration on the Rights of Indigenous Peoples—UNDRIP—and to making good on government promises to increase self-determination for First Nations people.

Beyond expressing our general support for the principles underlying this bill, the Council for Civil Liberties has not offered and will not offer views on the substance of the bill, including on the composition and operation of the council, the way in which local Aboriginal cultural heritage services will operate and the way in which Aboriginal cultural heritage is protected. We believe that First Nations people should not only have control over their own cultural heritage, but should be privileged in discussions over the design of these laws so that they work in their interests and not the interests of others, including well-meaning white folk. As an organisation which supports the human rights and civil liberties of all people who live in Australia, we stand beside and behind First Nations people in their quest for justice.

In this regard, we note that the NSW Minerals Council has made a submission. We absolutely acknowledge their right to make a submission but urge members of this Committee to privilege the voices of First Nations over the interests of the Minerals Council. Self-determination of First Nations people must be central to the process of developing this much-needed reform. From the perspective of advancing reform which implements UNDRIP and improving First Nations self-determination over Aboriginal cultural heritage, NSWCCCL supports the principles underlying this bill. In doing so, we urge this Committee to ensure that First Nations voices are being listened to as you consider and make recommendations as to the substantive terms of the bill to ensure that the best possible version is passed to give them control over their cultural heritage. Thank you.

**The CHAIR:** Thank you. Can I just ask you, because you raised the Minerals Council's submission—and I've asked this question quite consistently throughout the day—do you think the current form of the bill that proposes, for want of a better term, a right of veto—and I've said this before and I will say it again, but just the notion that when we talk about a right of veto, we're actually really talking about the right to protect cultural heritage above the right to destroy cultural heritage. Do you think that that is a sound feature of this legislation?

**JOSH PALLAS:** This is where the New South Wales CCL would take its lead from First Nations voices on this. As you say, when we think about the protection of cultural heritage, it must be protection of cultural heritage that comes first. If that's what First Nations communities are asking for, then the Council for Civil Liberties would be supportive of that.

**The CHAIR:** In terms of your comments around this legislation going some distance in the UNDRIP foundation and the principles, do you see anything specifically that we could be taking on board to go further at this point in time?

**JOSH PALLAS:** In reviewing some of the submissions that came in, quickly this morning, I note that there is some disagreement between First Nations communities as to the influence that land councils should have in relation to the bill. Of course, UNDRIP says that self-determination is one of the most important principles that should be adopted in relation to any governance around First Nations communities. I suppose something that exercised my mind in reading those submissions was that there needs to be careful balancing of voices to ensure that it's not just the most privileged within First Nations communities who are determining what self-determination around cultural heritage looks like. But, again, we would defer to First Nations communities on that point. But that was something that really stood out this morning.

**The Hon. ROSE JACKSON:** It's a challenging area because, as you've acknowledged, you're rightfully hesitant in speaking on a bill that is so profoundly significant to Aboriginal people in New South Wales. Similarly, we're a bit stuck because we're a bunch of white people sitting on this Committee and making recommendations. But we're muddling through. One of the things that I reflect on—and I'm asking you in terms of the Council of Civil Liberties, historically an organisation that's obviously very concerned with civil rights, with human rights—

the framework that we use, that you use, historically has been very individualist and about individual rights and ways to express and protect them, whereas often for Aboriginal communities, and we see this, it's much more of a collectivist approach.

I'm just trying to ask in general terms because I don't want to put you in a position of commenting where you don't feel comfortable. But do you think that this law makes a good attempt to balance principles that we're not necessarily as familiar with—principles of collectivism, self-determination in First Nations communities—with the more individualist, Western legal framework that we're all familiar with? Is that something that we're sort of getting right here? Do you have any more reflections on how the legislation, as it's drafted, might do that better?

**JOSH PALLAS:** From our perspective, it seems to—it's clearly a step in the right direction. Standalone cultural heritage laws are long overdue and something that is much needed. So from our perspective, anything that is a standalone cultural heritage law is inherently better than the status quo. That is our starting point. From where I'm sitting, the most tricky aspect of this is how are First Nations people going to be properly represented through the process. That's the thing that we grappled with the most. Do we express a view on this? Do we not express a view on this? We've landed on not expressing a view on this because we're not a direct service provider like the Environmental Defenders Office is, for example, which is intimately connected with and working with First Nations traditional owners. But that seems to be almost the trickiest part of the legislation.

Beyond that, the mechanisms that seem to be put in place appear to be appropriate, as the Chair's first question got to. If the purpose is to protect cultural heritage, then the purpose needs to be protection of cultural heritage: considerations of integration with planning approval, environmental laws and all of those sorts of things. If we're genuine about self-determination—First Nations-led responses to the regulation of cultural heritage—then that must necessarily be the case. So that seems to be right. Something else that struck me in reading the submissions is that there appears to have been a long consultation process in relation to the Government's draft bill. In some respects, it's a shame that that bill is not before Parliament.

**The Hon. PENNY SHARPE:** Correct.

**The CHAIR:** It's a big shame.

**JOSH PALLAS:** If there was a way to integrate all of the learnings into one, maybe that might be the optimal outcome.

**The Hon. SHAYNE MALLARD:** Solomon.

**The CHAIR:** We are optimistic about that. When this bill was referred here, the Government Minister did allude to the fact that the Government would be watching very closely. Even as we've sat here today, what's feeding into the bill that's before us today is the 2010, the 2012 and the 2018 work. Some of that has gone into it. So I think it is important that all of us make sure that that does carry on. I think we will be continuing to make sure that the consultation that has happened will carry on.

I may have asked this, but I may be asking it a different way. Just on the idea that you are suggesting—that it seems to have the operative mechanisms in there—given we are talking about cultural heritage, both tangible and intangible, not rights based because of the difference between that isolated human rights approach, in terms of your analysis of the actual legislation, is there anything that you can see that could be further included? Are there any other mechanisms that you're aware of that have been in other legislation that could be incorporated into this?

**JOSH PALLAS:** A couple of things. I suppose some of the submissions talk about the importance of sea country and ensuring that sea country is properly protected. That appears to be appropriate and appears to be something that First Nations communities would universally support. Usually on a bill like this, I would come here and rail against the affordance to create delegated legislation in this context, but you've noticed that that is something that I'm deliberately not saying in relation to this bill. I know it was raised in the legislative review digest, but it strikes me as appropriate in this instance that there be extensive powers to construct delegated legislation because if this bill is a genuine response to self-determination of First Nations communities, it's entirely appropriate that the council created by the bill have the ability to create delegated legislation.

Even as I say that, I can feel my delegated legislation tendencies tingling, but it appears to be a genuine response to self-determination in this context. In the legislative review digest there was mention of certain provisions, which I don't know off the top of my head, which—offences can be levied under two provisions simultaneously. That strikes me as strange, but it's not something that I've thought a lot more about. It's something that we would usually oppose. But, again, we haven't delved into the weeds of the offence provisions in all of that because this is more about mechanisms and ensuring that the mechanisms are right to begin with to protect cultural heritage and to lead self-determination for First Nations people in this area.

**The CHAIR:** On that point, I note that the Minerals Council's submission was particularly averse to the idea of having delegated legislation—that it wasn't appropriate. But your point in this regard is this legislation is perhaps trying to do something that has never been done before—a genuine attempt to do that—and therefore this could be a very appropriate thing, even though it feels a bit strange to all of us perhaps.

**JOSH PALLAS:** Yes.

**The Hon. SHAYNE MALLARD:** Welcome, Mr Pallas. My first Council for Civil Liberties president was John Marsden—big shoes to fill. Welcome aboard. I was on the executive there for a couple of years. Thank you for your submission. It's a good overview. Obviously, today, if you've been watching evidence, the issue for us, it appears to me, is who makes the decisions on this—it's become pretty clear there's quite a division on that—what are the veto powers and actually what is cultural heritage and at scale. What I wanted to ask you about—and you're welcome to comment on those things—is your submission, where you talk about the National Parks and Wildlife Act. You call it racist. In your submission you say, "We believe that situating it in that Act is racist." It's certainly archaeological, if nothing else. It's a very obsolete approach to this issue; we all would acknowledge that. Can you flesh out why you call it racist? I'm not criticising it but I think it's important that we understand that it has to be moved in our inquiry.

**JOSH PALLAS:** Yes, definitely. Maybe we'll be in touch with you, Mr Mallard, next year. It's our sixtieth anniversary.

**The Hon. SHAYNE MALLARD:** You'll get better speakers.

**JOSH PALLAS:** We hope to have many events coming up. Thank you for the question. In thinking about calling the current regime racist, it was something that exercised our minds for quite a while. I think we're getting to a point in the reconciliation process, and in understanding, through the Uluru statement and what First Nations communities are calling for in terms of self-determination and reconciliation, that anything that really takes the hands out of First Nations communities appears to not properly apprehend the colonial violence that took place within Australia. Any regime that continues to endure, where the power is held by someone other than First Nations communities over things such as Aboriginal cultural heritage, which is properly materials that belong to First Nations communities, is racist. It is discriminatory and it must be changed. Even the situating of the powers within the National Parks and Wildlife Act harks back to the days where Aboriginal persons were dealt with—

**The Hon. PENNY SHARPE:** As flora and fauna.

**JOSH PALLAS:** —as flora and fauna, and that's wholly inappropriate. It appears to be a hangover from that period. Even if it is only symbolic, it's important symbolism, if for no other reason, to take it out of the National Parks and Wildlife Act.

**The Hon. SHAYNE MALLARD:** Was it reflecting a thinking at the time that it was largely physical cultural heritage, first of all—caves and paintings, that sort of stuff—in the past, and where it was preserved was in national parks? Where it survived colonialisation, it was in national parks. Is that where that comes from?

**JOSH PALLAS:** I think that's probably the case. I'm not an environment and planning lawyer.

**The CHAIR:** I think it's more deeply entrenched than that, I'm afraid. I think it's quite clear from the 1974 Act that it was actually about trying to relegate it to national parks.

**The Hon. SHAYNE MALLARD:** What I'm getting to is the strong point that it has to be taken out of there.

**The CHAIR:** Yes.

**The Hon. SHAYNE MALLARD:** You can't wait any longer.

**The Hon. PENNY SHARPE:** Yes. I don't think there's any disagreement about that from anyone.

**The CHAIR:** I don't think there's any disagreement.

**The Hon. SHAYNE MALLARD:** You might want to remind the House that.

**The CHAIR:** Yes. The dispute is not about—

**The Hon. SHAYNE MALLARD:** The inquiry might want to say that, though.

**The CHAIR:** It's definitely not about if—

**The Hon. SHAYNE MALLARD:** Can't do nothing, I'm saying.



**The Hon. PENNY SHARPE:** Yes, correct.

**The CHAIR:** It's about when and how. Mr Pallas, can I ask you about intellectual property rights? This came up in evidence today, which wasn't brought up in submissions. It was brought up in evidence about the intellectual property rights of First Nations that extend from the tangible and intangible cultural heritage. How does the council approach intellectual property rights generally?

**JOSH PALLAS:** Can I take that question on notice?

**The CHAIR:** You certainly can.

**JOSH PALLAS:** I'm relatively new to the presidency, and intellectual property and data—all of that—is not my forte.

**The CHAIR:** It's a complicated area.

**JOSH PALLAS:** It is.

**The CHAIR:** I didn't know you were new and I thought you may have come across that from a rights and liberties perspective in something else. So I'm happy to leave that.

**JOSH PALLAS:** We definitely have quite strong positions on this. I don't want to fall foul of the IP gurus within CCL by speaking out of turn.

**The Hon. PENNY SHARPE:** Yes. There's a committee and they're very strong on it.

**The CHAIR:** That's what I was referring to. I'm not sure that that is something that has been contemplated well enough yet, and that's something that's front and centre now.

**The Hon. ROSE JACKSON:** I will ask one more question. I think you've touched on this already in relation to the way that certain rights would and should be privileged, but I want to draw you out on it a little bit more so that we have it in the evidence. There is obviously a potential clash between rights to self-determination and a centrality of cultural sites and sites of cultural significance in that, and potential property rights. Even the other witnesses have talked about how someone buys a piece of land or has owned a piece of land for a long time, has no knowledge, because they're a white person, of the significance of it, subsequently becomes aware of that, and there is a tension between their property rights under our Western laws and sites of cultural significance. I want to draw you out on questions of how those rights clash, like rights clash all the time, and, in this context, what framework we might use to resolve that tension. As I said, you suggested that we do have to privilege some rights over others. When we look at that tension, is that essentially how we should probably approach it?

**JOSH PALLAS:** Yes, I think so. I think where we've landed increasingly over time on issues of First Nations justice is if we're honest and serious about reconciliation and implementing the *Uluru Statement from the Heart*, we have to privilege First Nations' interests and voices to deliver real justice for First Nations communities. It's something that the Civil Liberties Council has come to over time. We haven't spoken or intervened in inquiries like this on issues of First Nations justice until very recently when it's become really apparent to us that, really, what have we been looking at for a long period of time? We've really just been looking at the rights and liberties of people other than First Nations people, and First Nations people have suffered the gravest injustices in Australia.

Really, it's incumbent on us to work towards ensuring that their voices are privileged and self-determination is privileged in lawmaking concerning matters of, for example, Aboriginal cultural heritage. I suppose that's a roundabout way of saying that in this context we would side with First Nations voices over private property interests. That's not to say that there's no compensation or something like that that the Government must stump up if land is being acquired or easements are being given, all of those sorts of things, and that's a remedy known to law in other contexts. But we just need to think creatively in this context.

**The CHAIR:** In terms of the operation of the bill, what you would consider as the most appropriate in terms of engagement around the operation of seeking to protect cultural heritage? I suppose I'm asking is the general proposition the earlier the better in terms of engagement? Is that something that you've turned your mind to in the operation of the bill?

**JOSH PALLAS:** No, it isn't something that we've turned our mind to. But, obviously, consultation and transparency and all of that should apply in any decision-making processes.

**The CHAIR:** Again, I suppose it comes back to what is it that First Nations voices want, and how and at what point they want to approach the discussion about protection or impact et cetera.

**JOSH PALLAS:** Yes, absolutely. As a follow-up to that and what Ms Jackson's question was before, when I say that First Nations rights are privileged over the rights of private property holders, I should make it

clear that I'm not necessarily implying that private property holders in this context, or business holders, have done wrongs. The wrongs probably rest with the Government for delays in amending these laws and in not protecting Aboriginal cultural heritage over long periods of time. I don't want people to think that I'm saying private property rights are not important. But really this is a whole different world and private property rights are put in jeopardy because of colonisation.

**The CHAIR:** Any more questions, anyone?

**The Hon. PENNY SHARPE:** Not from me.

**The Hon. ROSE JACKSON:** No.

**The Hon. SHAYNE MALLARD:** No.

**The CHAIR:** Is there anything you would like to finish on, Mr Pallas?

**JOSH PALLAS:** No. Thank you so much for calling me to give evidence and for taking the time to consider this bill in detail.

**The CHAIR:** Thank you. We will conclude. If there were any questions taken on notice, the secretariat will be in touch with you. We are asking for responses to come back within seven days, given the nature of the time. But you will be contacted.

**(The witness withdrew.)**

**The Committee adjourned at 16:39.**