REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 7 - PLANNING AND ENVIRONMENT

ABORIGINAL CULTURAL HERITAGE (CULTURE IS IDENTITY) BILL 2022

CORRECTED

At Macquarie Room, Parliament House, on Tuesday 4 October 2022

The Committee met at 9:30.

PRESENT

Ms Sue Higginson (Chair)

The Hon. Scott Barrett
The Hon. Rose Jackson
The Hon. Aileen MacDonald
The Hon. Shayne Mallard
Reverend the Hon. Fred Nile

PRESENT VIA VIDEOCONFERENCE

The Hon. Penny Sharpe

* 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 to the second 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 meet 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 land and 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 had to examine this bill and to get the community's views on it. I acknowledge that this is not desirable. The Parliament has told the Committee that it must publish its report by 8 November 2022. The reason for this deadline is that the New South Wales Parliament will meet for the last time in mid-November before the State election in early 2023.

Today we will be hearing from a range of stakeholders. First up we will hear from Government representatives. We will then hear from representatives of various organisations with different perspectives—namely farming, mining and environmental protection. We will also hear from individual community members, including the Dharriwaa Elders from the Walgett area and community members from the Armidale area. The day concludes with a public forum. The Committee is grateful to all the individuals and organisations who have made themselves available to appear at today's hearing on short notice. We thank everyone for making the time to give evidence to this very 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. If participants lose their internet connection or are disconnected from the hearing, please rejoin the hearing by using the same link as provided by the Committee secretariat.

Before we commence, I make some brief comments about the 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 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 the 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 microphones 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 GEOFFREY WINTERS, Chief Executive Officer, Just Reinvest NSW, sworn and examined

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

GEOFFREY WINTERS: Thank you. Thanks for inviting Just Reinvest to speak. I also acknowledge traditional owners and pay respect. Our involvement as an organisation or interest in this bill comes merely in two forms: one, to see great and excellent public policy made by this place, which we think this bill is; and, secondly, because of the nature of what we do, having a framework whereby Aboriginal cultural authority can be enshrined is deeply in our interest. Just Reinvest works with Aboriginal communities across New South Wales to identify ways that interactions with the criminal justice system by those communities can be reduced, and then we work with the Government—primarily Treasury—to figure out how the savings made by those reductions of interactions with the criminal justice system might be returned to community hands and put into programs so that they then continue to make that community stronger and safer.

In places like Bourke, where most people tend to know the work of justice reinvestment, that involves the identification of a community Elders group or a tribal council, as it is there. In a community like Bourke, where native title is not a settled issue, where the existing land council may have limited capacity or interest in providing cultural authority, we are deeply interested in seeing how State legislation might support a tribal council like that to step into the cultural authority that they clearly have. In other places like Moree, where we're also working—where there is, probably in the next few years, likely to be native title determined and where there is a highly functioning land council—we as a group get to enjoy those two structures and see how they might interact together.

Obviously, that's leading me to the point that our greatest interest in the bill is how the balancing act between existing legal interests, such as native title or land rights, might sit alongside each other neatly, consistently—but, I suspect, very differently and divergently across the State—to support a uniform, blanket protection of cultural heritage. I should flag before we go further that I've practised as a land rights lawyer and native title lawyer for about seven years. I did previously advise the department in 2018 on its last draft bill, when I was a solicitor at Chalk & Behrendt. So my knowledge of the last bill compared to this is somewhat notable, but please don't go into too many detailed questions. But on that, I'll leave it to the Committee to ask some questions.

The CHAIR: You've touched initially on the very thing that we've had evidence brought to us around—how the balance does or doesn't work and how the bill is trying to strike that balance. So far we've had quite a degree of input about the native title claimants, applicants, holders and recognised native title applicants—the land councils and Aboriginal owners. In your experience, how do we make sure that no voices of cultural authority are left behind?

GEOFFREY WINTERS: The task that you've set out to undertake is, I think, probably the most complicated legal question in this State. It's a question that doesn't exist in any other State. Because of the land rights Act here in New South Wales—which obviously the reverend was heavily involved in passing back in 1983—because of the rights and interests it created, it does put Aboriginal communities in a very complicated position. There were times when, in my previous role, we would be acting for a land council group whose interest is to have the court determine that native title doesn't exist over a piece of land so that they could assert their proprietary rights over that piece of land. I can think of a particular parcel of land on the North Coast where the same people who were the land council board were also the registered native title holders. For them to access the rights and interests they're provided for under the land rights Act, they actually have to go to court and have the court tell them their native title rights don't exist over that piece of land. That just shows you the peculiarity of this situation.

In 1994 and then in 1997, the Federal Parliament was trying to deal with this issue. They took what is considered a pretty backdoor, get out of jail, "leave it to New South Wales to deal with" approach, which was saying all land rights in New South Wales will be subject to native title. Really, the Federal Court and the High Court haven't ever figured out what exactly that means. But it is pretty generally accepted that the rigour and the nature of a right in native title that is created is the primary right of cultural authority. Where there is native title can be determined by the court. That is the greatest and most clear claim to cultural authority over the land.

The lesser known Aboriginal owners scheme under the land rights Act sits, I think, alongside but perhaps slightly below that in the sense that the rigour—although, I must say, the department is getting very good at this. If you look at the Kamay Botany process being undertaken, it shows the rigour. But it probably sits as the next tier of rights that can be identified in any clear way. What you are then left with is what about a situation where there is no native title, there are no Aboriginal owners and you've got a land council? I have always asserted that at that point that is a clear legal structure. While it is, I think, less culturally sound than native title, it's probably

as good as you can get in that situation. Where you don't have a land council, it's a whole different question. I don't think we need to get into that. Balancing those three voices is really difficult and really complicated.

You've probably had other organisations say, "Well, land councils must always be in the conversation," and other native title groups say, "Well, land councils don't have a right to sit at the table automatically." That is really the tough question. I think where native title exists, they have to be the cultural authority. There can't be a question about that. That's what native title is; it determines that there is an ongoing connection of a rigour that can't be challenged under any other legal structure. Where that is absent, which will be pretty prolific in New South Wales because of how successful the colonial project was, we do have a land council structure there as a safety net. The reason it works and the reason it is such a unique scheme is that it recognises that lots of families and communities were moved off country and just do not have a connection anymore and will never, therefore, be able to assert a native title right. But they are captured in a way that recognises their connection to the State generally by being able to join a land council.

While it's an imperfect way of getting a connection or developing a cultural authority framework, it's certainly one that works and it's certainly worked for a long time. It's a great safety net when native title doesn't exist. Getting them to play nicely together is a near impossible task. I don't think the first time we put a bill through you will get it right. I think the provision that deals with priority will be amended many times over the years any cultural heritage legislation is in power. I actually think the task for the Parliament at the moment is to get that first framework and that first bill in and passed in as good a form as you can and then go on the journey with community of figuring out how to make sure those two interests are balanced appropriately.

The Hon. SCOTT BARRETT: You talked about there being different ownership or claims on different areas. Is it clear what the structure is in those different areas?

GEOFFREY WINTERS: Yes, it is. If there is a native title claim that succeeds, it triggers a whole set of provisions that organise what we call prescribed bodies corporate. They are very clear structures. The native title process is both expensive and lengthy because you go parcel by parcel by parcel and you identify what the right and interest is over every single parcel and where it's excluded and so on. Schedules behind native title determinations are these huge sets of maps. They are the most boring sets of documents you will ever turn your eyes too. So it's really clear what the right and interest is. How the State land right then sits alongside that is clear because of what is excluded and what isn't. And then if you have got under the State system land rights at large, it's a private property right.

Identifying where a land council boundary is and what parcels of land they have control over within that is just like identifying what land you own. It's very straightforward. It's got reasonably strong and rigorous board and governance structures around the organisation—the local Aboriginal land council—and you've got an Office of the Registrar, and I believe Shane Hamilton is speaking later today. That sits within that department and there is a lot of rigour and support provided to ensuring the land councils are functioning and are safe and good corporate citizens, if you will. And then, where you've got nothing—that's where the greyness is—that would occur in very limited places around the State, I would think.

Where that does occur, I actually think it is just an opportunity to lean in to those few instances and try and figure out what the appropriate structure should be. I think in the current draft, by having the State level body appoint the local authority, that will be where that exercise takes place. If you've got it clear that native title holders are the cultural authority where they've got that, otherwise Aboriginal owners, otherwise the land council and/or, perhaps, a combination—because you draft legislation envisaging the worst case scenario, right? There are going to be many instances across the State where the native title holders are the same people as the land council and are very happy to draw up a framework of governance around that.

The Hon. SCOTT BARRETT: Sorry, just to put it in my words, you could very clearly point to a location and see who the highest authority was in that ranking that you mentioned there before.

GEOFFREY WINTERS: Yes.

The Hon. ROSE JACKSON: Just on that, some of the evidence that we received at our previous hearing was consistent with that broadly but there was this particular issue where there was no native title holder, so we are talking about the cultural authority of land councils. There was quite a bit of evidence we received from different parts of the State that there were local groups who certainly saw themselves as cultural authority holders and who did have particular—I am trying to use the right word—push back concerns with land councils. That is actually, potentially, quite a large category here. As you say, native title holders recognised by the court are quite a limited number. These are areas where there are land councils in operation but potentially also local groups who don't necessarily accept the authority of land councils. We did receive quite a bit of evidence, and some of it quite passionate, on that point. I guess I just wanted your reflections on how we might respond to that as, to be honest,

you know, white people who want to be respectful of privileging First Nations voices but there is clearly a conflict there.

GEOFFREY WINTERS: It's difficult. Take Bourke, where we do a lot of work. There is a land council and it's got a clear membership and a clear leadership. But there is another group—the Bourke Tribal Council—that would probably assert itself as being the genuinely reflective cultural authority group, and we back that as an organisation. That's probably a more straightforward example than, say, somewhere where you've got small groups of family members asserting cultural authority. These are often very senior Aboriginal people with extremely complicated circumstances and it's not always straightforward and easy to understand exactly what the right or authority is that they are asserting. In those instances, I think you've got to be really careful to become the arbiter of what is going on in community.

With legislation like this, you are only going to get it so right. I think it's really high-risk but high-impact legislation. I guess it's up to the Parliament and yourselves to figure out what your risk appetite is with this one. There is a reason it hasn't been done yet. In 2018, when the Government was trying to get it through, it basically came down to this exact question again. I think what occurred there was that there wasn't an appetite to basically say, "We'll accept this as good enough." There was an expectation that community would go away and get complete consensus. I remember sitting in a consultation for that bill and some Elder very cleverly leaning across to the then Minister and saying, "You don't have to get consensus in the upper House to pass a law so why should we have to get consensus to get a law that protects us?" There is something in that.

I think you've got to grapple with what is the risk appetite in terms of getting a big and important piece of legislation done. You can only create a framework and then it is up to community to sort it out. As I said earlier, Chair, I think that whatever legislation first lands and goes through Parliament, whether it's this bill or perhaps one down the track, it will go through many iterations of the provisions that deal with how you identify who is there.

Reverend the Hon. FRED NILE: Thank you very much for appearing before our inquiry, Mr Winters. My question is very simple: Could you outline the core differences between the culture is identity bill—my bill—and the Government's Aboriginal cultural heritage 2012 draft bill?

GEOFFREY WINTERS: For me there are three key differences. The first is how you deal with State-significant development, and this has always been a big issue. Not surprisingly—and I'm not in any way criticising the Government because I suspect a bill brought forward by the Opposition probably has the same provision in it—Government bills over the years, as they have been proposed, don't tend to protect State-significant development because I suspect the planning department writes a very nicely worded letter to them when they put up their first draft and says, "Make sure that's not in there." And that wasn't in there in 2018; it is in your bill. I think if you're actually serious about protecting Aboriginal cultural heritage, you say that it's not destroyed, harmed or impacted without the community's consent no matter what the project is. And that's what your bill does.

Like I said earlier, the reason this bill is a great opportunity for the Parliament is that it's really hard and really messy work and it's often the only work that can be done by an Independent or a crossbench member bringing it into the Parliament and the major parties letting it happen. The current Government has tried and not got a bill through. No doubt the Labor Party, if they were to form government, would try as well. It's really hard work when you're the majority party to do it. So a provision like that—I think it's section 11 of your proposed bill, Reverend—is a great example of why this is a perfect piece of work to be done from the crossbench.

The others are very straightforward and again probably linked to the nature of who's proposing the bill. The new bill proposes a very limited role for the Minister in the appointment of decision-makers and various office holders and the removal of office holders, I should say, whereas it was quite the opposite in the previous bill; there was quite a heavy hand for the Minister in appointing people and being able to remove them. Then the last point is this idea—there are a couple of bits on the membership and composition. Giving that autonomy to the authority to appoint local services, and the identification of a gender balance is one of those weird little novel ones that I think shows a little bit more nuance and thoughtfulness about this bill. But for me, it is just those couple of elements pulled together: the reduced role of the Minister, the protection of cultural heritage even where it's State-significant development and the autonomy of the authority.

The Hon. PENNY SHARPE: Thank you very much coming today. You've touched on some of the issues that I was going to explore with you, one of which was why you think the 2018 process has fallen over.

GEOFFREY WINTERS: I'll try my best without traversing into—

The Hon. PENNY SHARPE: I know you've been quite involved with it, so I'm interested in your reflections about that.

GEOFFREY WINTERS: The piece of work that the firm I was with at the time was asked to do in 2018 was to take the bill and put it into a plain language format to take it to community. When you do that, you start to very quickly see how things actually operate or will at least be perceived to operate. When you put a provision like "where a project is deemed to be State-significant development, no cultural protection is afforded" into plain language, community get a little bit shitty about that, and you've lost them, I think, at that point. When you start talking about ministerial power to appoint and remove members, community starts to perceive it as being a bill that is for the government, not for community. Again, I think it is really hard work to do this type of reform and I don't envy a Government Minister or an Opposition Minister having to consider this, but it's probably the right thing, ethically, and if we're really committed to the purpose of the legislation, for this not to be ministerially heavy, for it to have more autonomy and for all projects to be subject to its protections.

For me they're the three big differences. I completely understand why government of the day might not want to see those three elements in a bill but I think, objectively, when you step back, it's clear as a person who lives on Gadigal country or wherever you might live, who knows that what has gone is horrific and dispossession is writ large in New South Wales, that those three things probably don't belong in cultural heritage protection law: that the authority should be autonomous as much as it can be; it should not have the Minister appointing and removing members; and it should mean that every bridge, tunnel, hospital and school also must go through the same process of being surveyed, any heritage identified and any destruction authorised by the relevant person.

Like I said, Penny, it is really hard legislation. I don't envy the exercise but I think the fact that the Committee is going through this process shows that there seems to be a very genuine commitment to exploring whether this is the right vehicle and the right bill for this State. My encouragement would be to do it. I think I said to one of your colleagues in a meeting, "Why wouldn't you let this bill go through, because you probably don't want it on your list of legislation to get to if you form government after March?" It is really complicated.

The Hon. PENNY SHARPE: In terms of the State-significant development, which seems to me to be a massive hurdle, not from Aboriginal people but from government and basically the development industry, how do other States deal with that matter? Are there other things we can point to that work better?

GEOFFREY WINTERS: I will try my best to answer this and not go to taking it on notice. There are national guidelines that have been developed by the Federal entity. I think it's the Australian Heritage Council—it developed some national guidelines. I believe Rachel Perkins in particular did a lot of work on that type of provision in the guidelines. I'll point to a bad example. If you look at WA, who initially did produce some pretty rigorous cultural heritage legislation, after the catastrophe over there, the new bill that they brought in actually handed more power back to the State, particularly in the guise of State-significant development. And that was seen as a huge step backwards in a State that, to that point, had positioned itself as a leader of this sort of reform.

Could I offer just one more comment on that point? Also, the sector—and when I say "the sector" I mean the development industry and the construction sector—doesn't need to think of cultural heritage protection as a blanket "no" on where it exists. This provides a framework whereby damage and destruction can occur to culturally significant spaces, but it's done and managed with the Aboriginal community authority working with them in partnership. So I think it should be viewed as an opportunity to do development well.

The Hon. PENNY SHARPE: One of the things that has been suggested to me is that the cost of the 2018 arrangements, because of their complexity, was also a problem. Do you see that as being an issue?

GEOFFREY WINTERS: It certainly was in 2018. I can't recall precisely how it was dealt with but when the standalone entity—there was a State entity that was proposed originally—was put up, there was a figure, and I forget it but it was towards $100 million effectively, to get this all up and going. Multiple departments, I recall, sounded alarms at that, if not at least the finance and treasury department. I don't know what the costing is for this legislation but I don't think you can put a price on cultural heritage.

The CHAIR: There has been some suggestion, and you touched on it briefly then, about the idea of harm protection impact being ultimately a negotiation, a discussion and something that First Nations people have control of or say in. At the moment there's a suggestion that where native title exists under the ILUAs, that is already an arrangement that's taking place and, on some voices, including non-Aboriginal voices, there's been a question of how this law shouldn't seek to interfere with that. What's your view around that?

GEOFFREY WINTERS: The Constitution deals with this straight up. I'll go from the principle to the specific. Obviously, a State law cannot be inconsistent with the Federal law where it covers the field, and I think the Native Title Act and the provision for ILUAs—I think it's in schedule 3 or 4—probably would be viewed as covering the field. I suspect the High Court has already said that. Therefore, wherever the State law purported to go into that realm, it wouldn't be allowed to. So that won't occur. I saw in some evidence given a suggestion by native title holders and groups that this legislation tries to water down some of their rights and interests. In

principle, that just cannot occur. This legislation cannot be inconsistent with those rights and interests, and it certainly can't negatively impact them. If anything, where they were considered to sit alongside each other, you would think that it strengthens their rights and interests and gives them another weapon in the armoury, as it were. Say, you've got a determined native title claim, you've got an ILUA, you've got your prescribed body corporate. You would be entitled to the relevant compensation for any damage and destruction, under the Federal laws. Then whatever framework was established under this law would also be a further protection. So I don't think that argument really has legs. I'm not quite sure where it's come from.

The CHAIR: With that, the ILUAs are applied to those once-Crown lands that are recognised and have been determined as native title—the grant of native title over those lands. So I suppose this regime sits side by side on those particular areas of land, including private lands where there are no such agreements in place. Is that your understanding of how this would work together as well?

GEOFFREY WINTERS: Yes. I think so. Remember under the ILUA arrangement—it depends on the rights and interests of the particular native title group. But, speaking in generality, the right is to compensation for various acts that were or are to be done on the parcels of land. That's monetary compensation. The framework here doesn't go to monetary compensation for destruction or that there's obviously a way in which the local authority is a forfeit, user-pays sort of scheme. This scheme is to design in the management of proposed destruction. The ILUA compensation is around protections and compensation for actual destruction. There's a proactive and a reactive scheme that you would see sit alongside each other. That is how I think it works in my brain.

The CHAIR: I suppose one of the differences that's been raised is that the ILUA process generally isn't seen to have a sort of right of veto whereas the interpretation of these laws are that it could be seen that there's a right of veto.

GEOFFREY WINTERS: Yes. It would be seen that there were. My reading of the last draft I saw is that where there is the identification of a culturally significant landscape or place or space or whatever it might be and it triggers the provisions, you have the local authority determining what is considered to be the appropriate—either slight destruction or damage, if any, or to say, "No. Actually, the veto power can be exercised." You don't have that right under the ILUA. Also, while there are lots of ILUAs across New South Wales, they generally relate to very small parcels of land that are not necessarily the types of parcels that, I think, this bill would go to protecting. I've sat in ILUA negotiations where you're talking about what you call a paper town. It's a paddock that has lots of DPs. But they, obviously, don't exist. You go plot by plot by plot. You'll have 20 ILUAs on a paddock outside of Cowra. But I very much doubt, any time soon, apart from, perhaps, mining—but, then again, there's other ways in which that's dealt with, already, anyway. These really aren't the parcels that, I think, the bulk of this legislation's purpose is directed towards.

The Hon. ROSE JACKSON: This is perhaps a bit specific question. We're getting into the weeds a little bit here with this question, I accept. But, as it has been raised by the witnesses, I thought I'd just seek your feedback.

GEOFFREY WINTERS: Give it a go.

The Hon. ROSE JACKSON: One of the things that has been suggested is that there is no provision in the bill, either in the advisory council or in terms of giving a role as someone who has cultural authority to native title claimants. Particularly, the representatives of the native title holders who appeared suggested that, as you say, it's extremely difficult to actually have a court-determined native title ownership but that there were perhaps quite a large group of claimants who were in the process—the lengthy legal process—of trying to establish their native title rights and that perhaps there may be a way to include those voices in this process as well. I just wondered if you had any feedback on that sort of suggestion.

GEOFFREY WINTERS: That's a really excellent question and suggestion. I think what the proposal would be is that you draw the line at saying the first priority is a native title holder group, prescribed body corporate. Where you've got a registered claimant group, which is—just to register a claim in the Federal Court is a very lengthy process. It's where anthropology and all of these kind of identification of family groups goes on. That's just to start the native title claim; it could be many years later before it's determined. You'd let that group fall into the order of priority. I don't think there's necessarily anything wrong with that whatsoever. It certainly would suggest that that group have a more justifiable cultural authority over a space than, say—to be crude—any old member of a land council.

The Hon. AILEEN MacDONALD: You may have answered it. Apologies for being late. In this bill, does the meaning of "Aboriginal cultural heritage" satisfactorily cover what you would define as being Aboriginal cultural heritage? Or would you expand it?

GEOFFREY WINTERS: It's a very good question. I understand you're from Moree. Is that right?

The Hon. AILEEN MacDONALD: I was in Moree on the weekend, but—

GEOFFREY WINTERS: Yes. You spoke to one of my staff members. She said it's lovely to meet you. This is another difference between the 2018 bill and the bill that you've got before you: the way it talks about cultural landscapes, which are—if you go and look at native title law and the way it's developed, obviously, the earlier cases are very old-fashioned ways of considering anthropology and connection to country. I think, in the years since '93, we've really developed a body of understanding Aboriginal cultural heritage and how it interacts with the physical and the intangible. This bill incorporates landscapes and intangible cultural heritage, which—I think that would be high watermark, best practice cultural heritage legislation in the country.

The Hon. AILEEN MacDONALD: Can I ask another question in terms of the establishment of the council? Do you see the representation as being broad enough?

GEOFFREY WINTERS: This is one of those hard bits because—say the mechanisms in the bill, for identifying the council, go through. Ten years from now, you've got a self-perpetuating group of leaders that are establishing a body of practice in New South Wales, and the system's running. How you stand up the first council is always going to be difficult. You've got to choose the best possible way to get it done. The mechanism in here, I think, is fine. It's satisfactory. It's a tough task, and it does a good job of it. Then, when we're thinking about native title holders versus land council members versus other people, I think it does get the balance right.

The Hon. AILEEN MacDONALD: The consultation period for this bill—you mentioned before about consensus, and you actually can't talk to everybody. Has there been enough consultation?

GEOFFREY WINTERS: I think there has been enough consultation on Aboriginal cultural heritage in New South Wales to absolutely exhaust both the sector and the community. I don't think any evidence given before this Committee has been surprising. I don't think NTSCORP's come in and said something that you couldn't have expected them to say, or the New South Wales local Aboriginal land council came in and said something you didn't expect them to say. We know what people's views are. I think the conflict is easily identified. In fact, the drafting of the bill tries to pre-empt and satisfy a lot of that conflict up-front. Has this specific bill been consulted widely? Probably not as widely as the 2018 bill. But, because of the attempts at this, we've got a pretty clear sense of where the lines are. So I think it's one of those moments where it's now time for the Parliament to just—

The Hon. AILEEN MacDONALD: Do something.

GEOFFREY WINTERS: Yes.

The CHAIR: When you referred to the composition being okay in its current form, are you suggesting, consistent with your evidence earlier, as providing it does more to recognise native title voices and registered body corporates and holders, applicants, registered applicants et cetera?

GEOFFREY WINTERS: I think the order of priority could be made more clear and concrete. I've certainly said in many meetings it should say, where there is a registered native title group, you're a clear number one. Perhaps the suggestion of the claimant group could be 1B; Aboriginal owners, number two; land councils, number three. The fourth is—heaven help us, where none of those exist, at determining what it looks like. But that's how it should be.

The CHAIR: Is four—

GEOFFREY WINTERS: I would tidy up that provision in the current draft. I think it could be more expressed.

The CHAIR: And that it does need that extra body, class, cohort that are none of those, whether it's a traditional custodian, an Elders' group, whatever—

GEOFFREY WINTERS: Exactly right.

The CHAIR: Thank you. Can I just ask as well, in two areas of your expertise. When you refer to starting this and that it is likely something that would need reform, do you think a sort of presumption or a rebuttable presumption in terms of that would be a mechanism to engage in the actual bill?

GEOFFREY WINTERS: Yes, that could certainly work. I think you've got to look at other similar legislation to get a sense of how you might do it. In the land rights Act, the 1983 legislation, there is a five-yearly statutory review and it's a really rigorous review. The Department of Aboriginal Affairs certainly takes it very seriously and resources it very thoroughly, and there is now a well-established process of community consultation and stakeholder engagement and all of that. I think that sort of mechanism is extremely ideal for legislation like

this. You'd probably put a shorter one in it because I think it's going to be reformed quite a bit in the first decade and you want to set those—I think you want to have a two-year review and then a five-year review.

The CHAIR: Finally, given your role with justice reinvest—and I think you may have said in your opening but perhaps not so direct—is this inextricably linked with criminal justice and what's happening in communities?

GEOFFREY WINTERS: I think cultural authority in community is something that is missing and it often creates a lot of the gaps through which problems develop. You certainly seem to see in communities where leadership and authority are clearly identifiable and that cultural authority is obvious that there is respect, and commitment to the community is in a different way. Aboriginal society is a very traditional and conservative society. It has very clear boundaries and roles and rights and responsibilities. If this legislation, in part, helps to reinvigorate that in communities where we do see massive over-representation of Aboriginal people interacting with the criminal justice system, it would follow that you will see it have an impact.

From a more structural point of view—like from Just Reinvest's point of view—in Bourke, the establishment of the Bourke Tribal Council, a self-identifying community authority group coming together, has been the framework within which Maranguka—and, back in the day, Just Reinvest—was able to come along and figure out how we can attack these drivers into the criminal justice system. Another example would be—and this is a Moree-specific one—recently addressing the Moree Plains Shire Council. A new mayor and a bunch of new councillors really want to reset the relationship with their Aboriginal community there. The question is who do we talk to? So if this bill can provide some structure that in places at a local government level they know who to speak to so they can get a culturally authoritative voice, I think you'll see a lot of progress happen in places.

The Hon. ROSE JACKSON: We're about to run out of time. Presumably, essential to achieving some of those goals that you've outlined is the recognition of intangible cultural heritage, so that understanding that it's more than just—

GEOFFREY WINTERS: It's not just rock art.

The Hon. ROSE JACKSON: Yes, that's right. It is a much broader understanding of cultural heritage, so that you are able to establish cultural leadership in that broad sense and address intangible cultural heritage but also those intangible social or economic issues that groups like Just Reinvest are trying to address.

GEOFFREY WINTERS: Yes. I think it provides the opportunity for us to see a network of clear and responsible Aboriginal leadership across the State, and I think that's something that all of us benefit from.

The CHAIR: I think that's everything from us. Is there anything you would like to say in conclusion?

GEOFFREY WINTERS: No, I just thank you guys for having me in today.

The CHAIR: Thank you very much, Mr Winters.

(The witness withdrew.)

Mr SHANE HAMILTON, Deputy Secretary Aboriginal Affairs and Outcomes, Aboriginal Affairs NSW, affirmed and examined

The CHAIR: Welcome, Mr Shane Hamilton. Would you like to start by making a short opening statement?

SHANE HAMILTON: Sure, thank you. Firstly, I begin by acknowledging the traditional custodians of the land on which we meet and paying my respects to the Gadigal people, and extend those respects to Elders, both past and present, and to any other Aboriginal and Torres Strait Islander people that are with us today. While I appreciate Reverend Nile's intentions in producing this private member's bill, there are a number of areas that I am concerned that you haven't really taken the time to thoroughly consider the complexities of this important issue. The importance of culturally safe and appropriate management and protection of Aboriginal cultural heritage is paramount and cannot be understated. Not only are there cultural sensitivities that need to be respected, there is also a high degree of technical knowledge needed to line up with the planning and heritage system.

The legislative protection and management of Aboriginal cultural heritage needs to balance continued connection to country and the celebration of culture with the systems and operational demands of planning and development. That needs to happen at the front end, not at the back end. The private member's bill does not strike the right balance between these competing priorities, and this balance can only be reached through consultation with Aboriginal communities, government agencies and the planning industry. Self-determination must be at the heart of reforming the current approach to Aboriginal cultural heritage management, and Aboriginal leadership is at the forefront of the Government's reform priorities. The private member's bill has not been developed through the extensive consultation processes needed and it does not reflect the expectations of Aboriginal people in New South Wales, beyond a handful of organisations.

Reverend the Hon. FRED NILE: Submission 12 outlines the Government's process in developing standalone Aboriginal cultural heritage legislation, which began in 2011. Can you tell us why it has taken so long to develop such legislation?

SHANE HAMILTON: I think it goes to the heart of what I was touching on before about the complexities of Aboriginal cultural heritage and the legislation. We have done extensive consultations up until—from 2018 onwards. I think it highlights the fact that this is really complex and that it requires broad consultation. We have had, I guess, COVID in between that and there have been a lot of issues around being able to consult widely and extensively. But I think, for me, it goes to the heart of making sure that we get this right and how it interacts with the current system, because it is complex.

Reverend the Hon. FRED NILE: When do you expect your legislation will be tabled?

SHANE HAMILTON: I am not able to give you a clear answer to that unfortunately. We are still undergoing consultation, as I say, and working with key stakeholders.

Reverend the Hon. FRED NILE: When do you anticipate the Government's legislation will be presented to the New South Wales Parliament?

SHANE HAMILTON: I am not able to give you a date on when that's likely to happen.

Reverend the Hon. FRED NILE: When it is submitted to the Parliament, will it be similar to the 2018 Government bill?

SHANE HAMILTON: Again, I am not able to give you details on what that is going to look like. As I say, we've done extensive consultation. There is a whole lot more to be done, so I'm not in a position to be able to answer that question fully.

Reverend the Hon. FRED NILE: Does the new legislation have any outstanding characteristics? What would be the main features of the new Government legislation when it is presented and if it will be presented?

The Hon. SCOTT BARRETT: Point of order: I appreciate where you are going with this, Reverend, but these questions and the last couple of questions are probably best directed to the Minister rather than the department. They are questions about the timing of the bill, what's going to be in the bill. They are decisions of the Minister that would have to then go through Cabinet, rather than something that Mr Hamilton can answer himself.

Reverend the Hon. FRED NILE: Madam Chair, it's a question based on the assumption that the department is intimately involved in the development of the legislation. That is its role.

The CHAIR: I think the witness has answered that he isn't really certain at this point in time and is not at liberty to say any more. Are you satisfied with those answers for now, Reverend? There is not a lot more he can provide, by the sounds of it.

Reverend the Hon. FRED NILE: Does he wish to add any comment then?

SHANE HAMILTON: Yes. Without giving specific content, I think the fundamental principles around self-determination and Aboriginal people being at the centre or front end of decision-making, rather than at the back end, has benefit not only for Aboriginal communities but also for the system itself. We have culture and heritage that sits under the National Parks and Wildlife Act 1974—I mean, that goes to the heart of the issue.

Reverend the Hon. FRED NILE: I have one final question. If the department does not have any answers to the questions, it should raise in the minds of the Aboriginal community in New South Wales that there will never be a bill. Would that be a correct assumption?

SHANE HAMILTON: I don't think so. People may have that view but it's not necessarily a view that I share.

The Hon. ROSE JACKSON: I might ask a question and then go to Ms Sharpe and we can see how we go from there. Mr Hamilton, I obviously appreciate the comments that you've made. It is certainly true to say that what you have suggested in your opening statement and in the Government's submission is consistent with some of the other evidence we've received in relation to this bill. You would be aware, though, that evidence including from Mr Winters and others has suggested that, "Look, we can't let the perfect be the enemy of the good here," and that that process of trying to ensure that everyone is brought along is going to take a really long time.

Perhaps it is better—this is other evidence that we have received—to legislate, accept that that is imperfect and then try to use reviews or amendments down the track to work through the obvious issues that there are going to be and that you have drawn attention to. I just wanted to have any reflections from you about that as a legislative process—passing a piece of legislation that we know isn't perfect, that we know has serious objections to it, but saying to ourselves, "Oh well, we will figure that out later as we go down the track with reviews and amendments." I just wanted your reflections on that as a legislative process.

SHANE HAMILTON: I think that's all fine if it happens, but history would say that that may have been views historically, not just in this legislation but in others that for Aboriginal people hasn't actually happened. We run the risk of not engaging extensively, outside of those organisations that are in this space on a regular basis. I think when it comes to things like who can talk for country, that's very complex. In many ways, it sits directly outside those two organisations. If we don't take those views into consideration, I think at this particular point in time—again, I emphasise the front end of the development of it is far better than trying to do it at a later stage.

The Hon. PENNY SHARPE: Thank you for appearing today. You are in the hot seat when we probably need the Minister to ask some of these questions, I suspect. I am not going to ask you things for him, though. I am really interested, though, in the submission you talk about the process since 2018. Obviously the Parliament hasn't seen any of the evidence of that. While I think internally, within government, there is a lot of discussion about this, I am concerned that since 2018 there has been nothing that we have been able to see in terms of progress. We are faced with this awkward situation which is that the very groups that the department says it has been consulting with are the people who are actually backing this bill. I am just wondering if you can tell us what progress has been made since 2018? In particular you talk about amendments to the draft bill. Where can we see them?

SHANE HAMILTON: Again, I would just emphasise I can't give you the detail of that, but I can say that the opening remarks and what's in our submission is the process or the progress that we've made so far and we continue to engage with those key organisations. I think the biggest challenge for us has been having that extensive consultation through that period because there are a whole range of reasons like COVID and other priorities. Yes, I think my opening remarks and our submission talks to how we have progressed it so far and where we are currently at. Again, I am sorry but I can't give you when that's likely to be.

The Hon. PENNY SHARPE: That's okay. If the answer is the Government hasn't let you release it yet, that's fine—in a much more diplomatic way. That is fine; that is part of my question. We keep being told that there is progress but, from the Parliament's side of things, as opposed to the Government's side of things, we don't see that and we are puzzled by the fact that the very same organisations that have been primarily involved in your consultation are now backing a different bill.

SHANE HAMILTON: I guess I would just say that it is not to say that they don't necessarily disagree with some of the discussions that we've had with them. That is their decision to back another bill, but I can say that we have engaged with them extensively and had ongoing discussions and we will continue to do that.

The Hon. PENNY SHARPE: One of the things that we haven't received—again, this isn't really one for you, but your submission points to this—is the issue of the alignment of our planning legislation with heritage. How is that being dealt with in government?

SHANE HAMILTON: Again, I think heritage are an important stakeholder in our deliberations and so we are in close communication with them. We engage with them on a regular basis. If there is anything specific, I would need to provide that outside of today's hearing.

The Hon. PENNY SHARPE: The point that I'd make is that heritage is the key driver here but fundamentally it is welded into the way in which we basically approve development in the State. I am interested that we haven't got anything from the planning department, for example, in relation to this matter—this is not your fault, Mr Hamilton—because I'm sure they have strong views. My limited understanding of the internal discussion in government has been it's partly because of those strong views that the bill hasn't come forward. I don't expect you to comment on that. It was more of a comment from me. Can I ask you about where the State Government is at in relation to governance arrangements? The fundamental question that I think everyone is trying to grapple with—you've alluded to this in your evidence today—is who speaks for country and how does government recognise that process? Where is Aboriginal Affairs up to with resolving that very difficult and complex question?

SHANE HAMILTON: If you look at the land rights Act and that process, it allows for that to happen. There's a process that organisations, individuals and communities can go through to ensure that there are the right people speaking for country and there are organisations that have those applications and are undergoing those processes. But it goes to the heart of what I was saying before. I think that's what makes this so complex—that it's not always clear and you have to take the time. There is a process to allow you to do that now, but it enables us to get that right, I guess, in terms of who does speak for country.

The Hon. SCOTT BARRETT: Touching on the approach that Ms Jackson was talking about before, is it "Let's just get something up and then fix it later if it's got some spiders on it still"? We heard this morning that maybe we don't need consensus; let's just get something up. Earlier evidence was "Let us sort it out." There are two parts to the question then: What is the importance of getting consensus or close to consensus amongst community on this, and is there precedent for that sort of approach that we touched on earlier?

SHANE HAMILTON: I think across the country we're in a very different mindset after Juukan Gorge and thinking about things in a completely different way than we may have thought about it historically. Again, that's why I would emphasise that you need that up-front consultation, getting that agreement right. Even once you have the legislation in place, when it comes to developments across the State, again I would emphasise Aboriginal people need to be at the front end of that. Historically and even now we're not at the front end. We're the last thought rather than the first thought when it comes to development or changes that impact on Aboriginal cultural heritage. I would say we would be far better off spending that time, notwithstanding that you're not always going to get agreement across the board. We're a diverse community so you're going to get those—as long as you can get that diversity of opinions and ideas that help shape the legislation, I think that's the best way to go.

The Hon. SCOTT BARRETT: Acknowledging points raised by Reverend Nile and Ms Sharpe, it has been a long time coming.

SHANE HAMILTON: Yes.

The Hon. SCOTT BARRETT: I don't think there's—certainly not in this room—any resistance to the idea of protecting Aboriginal cultural heritage. What needs to happen to speed up this process?

SHANE HAMILTON: Extensive consultation to the extent that we're satisfied that everybody that needs to be consulted and have a say has had a say in that and has been part of developing that, and making sure that that's as wide and extensive as we possibly can and no-one gets left behind or left out. I think that's the fundamental practice that we need to engage in, again just emphasising when you look at where there have been issues with damage to sites and other things it's because Aboriginal people haven't been consulted up front.

The CHAIR: Perhaps you could outline the key differences between this bill and the 2018 exposure bill.

SHANE HAMILTON: I would just say that what you have in our submission and my opening remarks goes to the heart of what we've been talking about. That highlights the differences between this bill and what we've been talking to stakeholders about and are in the process of developing. Is there something specific that you wanted me to touch on?

The CHAIR: Your submission absolutely goes well to the overarching principles that good, standalone cultural heritage laws should include. All witnesses who have presented to us say those are in this current bill and that absolutely you identify consultation. As you're aware, we are limited by the process of consultation that we

can engage in as a Committee looking into a bill. But the entire bill has been premised and introduced on the fact, as other witnesses have sworn, that consultation has now been going on—let's be real, it's not the 2018 bill; it's the 2012 bill, the 2014 bill and it goes back, and it goes a long way back. We know what good cultural heritage laws should look like. People from all across New South Wales have been telling us, from Aboriginal communities and Aboriginal organisations and voices. Is there anything that you think is in this bill or is not in this bill that should be or shouldn't be?

SHANE HAMILTON: The bill proposes that its Aboriginal cultural heritage council has independence from government. We believe that's undeliverable. It proposes an independent body corporate that's not subject to the Minister in areas that are legally unworkable. The bill proposes that nominees for the Aboriginal cultural heritage council can only be put forward by New South Wales Aboriginal Land Council or native title holders. This approach is out of step with best-practice community engagement because it ignores a range of other interested parties, including traditional owners.

It's also prescriptive about the composition of local Aboriginal cultural heritage services. It sets up a hierarchy which prioritises local Aboriginal land councils over traditional owners who have the authority to speak for country. That has the potential to be a licence to destroy Aboriginal cultural heritage. The Aboriginal cultural heritage reform must recognise that who has the authority to speak for country, as I said before, is a complex issue. The composition of local services should be determined by Aboriginal people and not dictated by government. The reform also needs to build on existing legislation such as the Aboriginal Land Rights Act and the Native Title Act. The diversity between and within Aboriginal communities calls for a more flexible approach to local services that balances recognition of native title with the flexibility to incorporate the diversity of knowledge holders within Aboriginal communities.

Just based on some previous consultation and feedback on New South Wales Aboriginal cultural heritage reforms, the complexity and dynamic nature of cultural heritage and speakers for country has been acknowledged and factored into the role of the Aboriginal cultural heritage council to determine the boundaries and composition of panel areas in a culturally appropriate way. In its current form—the private member's bill—composition of local services is not reflective of this and has the potential to create conflict.

The CHAIR: I hear those things, and based on the evidence that we've had so far where some of those matters have been raised, they would just literally be the subject of some amendments to actually fix those issues or to accommodate processes to deal with those matters. I suppose the question then would be, consistent with Ms Jackson, why would we not do that now? Because, as you started, we currently have cultural heritage laws embedded in the National Parks and Wildlife Act. And wouldn't standalone cultural heritage laws right now be a priority of all of us? If those things were amended, from your position and that of the department, do you think that that would be satisfactory?

SHANE HAMILTON: It's one area I think that, as I've outlined, would need to be looked at because the current bill doesn't cover that, but there are probably a whole range of other areas as well in terms of how it lines up with the current planning system. There are other areas around—

The CHAIR: Can I just elaborate on one point that you raised? You object to the fact that the bill suggests that we would have a proper standalone that is administered by Aboriginal people and that it wouldn't be as connected to government. That's an objection that you have. You're suggesting that we should maintain a government-controlled cultural heritage system.

SHANE HAMILTON: No, I'm not saying that. I'm saying that if you have a standalone—you have the Aboriginal cultural heritage Act that deals with culture and heritage—it needs to work within the current system.

The CHAIR: Just on that point—I'm struggling with that one—how would this not work within the current system?

SHANE HAMILTON: For the reasons I've just outlined before. I'll just go back to my notes. If I can just go to an issue around the bill that it'll give an independent body, I guess, for example—sorry. Within the bill, it is currently mirroring categorisation of the Heritage Act, and it uses definitions of State significance and world heritage definitions of outstanding significance. Those high-level categorisations set a higher bar for what can be declared as Aboriginal cultural heritage, and this dismisses large quantities of cultural heritage that are significant to Aboriginal communities but not of a scale for world heritage, and it risks ongoing destruction of Aboriginal cultural heritage as it sets out an ill-suited measurement that does not reflect those Aboriginal perspectives of cultural value.

The CHAIR: So your concern would be that it doesn't protect cultural heritage enough. But they're clearly things that could be amended or modified. I think what you're referring to is just making sure that the classifications and the terminology are consistent with the existing heritage framework, from what I can gather.

SHANE HAMILTON: Yes. In terms of protected areas, the bill doesn't require the landholder's consent to declare a place as a protected area. That's what I mean. In terms of alignment with the current system, I think that would most likely be opposed by industry groups like mining and agricultural.

The CHAIR: And we certainly have got some submissions that are not wholly supportive of the bill as it's drafted. They're certainly supportive of the idea of standalone cultural heritage laws. Is it not, though, our primary objective here to be putting forward a bill that seeks to protect cultural heritage and that does work within the system but perhaps prioritises the protection of cultural heritage at this point as the focus of standalone cultural heritage laws? Do you see that as an objective that we should be trying to achieve with this sort of standalone law?

SHANE HAMILTON: Absolutely. Yes, I think that should be, but again I would argue that Aboriginal people need to be at the forefront of that right at the beginning of that process, not—

The CHAIR: And you don't see this law would be doing that? This would be putting Aboriginal people at the forefront, in control through the Aboriginal cultural heritage council, an independent body of government and a body that gets to determine local land services and how cultural heritage is protected on the ground ultimately.

SHANE HAMILTON: No, I'm saying that's how it should be. I'm just saying that there are aspects of the bill that don't allow for that necessarily to happen now, and it certainly doesn't happen right now with the current legislation.

The CHAIR: No. Thank you. I'm just struggling a little bit to understand precisely the bits that you're saying this bill doesn't actually do that, but I think I can grasp from what you've put forward.

The Hon. AILEEN MacDONALD: You might have to take this on notice. With the comments that you had that the bill has extensive inconsistencies with the proposed processes and unclear policy positions, and you did outline some of them, I was wondering if you can expand on that or is that something that you would take on notice?

SHANE HAMILTON: Probably better to take on notice to be honest.

The Hon. AILEEN MacDONALD: Okay. The other question has to do with your aims. With aim 1 "Better recognition of Aboriginal cultural heritage values", how does this bill not fulfil that aim?

SHANE HAMILTON: To an extent it does, but there are aspects that I've outlined I think that don't quite meet it, notwithstanding there were questions around "Could we proceed and then we make amendments later?" which wouldn't be my recommendation.

The Hon. AILEEN MacDONALD: Not unscrambling the egg.

SHANE HAMILTON: Yes.

The Hon. ROSE JACKSON: Your submission talked about how the bill does not adequately align with the Federal Indigenous cultural heritage reform process, which is described as "currently progressing". I just wondered if you might provide any detail that you had about the misalignment between this bill and that process but also perhaps just give us an update on where that process is up to if you had any information about where the Federal cultural heritage reform process was up to and the New South Wales Government's engagement with that.

SHANE HAMILTON: I probably need to take that on notice so I can give a full answer, if that's okay.

The CHAIR: No problem, thank you.

The Hon. ROSE JACKSON: That's fine. One more, which you also may have to take on notice: It's drawn from the submission, but you've talked a little bit about some of the inconsistencies with the Government's previous legislative efforts and some of the outcomes of the consultation that you've done that aren't reflected in the bill that we're currently considering. The submission also suggests that the bill does not adequately align with the findings and recommendations of the Juukan Gorge report that the Joint Select Committee on Northern Australia did, which is obviously a Federal committee inquiry, so I accept that. But I'd be interested in some detail, again, about that misalignment. What were the things that that report, called *A Way Forward,* found that are not aligned or are inconsistent with the bill that we're considering?

SHANE HAMILTON: I'm sorry, I don't have specifics on that. I can take that on notice and respond, but I don't have the specifics in front of me on the detail on that.

The Hon. ROSE JACKSON: That's fine, thank you.

The CHAIR: Mr Hamilton, from all of the work that you have done, do you think that best practice standalone cultural heritage laws should have the right of veto and a particular role in the protection of cultural heritage in relation to State-significant development and State-significant infrastructure?

SHANE HAMILTON: I think that's the point I was making before: It has to work within the system that we currently have. Notwithstanding that, yes, I do agree that we should have standalone legislation for Aboriginal cultural heritage, but it has to work within the system that we have.

The CHAIR: On that, the current system basically just provides that the existing cultural heritage protections are set aside when it comes to State-significant development and infrastructure, and the process of facilitation of harm takes place from the outset. Are you suggesting that that is the status quo and that's what standalone cultural heritage laws should include?

SHANE HAMILTON: No, I'm saying that we should try to find a way where it doesn't happen that Aboriginal cultural heritage is put aside, however that might occur. But it's important that, as I say, it's at the forefront. If we have standalone legislation—and, again, Aboriginal people are at the table, self-determination driven—then we should find a way to maintain how it stays within or works within the current system.

The Hon. PENNY SHARPE: In the consideration of 2018, and really through this entire process, is there a need for us to be very up-front that there's basically a presumption against destruction or harm? How is that picked up?

SHANE HAMILTON: How is it picked up in the current bill, did you say?

The Hon. PENNY SHARPE: Yes.

SHANE HAMILTON: To an extent, I don't think it does. That's one of the areas that we've been sort of focusing on—ensuring that Aboriginal people are considered at the front end of any sort of discussion or process.

The Hon. PENNY SHARPE: Yes, but I suppose my question is specifically, within any bill, do we need to state clearly that the objective of the bill is to stop destruction or harm? The presumption is that you don't harm it, and then there's the cascading decision in consultation with Aboriginal people about the way in which that may occur and under what circumstances. It sort of sets up that process, but can you point to anywhere across Australia that has good presumption laws?

SHANE HAMILTON: I'd have to take that on notice but, yes, I think the principles of what you're talking about are exactly what we should have. In terms of pointing to an example, yes, I would have to provide that information.

The Hon. PENNY SHARPE: That's okay. Thank you for your evidence. You've indicated the risks of just proceeding with the bill in its current form without an adequate process to particularly look at amendments, because we've had some really good evidence through this inquiry, with good suggestions. What do you see as the major risks of just letting it go and hoping we can fix it later?

SHANE HAMILTON: We talked a bit about the planning system, protected areas. I think there are just a number of areas that would need to be worked through and widely consulted on before you would consider the bill in any format, and I touched on a couple of these today. As I said before, I'm happy to provide supplementary information. Sorry, I just wanted to go to one of my notes. One of the areas is around ancestral remains, and it's probably fair to say that no jurisdiction in Australia has been able to transfer ownership to Aboriginal people during the process or where ancestral remains are in possession of a cultural institution. A key priority for Aboriginal communities is the unconditional repatriation of ancestral remains, and the bill also exempts certain organisations, such as museums, from requirements of the bill. Given that museums and cultural institutions have a large number of ancestral remains and sacred objects, the intention of repatriation is not underpinned by the necessary commitment to deliver tangible outcomes. That's one, in particular, that I think would really need to be considered and looked at.

The Hon. PENNY SHARPE: I just realised our time is about to run out, so are there any other things that we have missed that you would like to tell the Committee?

SHANE HAMILTON: I don't think so, apart from those questions that we've taken on notice.

The CHAIR: According to your submissions, you are currently undertaking ongoing consultations to follow up on the 2018 bill, but you refer specifically to those main organisations. Do you intend to consult any further outside of those organisations?

SHANE HAMILTON: Yes, I think we recognise that there needs to be further extensive consultations outside of the two key organisations.

The CHAIR: We've heard quite a bit of evidence that determining cultural authority and the voice of cultural authority can be complex in some areas and not as complex in others, but that processes have been happening and that can ultimately be designed to be facilitated. In the final drafting of your bill, will you be determining an order of hierarchy or priority or those particular voices, or will you be outlining a process in your bill?

The Hon. SCOTT BARRETT: Sorry, Chair, it was remiss of me for not getting involved earlier. That's probably another question for the Minister rather than the official. We've spent a lot of time asking opinions of the official.

The CHAIR: I hear what you're saying, but I'm literally just asking about a process that's resulted from the consultation so far. The submission goes to that. Is that something you're comfortable to answer?

SHANE HAMILTON: I can't talk specifically about the bill. But the system under the land rights Act now allows a process to determine who can speak for country. That already exists.

The CHAIR: You're suggesting, though, that you recognise the native title system works alongside that now, or perhaps even overrides that in certain circumstances?

SHANE HAMILTON: I don't know that it necessarily—yes, I'm not sure it overrides it, but the land rights Act allows for that issue to be considered and determined.

The CHAIR: Based on what you're exposed to, what's your view if somebody sits before you and says that when it comes to cultural authority, a native title holder is the gold standard?

SHANE HAMILTON: I'm not sure your—

The CHAIR: With regard to cultural authority, does that resonate with all of the evidence and consultation that you've achieved or obtained?

SHANE HAMILTON: That's one part, but there's also the Aboriginal Land Rights Act which also deals with that as well. I'm not saying what's better than one or the other; I'm just saying that the process to determine that already exists.

The CHAIR: I see. Sorry, I don't think that the evidence we obtained was that one is better than the other; it's just that one has achieved a satisfaction of cultural authority more so than the other. Is that not something the department has heard or the department does consider?

SHANE HAMILTON: No, I don't think we have a view on one or the other; we just know that there's a process for that to be determined.

The CHAIR: Is there anything you would like to say in conclusion?

SHANE HAMILTON: No, only that.

The CHAIR: Mr Hamilton, we're so grateful that you've come. Thank you for attending. The Committee has resolved that answers to questions taken on notice be returned within seven days, as we're a bit short on time.

SHANE HAMILTON: Yes.

The CHAIR: The secretariat will be in contact with you in relation to those. Thank you very much.

(The witness withdrew.)

(Short adjournment)

Mr ANDREW ABBEY, Policy Director, NSW Minerals Council, before the Committee via videoconference, sworn and examined

The CHAIR: I now welcome our next witness. Mr Abbey, would you like to make an opening statement?

ANDREW ABBEY: Yes, thank you. Firstly, I thank the Committee for inviting the NSW Minerals Council to assist in its consideration of this issue. I also acknowledge the traditional owners of the land on which I am meeting with you, the Wilyakali Australian Aboriginal tribal group of the Darling River basin in Far West New South Wales. I pay my respects to Elders past, present and emerging. I am hoping I got the pronunciation of that correct. I don't have much further to add to the submission lodged by the NSW Minerals Council, other than to mention or emphasise the following points.

The New South Wales mining industry strongly supports the modernisation of the Aboriginal cultural heritage regulatory framework in New South Wales, particularly the establishment of standalone legislation. In that respect, we broadly agree with the view that the current situation is offensive to First Nations people and should be rectified, in terms of the cultural heritage protection regime being absorbed in the National Parks and Wildlife Act. This reform is long overdue. However, whilst we agree the reforms need to occur, our industry has some questions about the approach being taken in the culture is identity bill.

Firstly, there has been no consultation on the substance of the bill that the NSW Minerals Council is aware of. I did note in the previous hearing that various parties were involved in the development of the bill but, as I understand it, there has been no broader consultation. Given the comprehensive nature of this reform and the range of stakeholders likely to be impacted, particularly Indigenous communities, at a minimum there should be comprehensive engagement before a bill is finalised, including culturally sensitive engagement with Indigenous communities.

Secondly, the legislation proposes a fairly expansive regulatory administrative framework, consisting of the Aboriginal cultural heritage council as well as multiple local Aboriginal cultural heritage services across the State. Whilst we acknowledge this is a private member's bill, there is no clear plan on how it would be implemented, how much it would cost, how it would be paid for, how it works with the Government, how it works with other stakeholders et cetera and a range of other practical implementation issues. The importance of resolving these details from the outset, in our view, can't be emphasised enough if we want these reforms to actually succeed.

Thirdly, the legislation defers very significant powers to subordinate legislation regulations and guidelines, none of which have been made available for consideration. Our view for such wideranging reforms is that, at a minimum, draft regulatory guidelines should be made available for discussion with all stakeholders so that there is a clear understanding of what is involved, how the power lies, how the power is distributed and how the costs and benefits are distributed amongst stakeholders.

Fourthly, there are a number of parts of the bill itself that we have questions around. I know the word "veto" was discussed at the previous hearing and is used and bandied around, but we question how the culture is identity bill is integrated—or, in our view, the lack of integration—with the existing planning and development assessment framework. Our understanding of the bill is that it includes a yes or no gateway decision for certain types of developments in New South Wales based on a single issue. The objectives of standalone cultural heritage protection measures are not disputed in any way, shape or form. In fact, that is exactly what it should be doing. But our questions are around how that process or whatever is entailed in that fits or sit—indeed, it may or may not—within the development assessment framework. The introduction of a yes or no gateway decision for certain developments in New South Wales is based on a single issue, particularly without the ability to consider all aspects of a project and without any ability to review decisions. There are some review mechanisms, but we can get to those or clarify those.

From a principle perspective, our industry supports integrated decision-making processes that assess all elements of a project, after which a decision is made balancing all of the considerations, including all the costs and benefits of a project. Importantly, an integrated assessment approach, in our view, can incorporate, update and strengthen cultural heritage protection and management requirements, including culturally appropriate consultation and engagement. Our view for projects is that the primary objective should always be to reach an agreement, particularly on cultural heritage impacts. But the reality is that this may not be possible in all cases. Where any party does not support a project for any reason, that should be able to be freely expressed and transparently addressed as part of the decision-making process, which takes into account all aspects of a project.

As noted earlier, the New South Wales mining industry strongly supports the modernisation of Aboriginal cultural heritage protection in New South Wales, particularly the establishment of standalone

legislation. Genuinely, this is an important reform. Our view is that hopefully it is done properly so we get it right in this regard. Despite the delays that have occurred to date, our view is that the Government is best placed to actually deliver these important reforms largely because they have the hand on the levers in terms of costs and how it would be implemented et cetera.

We would urge the New South Wales Government to complete these important reforms and make sure there is proper consultation and engagement, particularly with Indigenous communities and other affected stakeholders and industries, and, importantly, a clear plan, including a commitment to funding on how the reforms would be delivered. The last thing I will say is that we genuinely want to be, hopefully, a constructive participant in the discussions going forward so that we get it right and reach the best solution for all stakeholders. That is all I have to say. Thank you. I am happy to take any questions.

Reverend the Hon. FRED NILE: You have indicated that you have some strong views that have not been canvassed in the preparation of my bill. I would like to make it clear that we are very happy to meet with the Minerals Council and discuss any concerns that it has. I am sorry that hasn't happened to your satisfaction. We will certainly take steps to make sure it happens in the future. I was wondering what your reaction is to the initiative or innovation of having an Aboriginal land council for New South Wales. That is one of the main recommendations in the Fred Nile bill. Do you have any objections to that, or do you see some value in that?

ANDREW ABBEY: Just to clarify, I am assuming you mean an Aboriginal cultural heritage council and not the Aboriginal Land Council?

Reverend the Hon. FRED NILE: No, it is the new body.

The CHAIR: The reverend is referring to the Aboriginal cultural heritage council.

ANDREW ABBEY: Yes, sorry, I wanted to clarify that we are on the same point. There is no objection to that in any way, shape or form. In fact, we supported the Government's reforms—from recollection, it was back in 2018—that proposed similar bodies. In principle, there is no opposition to that in any way, shape or form. Once again, the body is not necessarily—it's how it works and how it's funded: What are the structures? What are the governance arrangements? It's how, if at all, it does fit with government and how it's paid for, particularly the Aboriginal parties. So, in principle, Reverend, no, there is no opposition. I add that if you do create standalone legislation, which we do support, then it makes sense to have an administrative body administering it.

Reverend the Hon. FRED NILE: That's the body, the Aboriginal land council.

ANDREW ABBEY: Yes.

Reverend the Hon. FRED NILE: It's a new body.

ANDREW ABBEY: Yes.

Reverend the Hon. FRED NILE: So you don't have any objections to that?

ANDREW ABBEY: No, for the reasons that I outlined. I guess, as I said, it's qualified. We'd love to be part of the discussions about the—well, if it is for us to be part of some of those discussions. But we would love to make sure that there's a clear plan on how it's going to work so, if it is introduced, it actually works. Respecting this is your bill, Reverend, our view is the Government needs to get on and actually deliver this, in whatever guise. Because from a practical perspective they'll have the best means of actually making it able to work, because they'll work out how to fund it. What are the budgets for it? How do people get paid? You know, simple stuff like that. That's a lot of words. Yes, in principle, if that's the way that Parliament/the Government want to go, we don't have an in-principle objection to it, other than making sure it works and that what is involved to make it work is clarified and detailed.

Reverend the Hon. FRED NILE: Good. We obviously would not have introduced the bill if the Government's bill had have been finalised and passed. But, as you may have heard in some of the answers to questions this morning, there seems to be a lot of uncertainty in the ranks of those who are responsible for the Government's legislation about exactly where it is, where it is up to and so on. It's a bit of a puzzle as to why it's so complicated to draft a bill, but, obviously, the Government has got some problems in doing that and that's what has caused a lot of the reaction now to the Government's lack of action on their legislation. We've tried to fill that gap and probably the Minerals Council would like to fill that gap as well.

ANDREW ABBEY: Is that a question? Because I have a view and a comment on that.

Reverend the Hon. FRED NILE: Good. Definitely it's a question.

ANDREW ABBEY: In both our submission and what I just said in the introductory statement, we agree. The sooner this is sorted out, the better. The only thing I would say is: Let's sort it out properly. There'll be people

that don't like our views and we might have questions about some other people's views on what it does or doesn't entail. But let's sit down and sort it out. I did not see this morning's part of the presentations. I did read the transcript from two weeks ago. I think there's a healthy amount of frustration amongst a lot of stakeholders for various reasons and I would imagine the frustration is massive on the First Nations or Indigenous persons' part. From our point of view, there's a regulatory certainty frustration. If you're expressing frustration and bewilderment about why the Government hasn't finalised reforms, I agree with you. As I said, we urge the New South Wales Government to complete these important reforms. Let's not waste any more time, but let's do it properly. That is my only real comment.

The Hon. ROSE JACKSON: I wonder, Mr Abbey, if you could give us a little bit of an overview about what currently occurs. What is the current approach that members of the Minerals Council take to addressing issues of Aboriginal cultural heritage when they're managing their sites or proposing new sites?

ANDREW ABBEY: In the submission there were a couple of pages where I banged on, for lack of better words, about the SSD process, and I know people will have views about the State-significant development process, because technically it does switch off a number of requirements, including cultural heritage. But, importantly, in our view, it doesn't mean that you don't have to deal with those matters—far from it, and I will go to a bit of an example of that in a second. But there are comprehensive requirements outlined for any mining project. I would strongly argue, and I've done a decent amount of analysis, that mining projects are more rigorously or thoroughly prosecuted in terms of impacts on cultural heritage than most other projects in the State—no question. I'm happy to be convinced otherwise.

So getting to the point, firstly, mining companies are there for a long term, in terms of years and years and years—20 or 30-plus years, potentially. They value or realise the importance of establishing good relationships with local communities. So when they first go there for exploration activities, they will strike up conversations and relationships with relevant parties. Where they're actually ready to go forward with a project, they have to go to the department of planning and get secretary environmental assessment requirements. In there—I don't know what page number it is in my submission—there's a list of all the environmental assessment requirements that are there.

Those include the current requirements under the National Parks and Wildlife Act as well as all the guidance policy documents. They then get those from the department of planning and then go away and prepare their environmental impact statement. Those requirements include requirements to consult with registered Aboriginal parties. Depending on the project and the location, that could be dozens and dozens and dozens, and I've been directly involved in a project where there are over 80 to 100 individual registered Aboriginal parties. As part of that process, there's engagement with them, correspondence and workshops for those that are interested. There is actually walking over country to identify where the cultural heritage impacts would be and what's there, archaeological investigations, broader cultural heritage or intangible culture investigations and the like.

Once that's done, the applicant puts together their impact assessment documents. Once again, the objective is to look at what the impacts are. What are mitigation measures? There might be some opportunities to address people's concerns in terms of relocating things. In some circumstances, there may be limited opportunities. So those things are all identified and articulated as part of the preparation of the EIS. It then is lodged with the department of planning who undertakes its assessment. That's subject to public consultation and the like. Typically, that is a year to a year and a half. Then it's typically referred to a body called the Independent Planning Commission, who is an independent decision-maker who looks at the full suite of issues that are on the table—of course, Indigenous cultural heritage would be a very important one. It will prosecute the issues before making a decision based on all of those issues.

I know I've talked a lot. I will get to my point. I know things like the Shenhua project was identified in Reverend Nile's second reading speech. It was ultimately not going forward because of agricultural reasons, but what about the three grinding grooves that were incredibly important to Indigenous persons and the like? Without offering a view on the outcome, because I know First Nations people who were opposed to the project would be aggrieved by it, I would suggest respectfully that the process itself is incredibly thorough. In all of those matters, there was nothing hidden or not addressed, and the issues were actually looked at by the assessment bodies and by the decision-making bodies.

In fact, they got permission to go out to the grinding grooves that were in question for the Shenhua Watermark project and they looked at it. And then there was a very fulsome report taken about the pros and cons and mitigation measures and whether or not the project should proceed. In that particular example, it was approved to proceed and I'm sure there were people who strongly disagree with that approval. I respect that and accept that, but it once again goes to how do you weigh up the competing interests—all of the competing interests—and what issue gets primacy over other issues? That's a lot of words. Did that answer your question?

The Hon. ROSE JACKSON: Yes, it did. Obviously, it's useful for us to have a sense of what the current arrangements are, as we're in the process of considering alternatives.

ANDREW ABBEY: Could I just add to that, if that's okay—one second. Sorry to interrupt, Chair. The only thing I'd say to that—when I talk about the environmental assessment requirements, outlining what all of the assessment requirements are, our view is that absolutely there should be standalone legislation and modernised, strengthened cultural heritage requirements. They would be absorbed into that process. The mining companies would then be subject to those new requirements and have to address those requirements. Sorry to interrupt.

The CHAIR: That actually goes really directly to what I was going to ask you. The main reason that decisions are made in the framework that you presented, including the Shenhua decision, is that there is no greater legal protection afforded to cultural heritage. That's precisely what this bill is seeking to do, to try to elevate the protection of cultural heritage through a legal and regulatory framework in New South Wales for the first time ever. Am I hearing from you, though, that you are actually suggesting that standalone cultural heritage laws should more or less present the existing framework because you're suggesting that it is a good framework and that, in your case, in relation to State-significant development projects—namely, mining—you believe that you do get to the right outcome each time? Is that the evidence I'm hearing?

ANDREW ABBEY: The best way to answer that is a process answer in that, taking the Aboriginal Cultural Heritage (Culture is Identity) Bill and what I mentioned as a gateway thing. What the cultural identity bill is doing is saying, "Come to this group first on this particular single issue. Based on our view of it, without having the ability to consider all the broader issues, we'll let you know if you can then jump into the assessment process where you can deal with the broader issues." Our view is that the integrated and holistic assessment process—once again, this is our view. I appreciate others will have different views. The objective of this is to elevate the importance and protection of Aboriginal cultural heritage. Our view is those requirements or the intent or objective of that can be absorbed readily into an integrated assessment decision-making process, with modernised or strengthened requirements, whatever they may be.

Indeed, the Aboriginal cultural heritage council, as registered Aboriginal parties currently do, should be able to express that they disagree with a project. Absolutely they should be able to; no question. But then the question becomes, "What if that position cuts or is in conflict with other interests in a particular project?" I'm not just talking about mining projects, mind you. We're talking about rezonings, bridges, Warragamba Dam upgrades, infrastructure projects, the whole lot. How do you reconcile those competing interests? Our view is, yes, there needs to be strengthened requirements, standalone legislation, et cetera. If the Aboriginal cultural heritage council, in whatever guise, exists, absolutely they can express views and the like and have an important seat or be part of that decision-making process. But then, ultimately, do you have a single issue—and I'm loath to use the word "veto"—acting as a gateway in and of itself and dealing with single-focus issues and not affording an opportunity to balance out the broader range of benefits and costs, whatever they may be?

The CHAIR: Following that up, Mr Abbey, was there not something similar in relation to gateway certificates when it came to other mineral or petroleum projects in relation to significant farmland? Have we been down this kind of path before, where we've absolutely had gateway processes? Why do you think that cultural heritage is not something that should be afforded a gateway-of-sorts process?

ANDREW ABBEY: That's actually a really good point. There is a gateway process that's administered by the Independent Planning Commission. From my recollection, when it was first introduced, it actually proposed almost similar, a veto to say—I think the words at the time were "ring-fence area" or "There'll be no-go areas." That was ultimately changed, for similar reasons, to say, "Well, hang on. You're just cherrypicking one issue out and not affording the opportunity to look at the broader suite of issues." That gateway process actually does exist, where projects are located on strategic agricultural land. You go to the IPC—sorry. You get whatever the requirements are, and it goes through the Independent Planning Commission, where they set parameters about what the broader assessment needs to take into consideration as part of dealing with the impacts on strategic agricultural land. It is a gateway in the sense, but it's not a yes or no at that early point, before the broader assessment's actually undertaken. But it's a very good comparison.

The Hon. SCOTT BARRETT: You were talking the process you went to before. How do you determine who speaks for country? Do you have a hierarchy of who you go to?

ANDREW ABBEY: On that, we don't, or our mining companies don't. We are guided by advice from, as I understand it, the National Parks and Wildlife Service, whoever local. Who the right people are to deal with, the mining companies are given that information by the relevant government bodies or whoever. I noted that, on the previous hearing, there's—I don't want to say "disagreement", but there's, I guess, challenges about who the right parties are to deal with and the like. That's not our business to deal with. I'm confident that, as part of this

process, people will work out how the right people and the right people to speak for country with authority are identified.

The only comment I would make—we actually purposely stayed away from putting this in our thing—is we just want to know who the right party is, with a reasonable degree of certainty. Going to my point, I think it was the Shenhua project that had 80-something registered Aboriginal parties. Sorry, as at October 2012, there were 144 separate registered Aboriginal parties involved in the engagement process. From what I heard from the Friday session, I could understand the frustration with some people if some of those parties aren't necessarily the right parties in some people's views. But, once again, that's not our business to deal with.

We're confident that, if this type of iteration or version of cultural heritage councils and the like gets through, those groups will be able to identify who the right people are. We're just hoping that occurs so we can have confidence to make sure that we get it right straightaway and we're dealing with the right people. But, at the moment, it's an all-inclusive thing, as a safety measure more than anything. You just include everybody—as I said, 144 for the Shenhua or Watermark project. Those numbers drop off or wax and wane over a few years as you're going through the process, but anything to improve the confidence about who it is and who has authority, we'd strongly support.

The Hon. SCOTT BARRETT: How do you deal with 144 different organisations? Are you looking for consensus from all of them?

ANDREW ABBEY: I'll give you my view, my flavour, but that question's best put to a mining company who actually does it. But, anecdotally, the feedback is it's challenging for a whole bunch of reasons. Sometimes some of the parties don't agree that other parties are involved and the like. Ultimately you are looking for consensus. The Shenhua proposal's actually a good example of that. At the front of the EIS—as I said, there were three volumes of attachments, something like the better part of 1,000 pages—they actually had a letter signed from a particular group that said they supported the project and mitigation measures and the like. That's at one point in time with one particular group. Then ultimately there was another group who was strongly opposed to it. Ultimately that other group then took them to court, I think, on the EPBC approval or the Commonwealth approval and took them to court. So it's a challenging aspect of it. But, look, that's the world we live in. We've got to get on and deal with the rules that are in front of us. But anything that can be done to give more confidence to that would be welcome. Did that answer that question? Ideally, you're trying to seek consensus, of course. But there will be things we do that some people might disagree with.

Reverend the Hon. FRED NILE: Your submission has a number of concerns about the reliability of decisions made by the arts council. What decision would you make to replace the arts council? Would the independent Aboriginal State council be a better authority than the arts council?

ANDREW ABBEY: I'm sorry, if you could just—I don't think our submission referred to the arts council.

The CHAIR: No.

The Hon. ROSE JACKSON: I believe the reverend is referring to the current cultural advisory council that sits under National Parks and Wildlife. I believe that is the council that he is referring to.

ANDREW ABBEY: I didn't mention any decisions taken by that group in our submission. We didn't offer a view on that.

The CHAIR: No, I didn't read that.

ANDREW ABBEY: I apologise—so I don't really have a view, Reverend, on that, that we've expressed in our submission or that I could add value in response to your question.

Reverend the Hon. FRED NILE: Right. Okay. Thank you.

The Hon. PENNY SHARPE: Thank you for coming along today. I have a couple of questions. What was the role of the Minerals Council in the government consultation processes to date? We talk a lot about 2018 and beyond. Have you been involved in any consultations in relation to this?

ANDREW ABBEY: We were, over a number of years. When we say "involved", it was dealing with—it was prior to my time and involvement in the Minerals Council, but my understanding is it was a number of submissions over various points in time from 2011 or 2012, or whenever it kicked off, up until 2018 or 2017 was our last submission.

The Hon. PENNY SHARPE: Sorry, can I just stop you there. Did the Minerals Council endorse the 2018 draft bill?

ANDREW ABBEY: Yes. Now, I know the cynical view would be it only endorsed it because SSD projects and SSI projects weren't included in it. So, yes, we did endorse it. But, once again, I go back to that other point that I raised previously about how do mining companies deal with Aboriginal cultural heritage. Any new requirements that come into play, we have to abide by them effectively—it's just that there is not a decision taken under the National Parks and Wildlife Act, but the requirements all have to be addressed. I just wanted to front-foot that. So, yes, the short answer to your question is, absolutely, we supported it. We want to just get on and put it to bed properly in terms of updated and modernised cultural heritage regimes. I think, from my submission, I've got the big table with the crosses and the ticks and the like. Most other States have done this and sorted it out. We'd like to see it sorted out as well.

The Hon. PENNY SHARPE: Sorry, just to be clear—I'm not sure that I've quite understood your evidence. So despite State-significant development and State-significant infrastructure not requiring Aboriginal heritage assessment, you're saying that it is undertaken?

ANDREW ABBEY: Absolutely, without any shadow of a doubt. In fact, hand on heart, I would say that mining projects are more thoroughly assessed and deal with cultural heritage issues, including all the other issues, way more thoroughly and way more rigorously than any other project in the State. Part of that is because they're so heavily scrutinised. They are very, very heavily regulated.

The Hon. PENNY SHARPE: But, obviously, not required in the law. Is your primary concern really that the assessment of this as a priority issue would lead to projects not being approved?

ANDREW ABBEY: Well, first, if I could take a step back. When you say not required by law, there is a requirement to undertake an assessment in accordance with the Secretary's Environmental Assessment Requirements. Those requirements, they do lend weight to whether a proper and rigorous assessment is undertaken. Sorry, what was the second part of your question?

The Hon. PENNY SHARPE: I suppose my question is, yes, they're required through the EIS process and through the SEARs process, but there is no sort of veto in relation to the issues raised within that. That's correct, isn't it?

ANDREW ABBEY: Yes, as they currently stand, there is no—as a standalone, single issue, if the council that Reverend Nile was talking about said no, that doesn't stop the project per se. It still, ultimately, can go towards a broader assessment.

The Hon. PENNY SHARPE: Under the current process, once these issues have been identified, there are then permits provided through the heritage system. Have you ever had any refused?

ANDREW ABBEY: No. Well, once—because of the integrated nature under the Environmental Planning and Assessment Act, the approval, you don't then have to go and get the separate approval because you're actually dealing with those cultural heritage requirements as part of that holistic and integrated process.

The Hon. PENNY SHARPE: Okay. Thank you for that. That's clear—because it is quite complicated.

ANDREW ABBEY: Yes.

The Hon. PENNY SHARPE: In terms of what happened at Juukan Gorge, what guarantees do we have under the current system in New South Wales that that couldn't occur?

ANDREW ABBEY: Firstly, on Juukan Gorge, I don't think there is anybody—sorry, I'm getting a lot of feedback. I don't know where that's coming from. Sorry. On Juukan Gorge, I don't think anybody in the mining industry would defend that outcome or thinks it was a good outcome. I can't sit here and say absolutely there is no guarantee that something like that wouldn't happen. What I can say is that the level of prosecution and the level of investigation undertaken is incredibly rigorous and incredibly thorough. It has got better and better and better over a number of years, and rightly so. So it should be, because the world has moved on from 20 years ago where there was a bit of a view that it was sort of a last minute tick-a-box exercise to now it is one of the front and centre big issues.

I don't use the word risk as a negative. In terms of projects, it is right up there in terms of being, "Okay, well, if we want certainty about whether a project will proceed, you've got to do this stuff properly." And it's not just about looking at what's on the ground and saying, "That's okay, on balance, because it is 10 more jobs and they should compensate for that." It's about stakeholder engagement, relationships with your local communities, cultural sensitivity awareness, long-term relationships, engagement and working with them and being very transparent and up-front about, "Well, what are the impacts? What does this mean to you from both a physical or tangible sense and an intangible sense?"—recording that, and then, ultimately, trying to go forward with a project. Sorry, that feedback is still there. It's a bit disconcerting.

The Hon. PENNY SHARPE: Yes, I'm getting it too. I'm sorry, it is. Yes, it's a problem.

ANDREW ABBEY: Did that answer your question?

The Hon. PENNY SHARPE: That's better. I think they've muted—that's better.

ANDREW ABBEY: Yes, sorry, I was hearing my voice twice. It was way too much.

The Hon. PENNY SHARPE: No, I've got it too—the stop and start. I apologise as well.

ANDREW ABBEY: That's all right. I hope that answered your question. I guess, in short words, it's very, very rigorous. So could I sit here and 100 per cent guarantee it? No. But the risk of it occurring in New South Wales, I would argue, because of the level of prosecution and detailed consideration of the issue and long-term engagement with stakeholders, I think the risk is low.

The Hon. PENNY SHARPE: Can I just ask one more question then. Are you able to tell us how many prosecutions there have been for destruction of Aboriginal cultural heritage?

ANDREW ABBEY: In terms of New South Wales, I wouldn't have a clue. In terms of mining projects, I don't know off the top of my head, if any. But as part of the approvals there are cultural heritage management plans that have to be endorsed and agreed to, and that includes protocols about if, when you're clearing sites or land or whatever, something's found, how that's dealt with. There are also cultural heritage stakeholder reference groups that are continuously, over years—it's not a one-off engagement before the project gets approved and then, "See you later". There is long-term engagement with whoever the right parties are which are oversighting clearance of areas and the like.

The CHAIR: Mr Abbey, we've just got a couple more questions. Do you accept that the reason that there is an assessment process and that the secretary's environmental assessment requirements require a management plan in the lead-up is because essentially some of these projects we are talking about are ones that permanently disfigure landscapes and destroy cultural heritage forever? That is just by nature of some of the projects.

ANDREW ABBEY: Yes. If you dig a hole in the ground, there will be impacts. Sorry, did you finish your question?

The CHAIR: No, I was trying to put that out there as to why we engage in this process. When we talk about this assessment process, generally speaking the end result is that Aboriginal communities, stakeholders and custodians are actually engaging in a process to destroy their cultural heritage forever because of the nature of these projects.

ANDREW ABBEY: As a general rule, yes, but things like, for example, the Warragamba Dam wall raising, the Windsor Bridge, infrastructure projects, residential housing estates—where you are changing the landscape, by definition there will be an impact on the landscape of some form or another. We accept there is a profound connection to land with Aboriginal communities and it's not just the tangible heritage—the stuff that's on the ground—there is also a broader cultural impact. This goes to my whole point about how do you work out respectfully and culturally sensitively, et cetera, what that scale and level of impact is to whom, and that is important, and then there is a whole bunch of others. The SEARs requirements cover 10, 12 or 14 things. If you look at all of those individual elements, what gets primacy over the other in terms of benefits and costs and who is best placed or what is the best vehicle, if you like, to decide where the benefits and costs are best prioritised?

The Hon. ROSE JACKSON: I might ask one last question. Leading on from what Ms Higginson was saying, a lot of the understanding of the way that mining projects impact cultural heritage is their impact on the physical landscape. That is important, and better ways to manage that are contemplated under this bill. But also contemplated under this bill is the impact of projects on intangible cultural heritage. That might include things like whether rivers are running and healthy—much more intangible things than just this particular site or this particular piece of art or this particular burial place or whatever it is. It is that more intangible understanding of Aboriginal cultural heritage. I wonder, what engagement so far have the Minerals Council or mining companies had with understanding those impacts of their projects—not just, "We will dig here and not dig there," but the broader consequence of mining activity on landscapes and the changes that they can cause and the consequences of them for intangible spiritual stories?

ANDREW ABBEY: I guess there are two ways in which I would answer that. One is how we have been engaged in the Government's reforms about the cultural heritage modernisation, but firstly I will answer from a project perspective. Each individual project is and does actually account for spiritual connection or the intangible impacts on cultural heritage—things like impacts on rivers downstream or what the valley means or whatever.

That is best left for First Nations people with the right understanding of it to talk to, but there is a requirement that that aspect of impact is tried to be understood as best as it can be and addressed.

The Shenhua proposal—and I keep going back to that because I looked into it, because it was raised in the second reader—actually has one whole appendix on its own dealing with it. It is not us telling people or the mining company telling people what the intangible heritage is; it is actually talking to and engaging with the right parties, hopefully, for them to tell us about the impact and what their view is and how would this have an impact on your view of what intangible heritage is or your spiritual connection to the land, if you like. So there is that aspect of it which, as I have said—and I keep coming back to it—is thoroughly dealt with.

I know the outcomes might not necessarily be agreed to by all parties, but in terms of it being dealt with through the assessment process, I am confident or comfortable that individual projects, particularly mining projects, have to deal with it. In terms of our engagement with the reform process over 10 or so years, we know that intangible heritage will be in the legislation or regulation in one form or another. That is consistent with the approach that is being taken in other jurisdictions, which is supported broadly.

Once again, it goes to that whole process and certainty about what is it, how is it worked out—and I don't mean give us the rules so a mining company can go and work it out, but how is it worked out respectfully and in close engagement with the right First Nations parties and the like? But getting the process right and the reform right and the settings right so it gives everybody the guardrails of how to work through the new order in terms of dealing with projects and making sure there is an appropriate level of assessment undertaken. Does that answer your question? That second part, it is a bit like—

The Hon. ROSE JACKSON: Yes, it does. I appreciate it. It is useful to know that you do support, or at least accept, that intangible cultural heritage would be contemplated as part of the standalone legislation, and you are just seeking clarity about how that operates in practice. I understand.

ANDREW ABBEY: On that, in terms of accepting it, there is no question that Indigenous persons have a very different relationship to land than I have—there is no question. That is 100 per cent accepted, both in a physical sense and an intangible sense. That necessarily means they have a very strong right or legitimate right to have a seat at the table as part of the assessment decision-making processes. Not only do we accept it, we strongly support it and agreed. But our view is that we think that can be worked through as part of a holistic, integrated assessment decision-making process.

The CHAIR: Mr Abbey, just one final part on your evidence that you spoke of about how, to introduce laws, the Government is best placed to do that and that it will roll out—and this notion that subordinate legislation, draft regs, should normally be exhibited and so on. Would you accept, though, that in the development of standalone cultural heritage laws that are controlled and administered by Aboriginal people themselves, this may be a case worthy of exception for that? And that we introduce the framework and then those matters are dealt with within the architecture of the new framework because there is overwhelming acceptance that we need to get on with this job?

ANDREW ABBEY: That's a good question. If I could answer that slightly differently. If we are going to do it, let's give it a red-hot go of success. I think to do that this involves, whether we like it or not, money, resources and buy-in from people who've got money to support it. It would be so frustrating or disappointing—and I would assume First Nations people would say this as well—if this had started with everybody patting each other on the back and then it didn't really work. So let's give it the best chance of success. Part of that is self-interest from our industry because we just want certainty of process.

In that respect, from what's on the table right now, I don't see enough, or there doesn't appear to be enough, to give the confidence that everybody has bought into this and this is going to go forward and be successful. But we would love to be part of that conversation and be convinced, based on the evidence. If there is enough evidence and enough will and support and momentum behind this that it is going to work—prefacing that we obviously have our views about certain parts of it and the like, of course, and those being at least discussed or addressed. But if there was that sort of buy-in and commitment to it, sure, why not? But at the moment that is not evident to me based on what we've seen, or it's not clear. If this bill was made tomorrow, I think we would all be scratching our heads going, "What happens now?" I hope that answers your question.

The CHAIR: Yes, thank you. That's very clear. I think that's it from the Committee. Thank you very much for attending.

(The witness withdrew.)

(Luncheon adjournment)

Mr NIC CLYDE, NSW Coordinator, Lock the Gate Alliance, before the Committee via videoconference, affirmed and examined

Ms KARRA KINCHELA, Narrabri Community Outreach Coordinator, Lock the Gate Alliance, before the Committee via videoconference, affirmed and examined

YINNAAR BURRIM JANE DELANEY-JOHN, Representative, Gomeroi Traditional Custodians, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome back everybody to the next part of the hearing today. I now welcome our next witnesses. Mr Clyde, did you want to begin with an opening statement?

NIC CLYDE: Yes, thank you. I believe Jane Delaney-John—I did speak to her a moment ago, so I think she's just sorting out her IT at her end. But I am happy to make an opening statement on behalf of Lock the Gate Alliance. Firstly, thank you very much for the opportunity to appear today before your Committee. We very much appreciate the opportunity to have a conversation with you about the protection of Aboriginal cultural heritage here in New South Wales. I'd like to begin by acknowledging that I'm on Gadigal-Wangal land here in Sydney in the inner west, and I'd also like to pay my respects to the leadership from traditional owners across Australia in the fight to protect country from destructive practices such as coal and gas mining. Our organisation has been working for more than a decade now with communities across the country who have been campaigning to protect their land, their water, their health and their cultural heritage from really inappropriate coal and gas projects.

Here in New South Wales we've tried our best to support First Nations communities in their fight to protect heritage. That work has never been easy, largely for the reason that NTSCORP noted in their submission to the Committee. I'd just like to quote one sentence from that submission, which we share, where they point out that the current system "rather than holistically operating to protect Aboriginal cultural heritage" instead "creates permissible ways to damage or destroy Aboriginal cultural heritage for the benefit of third parties". That has certainly been our experience in New South Wales. Our view is that the current regulatory system is not fit for purpose and it's fundamentally disempowering for the Aboriginal communities that we've worked with.

Our submission, as you know, provides a small snapshot really of just a few of the mining projects that we've worked on over the years. Some of the important ones are not in our submission also today, and one of those Jane is going to cover in particular, talking about what happened at Maules Creek. My colleague Karra, joining us from her home in Narrabri, will share some of her experiences as a Gomeroi traditional owner and the impact of Santos' Narrabri gas project but also can speak about Whitehaven's Narrabri underground expansion. Jane is going to introduce herself in a moment, and Jane and I have worked together over the years or so on the Maules Creek project.

In summary, I am a non-Aboriginal person so I can't speak personally on behalf of any First Nations communities but I can share my experience. Whilst I'm not a policy expert or a legal expert about how the legal system does not work and is failing Aboriginal communities, I am nonetheless feeling capable basically of pattern recognition. What I clearly see time and time again here in New South Wales is that the economic value of coal resources in particular almost always trumps all other values, including Aboriginal cultural heritage values. I'm pleased that this Committee has taken on this piece of work, and I guess this Parliament and the next Parliament has the power to change that and we appreciate the opportunity to be here today to have a conversation about that. That's all I'd like to say on behalf of Lock the Gate. Otherwise I'd really just like to make space for Karra and Jane to share their experience as Indigenous people about how the system has been failing Aboriginal communities.

The CHAIR: Thank you. Karra, would you like to start by saying a few words as well?

KARRA KINCHELA: Yes, thank you. Thank you for giving us the opportunity to speak today on the cultural heritage bill. I'm Karra Kinchela. I'm a Gomeroi traditional custodian living on my country in Narrabri, north-west New South Wales. Gomeroi people are also going through a native title claim, so I'm also a native title claimant. I'd like to pay my respects and acknowledge traditional owners and Elders past, present and emerging. Firstly, I'd like to thank Fred Nile and others who wrote the cultural heritage bill, drawing attention to some of the issues which traditional owners like myself, custodians and knowledge-holders face. It is an opportunity for us to begin to improve cultural heritage protection laws, which are seen to be inadequate and disproportionate.

Personally, cultural heritage workers feel our artefacts are not safe. They feel the conditions we work in are not safe. The traditional culture and heritage is not being cared for appropriately and is subject to mismanagement, with government favouring State development over the protection of sacred and cultural heritage sites. Cultural heritage belongs to traditional owners and must be managed and mapped by those with ancestral knowledge and connection to that particular area. A cultural heritage council may be able to support safe cultural heritage work. Enacting the united declarations of Indigenous peoples may promote a right to veto near or on a

cultural heritage site. There are also the issues around cultural heritage being used as forms of social licensing and that traditional owners have been sidelined in the development of the consultation process in New South Wales for far too long. It is our country and we should be given the opportunity to decide how our sites are to be protected. I think that's it.

Sorry, I forgot Santos. Obviously, living in a mining community, we've got Santos and Whitehaven. I live in Narrabri, so we're just off the Pilliga Forest. We've got a lot of cultural heritage sites. The Pilliga Forest is massive, an intangible site itself. How that works and the protections of that, whether the laws can determine how important the cultural heritage site is itself as a whole, and the tangible cultural heritage artefacts aren't being in a safe position where they can be safe or they can be accessed by traditional owners—they are just some of the issues that we have to deal with in regard to cultural heritage management on country.

YINNAAR BURRIM JANE DELANEY-JOHN: I actually would just like to say a couple of things, because our country's never been ceded and I need to acknowledge that:

[*Spoke in language.*]

I actually want to acknowledge the First Peoples of all nations across all our countries, and particularly the Elders of the Gomeroi Traditional Custodians both past and present. I've been asked to present today as Yinnaar Burrim, which means "female shield" or "matriarchal protector of culture".

The CHAIR: Would you like to commence with an opening statement?

YINNAAR BURRIM JANE DELANEY-JOHN: My opening statement is difficult. To be honest, if the Gomeroi Traditional Custodians hadn't asked me to speak today, I probably wouldn't. We've had a 15-year defence of country over some significant projects in New South Wales where we have an alliance with a number of parties, including Lock the Gate. However, we had chosen in that entire process to undertake only lawful practices. I'm going to give the example of the Whitehaven Maules Creek and also the Shenhua Watermark project, and what's actually happened in relation to those two aspects and the fact that there is so much broken in the systems now—in the policy, the legislation. When we first set about trying to get protections in place, we went with some optimism that there would be legislation to protect.

Having gone through the processes of trying to go through State and Federal, including a Federal Court case, even when we've proven the burden of proof in relation to cultural heritage and its value, we still have been denied protection. While we're hopeful about the Aboriginal cultural heritage bill, we know from experience that the best of intentions fall apart when it actually comes to the execution, what it looks like on the ground and how other legislation actually overrules, nullifies or doesn't even allow for an appeal process for State-significant projects.

The other thing is the assessments that are done are done by what are proposed to be independent assessors. Even if they have flaws in those processes, even to actually get that heard is not heard. The State Government use the part 4 process for planning and assessment, and that switches off a number of obligations that were already in place if they'd actually undertaken a cultural heritage Act. Through that process, everything—even if you want to try and influence the way you walk country, you can't. The archaeological assessors determine that this is how you walk through an area. You walk in these lines, and you look like you're looking for forensic evidence for a murder. There's no reading the landscape; there's no looking for directional stones; there's no linkage between night sky and day sky. There's nothing in relation to the intangible evidence as well as the historic and tangible artefactual material.

Everything is mitigatable in relation to it, and so what happens then is you go through this process, you raise your concerns and it's just this drawn-out process where you actually don't get protection in place. Then it gets triggered with an independent commission, and then section 4 has a clause 20 that then, if it goes to the Planning Assessment Commission, actually switches off automatically any rights to appeal. So people get together and they can have public statements, and they make all these sorts of statements that are not necessarily proven in court or not even judged in court. You have no legal rights to even appeal the inadequacies of the reporting framework to gain their protections.

For us, we would love to see an Aboriginal cultural heritage bill that is truly going to protect and give a veto for that to happen. However, given the landscape that we've actually walked, it's very hard to feel confident that it's not going to be undermined by other legislation, whether it be it at a State or at a Federal level. What I wanted to do is to try and bring forward the voices of our Elders who have passed and who are present, who asked us to do all things possible to protect Aboriginal culture and heritage. To be honest, if we hadn't made that promise to them, I probably wouldn't be talking today.

Reverend the Hon. FRED NILE: Hear, hear!

YINNAAR BURRIM JANE DELANEY-JOHN: I apologise if I'm emotional, but it is an emotional matter. Elders have sought to protest approvals and, for the Whitehaven Maules Creek example, the proof of legitimacy—are they the ones that are allowed to have a say? Are they the ones that are actually allowed to say what the cultural heritage is?—they get marginalised, and the burden of proof in relation to that. If they're not part of the coin of management, planning, implementation, surveying, collection et cetera then they are excluded from the process, because there are others and they actually have—government, I see, has set major developers against Aboriginal people.

They want to progress with their leases. They've invested huge amounts of money to do so, and they want to do the assessments. There's all these statements about "We're going to make it more efficient," "We're going to make the planning assessment process so that you actually have this much easier" and all the rest of it. That actually is in direct conflict in relation to Aboriginal culture and heritage, where some things are just not compatible with Aboriginal cultural heritage. It doesn't matter what they're going to try and mitigate; it is not compatible because of the specific area in which they're actually wanting to do damage, and it is irreversible.

What happens is you've got this trajectory to conflict, and we're gouged by the dragline in a lot of these coal companies. Within that conflict, the State Government kept wanting us to be legitimate and prove that the voices of the Elders are the ones that should be listened to and all this sort of thing—and yet here we were. A hundred of us who had actually been law abiding had been made persons of interest, and our images were put up in the Narrabri police station. We had not been part of any of the 350 people that had been arrested on lock-ups and lockdowns—or whatever they called them with the locks and things—in the protest.

Not one Gomeroi person was part of that and yet here we were—under the policing process we were actually persons of interest. I went to the Human Rights Commission in relation to this and I went from State to Federal and we couldn't get anything. I had a meeting with our community and we basically said, "Right, win, lose or draw, we will go back to trying to fight this." I went to the *Hansard* and the *Hansard* looked at the CoPS system, the computerised policing system. What happened with that was they actually identified that people could be profiled and used inappropriately. We went to the ethics committee and we also went to the anti-discrimination committee in relation to the fact that we were actually being profiled and we had been lawful citizens.

In one stretch we are identified and we are legitimate enough to be profiled, but on the other side we are actually not legitimate enough to be listened to in terms of cultural heritage values. We have had to fight that ourselves to actually change the CoPS system and to take our images off and to say that we are actually lawfully defending country and it had only ever gone through a lawful protest. It had never been part of anything that was actually against the law. You get demonised because you stand up and you get targeted in relation to that. It increases lateral violence in our community. Poverty is actually used as a weapon for those that get and those that do not.

The other thing is that with this we actually exhausted all of the State Government's processes and we couldn't get anything and so we had to try and get a section 9 and 10. To be honest, we were bounced around like there's no tomorrow. The Minister didn't have to make a declaration and so he didn't. Therefore, Lawler's Well and a number of sites, including a women's site, were actually destroyed. We weren't given access to the areas so that we could actually take the GPS coordinates that they were saying that we needed and so we had no access. It was just like this balance of you ask for access and we can't have access. All these sorts of things go on.

We couldn't even actually do a ceremony until we had taken that to the anti-discrimination commission. Because they had employed Aboriginal people, what we did is we did it under religion. It was the only avenue that we had available to us to try and actually even go out and do a ceremony before everything got destroyed. There were sacred crystals on that site and we asked, "Could you just scoop them up in one of your systems—because you are going to blow it up—and throw it over the fence and we will collect it ourselves?" We weren't even given that as an approval. This is how low it is in relation to getting respect for our Elders and to have protections. Everything is a movable object and anything is up for destruction in that approval process.

With section 9 and 10, we learnt the hard way that the burden of proof for the ATSIC protection is unbelievable, to be quite frank. Then Shenhua was the next threat in relation to what's happening. There were others, but we just couldn't do all of them because there are no resources. We are just trying to do what we could. This time we actually had pro bono support. We tried again to exhaust all of the avenues in relation to the assessment process. The commission, again, was put in. What it did was it turned off all legal applications to appeal in the court in the State Government.

We only had section 9 and 10 as a process. We didn't just do one; we did two. We've got hundreds and hundreds of papers in relation to it, we had a special inquiry go out with us, we had sacred knowledge, we had over 600 people as part of all of that, we had 13 other nations who actually all stated that this is incredibly important, and we had a decision that was made by the Minister. Even though we met all the criteria of that ATSIC

application and the significance of the area had all been proven and acknowledged, at the end of the day, we were denied on the basis that there would be a social and economic benefit to the broader community because mining companies make money.

Everyone will say we had relief because the State Government members of Parliament came out and met with some of our Elders. There was some funny wording. It is all about the funny wording that goes on in this process. What happened is that they came out and said, "You saved the area." The next minute we find that we are not given mapping, we are not allowed to go out and we are not allowed to actually find out what is going on because some of the area was going to be put under the State Government's process and the rest of it was going to be sold for agriculture. A part of the problem that we have in relation to that is that you couldn't actually get the information. They knew all the areas. There was so much information given to everyone in the State Government in relation to this.

The GTC—the Gomeroi traditional custodians—are not unknown by people. Whether they are agents for the State Government or Ministers, they do know this group and yet they divided up the land. Some of the sacred sites are now in agricultural land, where it's up to the goodwill—or non-goodwill, we have found—in some and some goodwill with others in terms of farmers in relation to what they might protect and what they might not protect. We actually sought an application to have some heritage protection for that area. Because we apparently missed a date of a meeting by the committee, they wouldn't make the decision and they were going to delay the decision. Meanwhile, back at the ranch, everyone else is moving forward in relation to lands and everything else.

We hadn't been told in any of the interviews that we had, which we forced to happen, that there was a time imperative in relation to the meeting and that time. The next minute, we find that we still have all this uncertainty. This is where it doesn't matter where we go or what we try to do. We don't get protection. I am just really worried that this piece of legislation will again have the same issues of either environmental assessments and State-significant projects and wipe out any other right to veto or appeal or to have our rights heard.

The CHAIR: Thank you very much. That is very compelling. I also acknowledge the pain in telling the stories at the beginning. The Committee will have some questions for the three of you. Please feel free to determine amongst yourselves who the questions are best answered by. Firstly, is it generally your experience that you will apply for section 9 and 10 applications for protection as a last resort because the State system is failing? Is that what I heard?

YINNAAR BURRIM JANE DELANEY-JOHN: Yes. That is absolutely true. You cannot make the application unless you have exhausted everything.

The CHAIR: Moving to the intention of the bill, it is seeking to establish an Aboriginal-controlled Aboriginal heritage council that then determines the cultural heritage local lands services that would then work on nomination for protection but also determinations for harm. At the moment, there has been some concern around the constitution of that Aboriginal cultural heritage council. Do any of you have views on that council and the constitution of that council?

KARRA KINCHELA: Yes. I had a really good look into it. Honestly, the first look I had into it, I turned off it because we have an issue about representation on country with traditional owners and coming from dispossessed people and a lot of things that are happening. And the land rights Act is actually based on economic development over native title being about native title traditional rights and interests over an area. So there's a lot of conflict between those Acts in themselves. It's the choice that you have to make between native title or land rights, as well, and whether you profit from the destruction of country or not.

Just in general, of the council, I look at it and I think this might be an area to dissolve what's happening between land councils and native title at the moment and that there will be proper management of who speaks for country and whether the council can address that situation, which I believe it can. If the right people are in it, I believe it can be managed for First Nations people to be able to have that voice. Because what we have happening on country is we'll have certain individuals who will say, "The cultural heritage—we're within the land councils but we're not connected to the artefacts or the sacred sites and intangible sites as well." Who manages that? I think if we bring that up, get it away from land councils and put it into somewhere where we feel like First Nations people like myself, who feel that my voice isn't being heard over people who aren't technically from the area.

The CHAIR: Thank you. So from that I gather you think that for the Aboriginal cultural heritage council, Aboriginal controlled is a good idea, but making sure that the constitution is the right voices on that council.

KARRA KINCHELA: That's right.

The CHAIR: And, from what I can gather, you were suggesting there that the role of the land councils shouldn't be a majority or monopoly role.

KARRA KINCHELA: Yes, that's right. In Narrabri, the land councils build up relationships with mining companies. They work in good faith for protection of country and employment for people, but mainly protection for country and just feeling comfortable that our land is being protected appropriately and who's managing that. And right now our people don't feel like we know exactly who's managing our cultural heritage in general, so if we have that I think it will comfort a lot of our people on country knowing that our artefacts and our sites are being processed properly and being documented properly and that that's not being done by just one organisation in one town.

The CHAIR: Thank you. I've just got one question about the experience and this may be to Ms Delaney-John. Just going back to that experience, I think it was around Lawlers Well, can you explain how that situation happens? Where there are, as I understand it, registered Aboriginal parties that are perhaps suggesting that the mining company or the particular proponent is doing the right thing, and then there are traditional custodian voices that are saying, "No, this is not the right thing," how does that situation actually come to play and how does that play out?

YINNAAR BURRIM JANE DELANEY-JOHN: What occurs is there is a program of works where people are earning around $650 a day and then you've got those that are trying to protect. So, for example, with the Gomeroi Traditional Custodians in relation to Lawlers Well, Lawlers Well was named in relation to a bushranger. That bushranger was an Aboriginal person. That bushranger was actually a Gomeroi person, and his direct descendants and Elders voiced those deep concerns and connection. And yet their voice was marginalised. What happened was, over time, that particular well, which is part of a Dreaming story, which I won't go into, but it's part of a Dreaming story that was documented and it was in the confidential section that went to the Federal Minister for environment.

So what happened was Rio Tinto comes along and says, "We actually dug and made a well out of there." That's true. They did go and do an overlay and dig over the top of the sacred area. But they then marginalised the fact that, "Oh, well, this is desecrated. We deepened it. We made it look like this." Therefore, is it still a sacred site or not? So you had companies working with companies. Rio Tinto came forward and did all of this stuff. It doesn't change its value. In fact, the fact that the cultural values and the traditions in relation to that area and how, even prior to it being called Lawlers Well, it was actually part of a pathway where, in a deep forest in drought, it would have water. And there were so many artefacts around it that showed the repeated visitation.

The other thing is that archaeologists tend to dominate the discussion over "ancient"—"ancient" not in relation to continuum and the changing needs. So, for example, in Maules Creek and that area there was a Gomeroi woman run down. It's documented they had been run down in that creek, and yet anything that's said or anything that's shared is just all marginalised. We had families that had a burial area there. One of the Elders, their family member was buried there. That area just gets destroyed. They did an examination of an area and they couldn't prove there wasn't a burial and we couldn't prove there was a burial because of the way in which the evidence occurred. But they then proceeded to do a fence.

The fence actually went directly where you needed to go further out than that, and they actually fenced off on top of the burial. And then we're going down there to do ceremony, this is even before it became a fully active mine, and they're making us wear helmets, high-vis and boots and trying to hand them out to the kids so that we can do a traditional smoking ceremony in that gear—all this stuff. So you've got these layers and layers of failures. Everywhere you turn, it's broken. So there is the contradiction in terms of what's verbally told to the community. The community understood that Lawlers Well would be safe and that they would have 30 years in which to have this big argument in relation to its protection. Then they find it's under threat immediately. So we tried to put a section 9 and 10 because we had absolutely no other avenue possible to protect. And then that still failed.

The CHAIR: Just finally on that point, were there Aboriginal parties suggesting that what the company was doing was okay and then there were voices that were suggesting otherwise? Is that ultimately what played out?

YINNAAR BURRIM JANE DELANEY-JOHN: What happened is they brought in people that are from—they are Gomeroi but they're from outside of that direct area of connection.

The CHAIR: Right.

YINNAAR BURRIM JANE DELANEY-JOHN: And then what happened was they acknowledged that it was of cultural heritage value, but if they took the artefacts that were surrounding the well then they could blow it up, basically. So when you asked that question in relation to the heritage council—one of the concerns

that we have is that, in any model that's actually going to be created, there's actually going to be a non-traditional model. The cultural heritage will be formed in whatever form. It's actually not necessarily in basis of the traditional way in which decisions are made. So there needs to be always the ability, and it needs to be reflected in any legislation, that those that actually do have traditional knowledge, that can actually prove and have information and want to have the right to appeal a decision should still have a right to go to court, should still have the right to actually put the evidence on the table. They shouldn't be denied access to get that evidence.

So if there is a failing in the heritage council because of corruption or other stresses, economic stresses et cetera—we found that the land council is a statutory authority that's supposed to protect Aboriginal cultural heritage. Yet to actually have them try and do the protection of Aboriginal cultural heritage, they were very tardy and very late and very toothless in that process. They had investment issues. They wanted to get leases for coal seam gas at the time because they're needing to have economic sustainability to be able to provide support because they're actually focusing also on the poverty levels of our community. This is where you get this conflict and the lateral violence that occurs. It just feeds into that lateral violence.

Reverend the Hon. FRED NILE: Thank you very much for what you've been sharing with us. Like other members, we all grieve with you over the way the Narrabri group were treated, being treated as if they were criminals, when they're doing the right thing. So we support all your endeavours. Just following up with some questions, I note that, as you know, the examples were State significance, I suppose, for special protection, but they don't have any protection, as far as I can see, from mining and gas projects. How do you respond to that?

YINNAAR BURRIM JANE DELANEY-JOHN: Karra, do you mind if I just make a comment on that? Absolutely. In our experience, there's been no protection whatsoever. They're so big and they're so wealthy, and there's so much at stake, and we are so under-resourced. We just try to do what we do because—we have a saying: We'll never win in the system. People say, "Why do we do it?" We're not a campaign. We're defending country and we're defending culture. There was a third regiment that went through, and there was war and violence, and people died. It's not about whether we win; it's about being able to tell grandchildren and children that we actually stood up, regardless. We don't win against mining companies. We just don't win against mining companies. We requested even the interim heritage order for the lands associated with Watermark, and we haven't been able to even achieve that, even though the ATSIC Act and the decision and all the documentation prove how highly significant that area is. We're not even able to achieve that.

Reverend the Hon. FRED NILE: What are the key features you would want to see in any Aboriginal cultural heritage legislation?

YINNAAR BURRIM JANE DELANEY-JOHN: The absolute right to veto.

Reverend the Hon. FRED NILE: If you were Premier tomorrow, how would you unite all the Aboriginal cultural stakeholders to reach an agreement on the features that should be seen in an Aboriginal cultural heritage bill, which is what we're talking about? Any of the witnesses can answer the question.

KARRA KINCHELA: It's difficult with the legislation that we've got. Like I mentioned, the native title and land rights legislation conflict. So while our people are being forced to work within conflicting legislations, it will always cause conflict between groups. Just finding that balance of economic sustainability and development as well as traditional rights and interests is a fine line for us Gomeroi people, especially with the excessive amount of mining and how we live within mining communities as well.

Reverend the Hon. FRED NILE: What would be the way in getting other native stakeholders and Aboriginal others to see the merits of the culture is identity 2022 bill? That's the title of the bill we're discussing now.

NIC CLYDE: I'd be happy to have a crack at that one, Reverend Nile. For me, I think it's about storytelling and education in the community. As a community, when we start to understand more of the significance of these sites, of this rich, living, dynamic Aboriginal cultural heritage and oldest surviving culture on the planet, when we start to hear more stories of particular places and learn about those places, particularly in this moment of the Uluru Statement from the Heart and this national journey that we're on, led by Linda Burney, the new Federal Government, I think there is an immensely significant opportunity for us here in New South Wales to come together on a shared journey. I think protecting cultural heritage and a process led by and co-designed by our First Nations people can get us on that pathway.

The Hon. PENNY SHARPE: Thank you very much for coming along today. Thank you for telling us in really stark terms why the current arrangements are failing. I really appreciate that, but I also know that that takes a lot out of you every time you've got to do it. Ms Kinchela, I wanted to ask you particularly—you made a comment earlier on about getting the right people on the council. We are non-Aboriginal legislators that are trying to wrestle with all of that. Who do you consider to be the right people in terms of the make-up of the council?

KARRA KINCHELA: In regards to cultural heritage and finding who belongs where or who comes from where, it would be native title. It would be that process. At the moment, it would be a process through native title. I know there are issues with the Native Title Act as well. We don't have our determination yet. But, through native title, you have direct access to people from the area and who still live in the area. To go to the traditional owners would be that way.

The CHAIR: Thank you all for attending and for your evidence today. We're very grateful.

(The witnesses withdrew.)

Ms MAVIS AHOY, Elder, and Panel Member, Armidale Aboriginal Cultural Centre and Keeping Place, before the Committee via videoconference, sworn and examined

Mr REECE SHEUMACK, Aboriginal Community Engagement & Culture Officer, Armidale Community Corrections, before the Committee via videoconference, affirmed and examined

Mr DALLISS RAMAGE, Director, One Connection Aboriginal Disability Services, before the Committee via videoconference, affirmed and examined

Mrs ROSE LOVELOCK, Elder, and Director, Armidale Aboriginal Cultural Centre and Keeping Place, before the Committee via videoconference, affirmed and examined

The CHAIR: I now welcome our next witnesses. We're very grateful for your attendance. I note that you are all appearing via Webex. Would any of you like to commence with making an opening statement?

REECE SHEUMACK: Aunty Mavis would like to do that.

MAVIS AHOY: Reading some of the bill over the weekend and speaking to some of the Elders and getting their advice and that, half of us are for it and against the changing of the bill. Now, it's been proven in the High Court that Australia was inhabited by Aboriginal people when Captain Cook landed in 1788. That's already been proved in the High Court with *Mabo*. And with saying that, with native title, it needs to be shaken up and some changes need to be done with native title about how long it takes to get a result from native title. With our understanding, it's 18-20 plus years to get a result. So if I applied for native title now and then it does come my way or if it doesn't, then, in that long, I mightn't be around to see it—the same as Mabo. He died four months before he got his result—it was good. I don't want to do that, so I'm saying native title needs to be shaken up and changes there with shortening that span of giving which is the rightful owner of each country, nation.

The other one is land councils—it really needs shaking up. That's speaking from experience with our local land council. With the changes that have been done in the last four or five elections, it's changed to the west, towards the Aboriginal people and the other people. They're actually making our stake wider—our boundary wider, instead of keeping it smaller. We only had about seven local land councils on our side, now we've got about 20-odd plus. There is one there [inaudible] is not in that. I think we should bring back in the regional land council. The local land councils shouldn't—and it always should be, if you're a member of the local land council you all should be a person from that country, that nation, not from Timbuktu [audio malfunction] say, "I will be the chairperson of this local land council" and they're not originally from here. They're giving our lands and selling our lands and that, that we've worked for and sitting and protesting on years ago.

For example, I sat and built my hut, just here, outside of Armidale, for six months with my four-year-old son. We've camped in this shack, all eight years' worth. Then we ended up getting the land. Then, two elections back, the chairperson of the LALC turned around and sold that land. So this is where land councils need to be changed and the people from that area should be the only ones on the land council. Anyone who comes from Timbuktu and that [audio malfunction] selling our land.

The other one, with National Parks and Wildlife—now that really needs shaking up. I've got a long story there that I won't go into. I will just give you the basics. National Parks are doing wrong by us, and they've always been doing wrong by us. They know that, for example, here in Armidale we've got two tribes fighting over what country this is, who are Gumbaynggirr, which is myself and my descendants where I come from, and you've got the Anaiwan. I don't know where they've come from, but this is [inaudible] any of them are local. Parks and Wildlife is doing wrong by saying they've got people in these high places, and they do have people in high places, that say, yes, that suits them. They're sitting up with no-one doing anything else about it.

For example, Mount Yarrowyck, we know that's not Armidale, not a part of our country, our nation. We know it belongs to the Kamilaroi and that. We were told by our past Elders, my grandmothers and everybody—great grandfather—they told us where our boundary is. We know our boundary. We know that's not ours. Parks and Wildlife sent us a letter, a written letter, to say that we had to sign a part of that mountain if we wanted our say over another mountain which is in our boundary. We had to sign for Mount Yarrowyck to be part of that. I don't think that's right. It's things like that that Parks and Wildlife are doing to our people and our artefacts. If people find artefacts on their property, fence it off, protect it. You don't have to get up and move it somewhere. That's not the way it's done. It was put there for a reason, not to go out there and dig it up and lose it, for it to be put somewhere else. If the farmers own the property, just fence it off. That's everything we ask: to protect our past.

We can't move forward to our future without our past. Heritage is our land, our country, our songs, our walking trails, our stories, and that is the way it should be—not somebody who is writing it down saying, "Oh

yes." There are people who work in native title or in parks and wildlife and that person is saying, "Oh no, that is Anaiwan" because he works there. Parks and wildlife believe them and cut the other tribes out. My suggestion is—I don't know about the other three here—that some of it needs shaking up and some is good. With the bill, I think they should take note of what Aboriginal people are saying and not just take it from one person. Go into the community and find the truth.

I am the fifth generation of King Bobby, King of Armidale. Now, he saw the first white man who came into Australia. He helped build Armidale, this king. We have proof, we have photos, and yet they all say it was Anaiwan. What we have to do is to say to parks and wildlife, "No, it is being housed." There is one family that is saying it and they live in nearby places. They need to be checked. The same with the Aboriginal Affairs registrar. They need to get out and come back to our community, to the ground and the grass and the people, not take matters from someone in the office who said, "I did a report back. I spoke to this person." Go out to our people and sit and talk to our Elders. That's all I've got to say. Thank you for letting me speak.

REECE SHEUMACK: I think in a nutshell, just to wrap that up on behalf of Auntie Mavis, it is a fractured community here. I note that this was actually sprung on us last minute. The tableland wasn't put in for consultation initially, which was very alarming considering the fractures that go on here. I am actually tiding with all three mobs that are a part of that bit of a divide. It does stop us moving forward as people as well. In relation to this bill, I think it is important to note that changes are okay, but you have to fix the things of the past first before you can move forward with change. I think we can move to questions, if you like. Thank you.

Reverend the Hon. FRED NILE: Perhaps to get a summary for what they have been saying, what are the key features you want to see in any future Aboriginal cultural heritage bill, which is what we are discussing? It is your opportunity to shape the bill.

DALLISS RAMAGE: A holistic approach to community consultation, not just going out and nitpicking who they want to go in there, because there is more than a handful of people to one community. One to five people doesn't make up one community, and one nation doesn't make up the Aboriginal community of New South Wales. It needs to be a holistic approach across all of our mobs in order to get the best outcomes for moving forward. But you have to be prepared for us to move forward. Like Reece said, there are a lot of fractured communities and there are a lot of broken promises from the past that need to be mended and need to be reconciled.

The Hon. ROSE JACKSON: Thanks, everyone, for coming along and making some time to talk to us. It is incredibly important to hear from you. I think one thing that has definitely been raised by you and by many other groups is just the importance of those local voices. This bill envisages a statewide advisory council and the bill talks about them engaging with local groups, but maybe there is not a lot of detail about how that might happen, and I am hearing from you that that is incredibly important. I want to hear a little bit more from you about why you think a statewide advisory council on its own, without those local voices, isn't going to work?

DALLISS RAMAGE: You are dealing with 60,000-plus years' worth of culture, of our Bible, of our beliefs. I am going to give some prime examples here of 240 years' worth of history here in Australia, from colonisation. There is more protection around those sites than some of our sites that are 40,000 to 50,000 years old. At the end of the day, I could walk into a church—and this is an example—and deface the church and I am facing criminal charges, but a mining company that is going to go out to make millions of dollars out of destroying sacred sites for profit doesn't get a slap on the wrist. So community consultation, but holistic community consultation. For a mining company or someone that is going to make some form of economic value from our country, they need to come in and see what it actually does—how what they are doing is breaking and building on identity trauma. Because once you start breaking our identity by us losing our culture and our sites, that is when we are going to start going backwards again. It is like three steps forward, 10 steps back. We can't do these 10 steps backwards.

The Hon. ROSE JACKSON: I would imagine that the damage you are talking about that can be done is not just damage to physical sites; it is damage to intangible things as well. We have heard quite a lot of evidence about that. It is not just physical places, although they are very important. It is some of those stories and those more intangible things that can be damaged as well.

DALLISS RAMAGE: Our rock art is no different to your Bible. Our rock art is our Bible. It is our story. It is where our ancestors tell us how to live, how to be and how to treat others. It is no different to the Holy Bible.

REECE SHEUMACK: I think in a different approach too. I sit as an authority figure with Community Corrections, and when you say, "Consult on a bigger level," rather than a committee, so to speak, it is very important. When it comes down to those broken promises, in order to get the right voices you have to win their trust, so you have to come to them. I mention, for example, this meeting—the day after the Koori Knockout, which

is our heart and soul and which we haven't had for three years. I only had eight days to try to get those sitting here today because everyone had gone away. But a lot of people are scared to even approach these types of things because they are scared of those broken promises or just facing the Government, so to speak. I remember when I first came into my role and I actually asked people, "What do we need to change?" They were like, "You actually want to listen to me?" I was like, "Yes, that is what I am here for." I think consultation on a bigger scale is very important. It is going to break down that stigma between us and them when you look at Aboriginal people in today's society.

MAVIS AHOY: As an example, we have asked native title to come up and do a workshop with us. I have been involved with going down to Nambucca and native title since day one. If you were related to King Bobby, we were allowed to go down there amongst them. You were classed as them. We thought Armidale was part of that. It led to [inaudible] and that is what we wanted. I asked native title to come up here almost a year and a half ago. We are still waiting for them to come up and do a workshop with us so we know and understand what native title is all about and how do we do it. Digging up pieces from the past and putting them somewhere that's supposed to be safe—but they're going elsewhere and they're being sold to other people. These are some of the things that are happening in our community. Is this bill going to help us stop that or is this bill going to say, "No, we don't care about what they say. Get rid of it. Trash it"?

The Hon. ROSE JACKSON: That's what we're trying to figure out.

The CHAIR: Yes, that's what this inquiry is trying to get to. Essentially, the bill, as proposed, has some pretty key features that we actually haven't seen proposed in a bill ever before. The bill features the ideas that have come directly from First Nations people from consultation over the last 20 years, really. One of the things that's put forward is an Aboriginal-controlled and an Aboriginal-constituted council that then determines these local land cultural heritage services on the ground, which would be made up of people who have cultural authority and speak for country, and a process of trying to work out who that is.

There are two particular features of the bill, and I would just love to hear your views. One is the idea that if a proponent or a developer or a mining company, or whoever the proponent is, is seeking to develop land which is very sacred—I know that's controversial in and of itself because we understand that all land has importance in some way or another. But if there was a project that is proposing to harm and perhaps destroy forever really significant tangible or intangible heritage, it gives the Aboriginal cultural heritage council the right to say, "No, you can't do that." At the moment in New South Wales there is no law that does that. What do you say to that part of this law?

MAVIS AHOY: That's why they [audio malfunction]. I think we need to stop that because we've got people going on there, all the way around us, and buying land up there. We've got sites and everything and they want to dig it up for coal, and we don't want them to do that. If they do do it, what have we got then? I'm going to say do we give a royalty or we don't if they damage the sites, which we don't want them to do? But if they do, what is in it for us?

REECE SHEUMACK: Compensation. We've already got a site out at Uralla when the solar farms come in play that they fenced off. But by doing so, we don't have access to that site anymore. It's all well and good that it's preserved, but we have no access to that. A lot of people here in this community still have connection to that site, and it's very important that they have that connection out there to be able to go there. But because it's now on a solar farm site, you can't go there.

DALLISS RAMAGE: It's unsafe.

REECE SHEUMACK: Because of safety reasons and so on. So a lot of that, that bill—that part of the bill needs to be taken into account, I guess in a sense. Obviously, that's great that they protected it, but how do they still get access to that?

MAVIS AHOY: This is what you call a sell-out. They shouldn't have sold out. People are selling our things out. Let the rest of the community know it. This is why we've got nothing, when we we've got people selling out.

DALLISS RAMAGE: Another concern I have—

The CHAIR: Can you just elaborate on that point—people selling out—please?

MAVIS AHOY: It's our own mob going out there and showing them sites and that. Now they can't get access to it and they want to. That's their fault for selling it and giving them permission to walk on that land. If they'd have said, "No, don't walk on there," they'd still have the access to these sites. This is why I'm saying they're selling out a lot.

The CHAIR: Is it your understanding that that happened through the registered Aboriginal party process or is that because they're connected to the land council? How did that happen, that particular example?

MAVIS AHOY: The land council.

The CHAIR: Dalliss, I think I may have cut you off. I'm very sorry. I didn't mean to.

DALLISS RAMAGE: No, you're all right. Another thing that I want—we need to make sure that is airtight because for years and years and years organisations and corporations paid lawyers big money to find loopholes. That's just the way of corporations: Let's find a loophole and get around it. We need to make sure that all this is airtight because a loophole could destroy 50, 60, 70 or 80,000 years worth of culture.

ROSE LOVELOCK: I think that we're at a point in time where we know the flawed approaches that have occurred in the past. We have to have some role in it where we are the people that are consulted, not directed. You can't have a successful outcome without it being shown to be that. Yes, I agree that National Parks and Wildlife should not have that much of a say in our dealings on land and with culture. But I also believe that governments need to look a bit deeper as well because I think there's a lot to be said in respect of how that's managed. I think we're all looking for self-determination and self-management, but I think there's a need for us to be recognised as having a fair say in what's happening to us, as communities.

DALLISS RAMAGE: I know we've been throwing National Parks out there, but there are other government bodies out there like NSW Rural Fire Service. They're quite blasé when it comes to getting the back-burning [audio malfunction]. I'm a captain of the local brigade here. The cultural awareness training for the NSW Rural Fire Service is absolutely atrocious. It's about burning paddocks, burning timber. Their new computer system that's going into the trucks doesn't even have the capabilities of having items on there to see if there are any sacred sites or any sites of significance nearby. But I can go on there and it will tell me that there's a cattle farm up the road here. There's been a lot of money spent in building this tablet, this technology. We've already got the technology there to lay that map over onto the tablet to let us know that there's a site that needs to be protected, but it's not even thought about because "preserve life", "preserve property" but no "preserve culture".

The CHAIR: Thank you, that is a very compelling point.

The Hon. AILEEN MacDONALD: Thank you for joining us. I wondered, if you've had a chance, where the bill says "Aboriginal cultural heritage"—the meaning—do you think that encompasses what you'd like to see as Aboriginal cultural heritage?

MAVIS AHOY: Myself, I'd say let our committee mob do it at the local level, at ground level. Let them do it—the committee there. Take it to the community and let the community decide on who's going to be on that committee and who's going to speak for us and going to put their hand up for us. Us four can't make all the decisions now without our people. I'm only here because I'm the chairperson of the land council. The Gumbaynggirr Elders and descendants—I'm the chairperson of them—and I've only got this here eight days ago and I haven't even had a chance to go through it. I've got somebody to go through it and look at it and they've written down points for me and that. Some of the Elders—it's really up to the Elders if it's good.

The thing here is everything has got all the power in the LALC—the local land council—the registrar, Parks and Wildlife. Have I missed anyone? The State land council. We don't know where we are here with the local land council, and they're the one that is making the decisions for these big companies to go and destroy our sites and that, and it falls back onto the local land council. On this local land council, because half of them are all not from this area, they're making decisions on our sites and giving the approval. This needs to stop. This needs to go back to the members of the LALC that make the decision or [inaudible] sitting around a table and say, "Do this and do that," and they're not from here. Then when they do send somebody on site, they're still not from this country and they send white people, their sons-in-law and that, out there to the sites. There's all this big money and they destroy our sites.

This is where local [inaudible] to get in there and change some Act with the local land council. Same with all of them; they all need changes and that. If you put people up in high places working for government agencies and they know there's something going on in your own town, they should say, "Out of conflict of interest, I can't go there. That's my own town on country." They sit up there and those government agents say, "Do it. This is that country; just do it. I know it." This is where it needs to be changed. Those people in those government agencies that make these decisions for the rest of the community should not be allowed.

The Hon. AILEEN MacDONALD: Could I ask another question, and it's probably to Reece and Dalliss. We heard from Geoffrey Winters, who is the CEO of Just Reinvest, this morning, and he said if we got this right, it would be empowering or—what was it? Something to do with, I guess, the trauma. I know you work in disability and you work in corrections, so would it empower the people that you work with?

REECE SHEUMACK: In a nutshell, Dal and I collaborate on a program that we call Brothers in the Dale here in Armidale, which is a chance for the men to rekindle their identity and build on their strengths, separate the behaviour from the men and create a stronger [audio malfunction] community. Culture is identity is what that is and that's what it does, because too often we've always focused on the negative rather than who they are as a person and their contribution to the town that they're in and who they are. When it comes down to, I guess—to twist this a little bit—talking about that council, it comes down to a voice in that. When I got this handed to me eight days ago, those same men that I speak of, the Brothers in the Dale, actually participated in the consultation process in us four sitting here today. We had men that are on orders that are looked upon too often by the justice system as the too-hard basket. They were sitting here talking culture with us, what needed to happen for them people. Those men had a voice in that. It is very important and it is about change.

My only concerns, Aileen, would be, when looking through the bill, some of the repercussions of breaking some of those laws. It is like Aunty Mavis said; it is sometimes our mob that do it to mob. Are we going to contribute to actually furthering that gap from closing with some of those harsh punishments? Or are we working towards closing the gap, which is what we want in the long term? We really need to make sure that those punishments are taking into account, for example, that if it is mob that's breaking some of those things, are we looking at things like circle sentencing and so on and so forth where mob is still in that stage? Are we looking at programs like Brothers in the Dale in the community to keep mob out of custody? Because we know institutions don't work, like jails and so on. They are the things that furthermore I'd like to see down the track in what that bill is going to look like and what comes from that.

DALLISS RAMAGE: Furthermore, just to add to what Reece said, it's the youth that we need to start educating with—our mob need to have access to all these sites, not some of them. I'm not going to sit here and talk out of protocol with law and whatnot, but there are laws of the land and laws of our ways that are being inhibited by not being able to gain access to these sites or not being able to go and practise our ways on these sites. I'm not going to breach protocol around our ways, but you can get the gist of what I'm trying to say. In order for us to start moving forward with these young ones, this is going to make Reece's job hopefully easier in the future with less people offending because if you don't know your identity, you don't know who you are and that's traumatic and that leads to so many different avenues in life. Some people make the right choices; some don't know what their choices are because they don't know who they are. I'll leave it at that.

ROSE LOVELOCK: Just to add to that, I think that some of our historical trauma, as they call it, we say the trauma is still living. We're still living with members of families that have been separated and are now looking back on communities and trying to find where they fit and what they should be doing. I think that we haven't paid enough attention. When I say "we" I mean non-Aboriginal people because it's been the case that that's been inflicted by non-Aboriginal people toward Aboriginal people. My mother was taken at the age of five and brought back at 22. I'm a living person in a setting where I'm expected to be able to teach our culture, teach our history and teach our heritage, and from that I don't think enough care has been given to allowing us to grow even further within our culture and heritage and knowledge of the environment we're in. I think we're the best people placed to be able to give advice and ask for some sort of way of dealing with the neglect we've suffered for too long.

MAVIS AHOY: One more thing, going back to the local land council, because this community has been speaking to them and native title is taking forever to come meet with us all, my organisation took it upon themselves to go out to all the surrounding nations around Armidale. By saying that, we went over to Inverell and Tingha and met with people over there. They were on their special contract—the old mission where they put bush tucker they had back in the days and put their bush tucker and what they stayed in in the environment and everything. It was a beautiful day to go over there and see all that. We're doing it in Walcha next month. We're going down there and speaking with them to do a treaty between all the neighbouring tribes around us to join and say that, "Yes, you are our neighbouring tribe," and sign some sort of paper to say the boundaries within the same [inaudible].

The Dunghutti Elders down in Kempsey, we've met with them. The ORIC people down in Gumbaynggirr country in Coffs Harbour, we met with them. Ashfield and that, Glen Innes, we met with them. Out of our own pockets, we put in our preschool—with all them, we had a meeting in there. We had about 50 people turn up at the first meeting to come on board and sign this treaty, because the land council and native title were taking forever. They couldn't get up here and help us out. If we don't get recognised now, what is our future, and what are we going to lose? We took this upon ourselves.

This is what I'm saying: I'm so upset with native title and the land council. I was speaking to some of your colleagues, Ministers and that, and they're willing to help us—Ministers from where you fellas are up from, down in Canberra. I've got another meeting with some of them on Monday to talk about our issues. This is one of them, this bill. I hope that when you do make a decision on what you're going to do with this bill, please come

back to the community and let us all know that are in the community, and not just us four. I know there's funding out there to go out to the community and see, and hold a community meeting there and let people know—all my community for this area or for the whole region. I'll say no more on what I've got to say; I'm just happy to be here today to speak online. I hope I can come across and help with some changes with the bill in making it.

DALLISS RAMAGE: I suppose I'd just like to also formally acknowledge Aileen MacDonald for actually recognising that we weren't represented as a community. Thanks, Aileen, for that. It really shows that there is change moving through the system in a positive way, because this consultation, I believe, needed to happen. The timing was pretty ordinary, just because of not being able—

MAVIS AHOY: The time frame.

DALLISS RAMAGE: The time frame. When we formally met last Tuesday—I've got to be honest, I've read maybe a dozen pages from the bill so far, out of the 119, so I do have some reading to do. Once this is over, I can put a bit more time into reading. But thanks, Aileen.

The CHAIR: Thanks so much for the candour. If I can just say, on behalf of the Committee, we all are not particularly happy about the timing. It's been really challenging. Reverend Fred Nile introduced the bill because we've been waiting for the Government to introduce the bill since 2018 and we hadn't seen one. Reverend Nile was getting more and more concerned that this term of Parliament would end and we would still not have standalone cultural heritage laws.

Reverend the Hon. FRED NILE: Amen.

The CHAIR: Recognising that the intention has been very good, time hasn't been on our side at all. But the Parliament has asked us to undertake this inquiry, and the Committee secretariat has done everything it can to try to reach out in the short period of time. We are just so grateful that you have participated, that you have appeared today and that you have given time to having a look.

Reverend the Hon. FRED NILE: Hear, hear!

The CHAIR: We are so grateful for your help, and it will help inform the report that comes from this inquiry. No matter what happens with this bill in this term of Parliament, all of your evidence will now be on the public record for forevermore as we walk towards the journey of getting standalone cultural heritage laws. We know in New South Wales that it's not a question of if; it's a question of when. That's what we're working towards. On that note, we are out of time. On behalf of the Committee, once again, thank you so much for your time, your effort and your evidence today.

Reverend the Hon. FRED NILE: Hear, hear!

MAVIS AHOY: One more thing before you go. Sorry about this, but—

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

MAVIS AHOY: This bill that we've got here—when you finish deciding and make your decision, will you go back and change things out of it? Do you send it back out to the community and let them know what the changes are, if there are going to be any changes?

The CHAIR: Our role here is to draft a report and for the Committee members to agree on the contents of that report, which will have findings and recommendations about the bill, and then our job is to present that to the Parliament. I am sure that all the participants will be made aware of that report, but what the bill ultimately looks like and what happens to it will be up to all of your elected members of Parliament. They will be the people who make the decision whether this bill gets supported or doesn't. We know that there are some real constraints about whether there will actually be time in this Parliament before the State election. This Parliament will finish and do its last sittings before the end of this year, and then there will be an election in March. Regardless of what happens to this bill in this term of Parliament, this report will be enduring and will be on the public record forevermore. Thank you so much for your participation, for your time and for sharing all of your knowledge.

(The witnesses withdrew.)

(Short adjournment)

Mr MICHAEL YOUNG, Community member, before the Committee via videoconference, affirmed and examined

Mr ROBERT SYRON, Registered Aboriginal Owner through the Office of the Registrar, and Australian War Veteran, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome back, everybody. I now welcome our next witnesses. We cannot hear Mr Syron online, so we will go to Mr Young. Do you have an opening statement or some words you would like to talk to the Committee about in relation to the bill?

MICHAEL YOUNG: Yes, I have a short statement. I am a traditional native title holder. I was also on the AAG in the Willandra area in Mungo National Park. I am a Paakantji Parenti person under the Barkindji nation. I don't believe this bill is contemporary enough for what we envisage in New South Wales. I think it will cause conflict, particularly with native title holders. It seems the pendulum has swung in the opposite direction and native title in New South Wales has been relegated to a rather low level. I feel that that in itself is going to have flow-on effects within the communities and particularly also for lateral violence—that is my main concern at this stage—due to the structure of it.

The powers that are going to be handed over to, for example, land council, doesn't serve native title holders in any way and it conflicts with it. We probably have to go back 200 years to the native police before we come across anything that is close to this sort of style of legislation. I feel that it just does not serve any purpose except for maybe the property lobby. I feel that native title holders are the ones that are going to be losing out mostly with this proposal, if it ever gets put forward. The destruction of that is also, I feel—we have taken 18 years during our native title to get to where we were, using proven methodology and anthropology et cetera to establish who the original families were in our area.

I would just like to draw your attention to the Nellie Johnston paper that I sent through earlier. That gives us a brief history of our family and yet we still have no seat at the table. As a matter of fact, if we ever objected to any moves, particularly in Willandra and the Mungo area—we have seen the destruction in May of Mungo man and woman. We feel that that was a travesty as well. We were not represented there. We feel that the AAG is a body that was put in there by the New South Wales Government, in particular OEH and the heritage advisory group. It is not representative of the native titles holders of the areas.

We had other plans for that. The plans were for a future for our future generations' storytelling and the continuation of contemporary storytelling for our people, education, scholarships and so on and so forth. All we got was a burial. Also under this legislation—I believe it's number seven in the legislation—is that any stop orders shall be abided by. They were not abided by. The day before this action happened we were told by the New South Wales Government and the Federal Government that this was not going to go ahead and yet it proceeded. We feel that this legislation protects nothing. It is only for the lobby groups. We feel left out again. In actual fact, we feel it is backwards. We cannot support it under its present circumstances.

The CHAIR: Thank you. Mr Syron, can we hear you now? No. We will wait for you to dial in. While the Committee staff are trying to sort that out with Mr Syron, Mr Young, thank you for sharing the story about what has happened recently. I know how much pain that has caused for you and the Elders and the people on the land there. The bill at its very heart has the intention to introduce standalone cultural heritage laws in New South Wales and it seeks to empower an Aboriginal controlled authority to administer the laws, and it seeks to provide a way of determining who the local land cultural heritage services are and who speaks for country—if that is the native title holders or who that may be. The laws fundamentally are seeking to provide a way to protect cultural heritage, including allowing those—assuming it gets it right—who have cultural authority to be able to have a right of veto in relation to developments or harm over cultural heritage, which of course is in the bill, described as both tangible and intangible heritage. If the bill gets right the cultural authority, do you think the bill itself is worthy of support?

MICHAEL YOUNG: I think the bill should be, if there were more negotiations and if there was more consultation. We haven't had that out here. A lot of people don't even know that this bill is even proposed. I have been asking the community and a lot of people are unaware of it. So consultation really needs to be stepped up. I do believe that native title should be the principal body. They should be looking after that. I don't think the Aboriginal Land Council in its present structure can represent native title holders in any way, shape or form. As I said in my submission, I have been a member of a land council in Sydney for over 30 years and I have not seen a whole lot of benefits coming back to the members. There have been a lot of secret meetings. There have been a lot of takeovers, if you like, within some of those meetings.

Structurally and historically, I don't think the land council has the integrity and the proven—I just don't think the land council is representative. I think it's very pro-development, with all the land that it has got. So naturally they will veer towards that. What happens on the northern beaches cannot happen out the back of Bourke. That's just sheer arrogance to think that. The majority of people out this way, along the Darling River—the Barka River—are native title holders, not land council people. And that is where the conflict is going to come in. If they find out that this has passed without them even knowing about it, which has been the case out here, I think that is a precursor to lateral violence. We have seen lateral violence come up in the community through decisions like this before and I don't see that stopping.

The Hon. SCOTT BARRETT: When you were talking earlier, you were saying "we". Who is "we" in that structure?

MICHAEL YOUNG: The we in that structure are native title holders. My family group who in 2015 were present when the determination happened and also even after that in 2016 we [inaudible] 30 people to represent [inaudible] for the part 4A full handback under the Aboriginal Land Rights Act 1983. And we have been promised for six years that this was going to progress. And while I was on the AAG, I've had other people come down—department heads, et cetera—telling us that it is progressing. We are still waiting six years down the track. The only empowerment that has happened is for the AAG to take control of the heritage and culture out there, and this in itself has been very upsetting because we've been promised for six years that the full handback would happen and it has not happened. We feel that we've been, again, lied to. That's just being an Aboriginal person in Australia. So we understand that this is obviously now going to be part of what the future structure is going to look like—this new legislation. But it doesn't entail native title holders and it doesn't even include the existing legislation under the land rights Act. That hasn't progressed. So if the existing legislation cannot even hold up to its own promise, then I don't see how the new one can.

The Hon. SCOTT BARRETT: Can I ask you another question based on something you said before? The difference between how this bill or a similar bill would have an impact on the northern beaches versus the back of Bourke, you touched on that before. Why would it be different and how would it be different?

MICHAEL YOUNG: There are a couple of things. Land title is western land leases which is a whole new set of regulations. The other thing is that we have native title over the area. So a lot of those will have to go through ILUAs, through the native title body. We've seen the land council selling off lots of land that had been given to them. That was part of the land trusts and Crown land. And yet we still have no say in that. So it's an affront to us to see that happen, after all the time that was spent on native title. And, like I said, it has taken us 18 years to get there—2015 was the determination. And yet now we see this coming in. It's just another stop-go situation. We don't know where we stand fully.

The CHAIR: Thank you, Mr Young. We've heard a lot of evidence that native title holders and registered parties are recognised quite deeply as the holders of cultural authority. I understand we have got Mr Syron, who is participating by phone only. Mr Syron, are you there?

ROBERT SYRON: Yes, I'm here. I'm sorry, I did go through this yesterday.

The CHAIR: On behalf of the Committee we apologise. Technology sometimes is great and sometimes it's a bit random. Would you like to start with an opening statement?

ROBERT SYRON: Yes. I'm an Australian Army Rwandan War veteran from the Guthang language group, the language of the Worimi, Biripi and Guringai people north of the Hunter River, New South Wales. As I said, I'm a registered Aboriginal owner through the office of the register, Aboriginal land rights Act 1986 land title holder. I've gone through all the [inaudible], above and beyond proving my connection to country and my Aboriginal heritage. Sadly, I've also experienced a similar situation where I've had to battle with my own local Aboriginal lands council as a registered Aboriginal owner simply to hunt and gather on my own country, which I was completely denied, as per my submission statement number 1.

I understand that some people believe that land rights should supersede native title and registered owners. This creates division in our communities and undermines our cultural lore [inaudible]. Native title recognises in common law First Nations peoples' rights and interests to the land and the water according to their traditional laws and customs. I believe that land rights should never supersede native title and those people who have legally gone through the processes of registering an as Aboriginal owner through the office of the register—Aboriginal land rights Act 1986. I know, from my past relations with local Aboriginal land councils, that other registered Aboriginals also support this approach under cultural lore [inaudible]. There's been no community consultation or public notices taking place with native title holders, registered Aboriginal owners and New South Wales local Aboriginal lands councils, from NTSCORP or New South Wales Aboriginal lands councils in regards to land rights superseding native title and registered owners of New South Wales. Am I okay to keep talking?

The CHAIR: Yes.

ROBERT SYRON: As an Australian war veteran descending from an Aboriginal family who has the highest number of family since World War I who served in the Australian defence forces, I continue to fight these cultural battles. Our mob, Guringai, have had to fight against the destruction of cultural heritage, setting a landmark ruling, first in Australia, to stop a coalmine at Gloucester. I have seen the destruction of our sites and have been at the forefront line of protecting our heritage. I've also seen people claiming cultural authority with no proof that they are entitled to it through lore or law and at times not even providing that they are Aboriginal people. Only not so long ago, to my disbelief, I discovered you don't even have to provide proof of Aboriginality or even be an Aboriginal to register an Aboriginal corporation; you just tick the box. Current legislation in government doesn't protect our ancient cultural heritage. The authority ultimately sits with non-Indigenous people. This needs to change so we don't have to fight—and too often lose—to protect Aboriginal cultural heritage.

Aboriginal lands councils are not perfect. But, in the absence of native title and registered Aboriginal owners, through the office of the register—Aboriginal land rights Act 1986—they're the next best thing as custodians of this country and as legislated community-controlled entities. Aboriginal people for thousands of years have always spoken on behalf of country they are from, never to disrespect the land or language or laws of neighbours' country. It was never done. Only just recently—well, not just recently—we're dealing with a situation at the moment. In 2015, a taxpayer-funded report called *Filling a Void* was published in the papers—the heading was "The historical fiction of the word Guringai that has filled a void in our knowledge of the original inhabitants"—and also published on the Aboriginal Heritage Office website, as per tabled documents.

Regardless of who the true Guringai are, being recorded in the 1820s, north of the Hunter River in New South Wales and funded report on *Filling a Void*, to top it off, we have a group of people using and claiming a tribal name, "Guringai", on the Central Coast. Not one person from this group has applied or is legally registered as Aboriginal owners through the office of the register—Aboriginal land rights Act 1986—as per tabled documents. At the end of the day, when I have complained to many Aboriginal departments, including New South Wales Aboriginal lands council and NTSCORP in regards to these issues, only one has made any effort beyond the meeting or an email to correct these issues. That was the office of the register. It's terrible. That's all I have to say for now.

Reverend the Hon. FRED NILE: What will be the key to getting other native landholders and Aboriginal owners to see the merits of the culture is identity 2022 bill? That's the bill we're discussing now.

The CHAIR: Do you have any views on that? What do you think could be done to get more people on board?

MICHAEL YOUNG: I think the consultation process is faulty. We could start there. The view down here, from a number of the Elders, is that the native title holders should be the first in that process. Replacing us with Aboriginal land council and placing our heritage and culture—as you may note, Nelly Johnson's canoe is in the South Australian Museum. I do feel a lot better that it is down in the South Australian Museum and not in New South Wales so we can continue to pass on our stories to our children and grandchildren. The stories that are embedded in our family are not your licence to give away. That is our heritage. That is our culture. That is our stories. That is our history. It is not to be bartered off to the highest bidder. So you really need to come in with a reworked model that's going to give us real leadership and also incorporate that with the Federal Government's view of what may or may not happen with the Voice to Parliament and the reform of the cultural heritage bills within the Federal Government as well. That needs to be explored before it's even going to be acceptable in any way, shape or form by the native title holders of this area.

The Hon. PENNY SHARPE: Thank you for coming to talk to us this afternoon. Thank you for putting up with dodgy technology. It's quite frustrating. The Committee is a group of non-Aboriginal people trying to wrestle with this. I think there's a great deal of agreement that we need standalone protection for Aboriginal cultural heritage. But, as you have outlined, it's a complicated issue. Part of what this bill is trying to do is put in place a statewide council that then would look at delegating to local levels. The greatest degree of disagreement is the hierarchy issues in terms of who's entitled to a point. Native title holders, such as yourselves, have really made the point that native title is native title, you're recognised under law after a long and lengthy process to deal with that and that that should be the primary process. That's a very long way of saying, in terms of a statewide heritage council, do you think it's possible to do that, given the number of native title holders versus Aboriginal land councils? Or do we need to be more regional—would a more regional approach operate better? I'm just trying to get some guidance about where you think we could—is it fixable, really?

MICHAEL YOUNG: I think it needs to be explored. We do need reforms, there is no doubt about that. But as far as hierarchy goes, it seriously should be native title. That should be at the forefront.

ROBERT SYRON: Absolutely. I agree.

MICHAEL YOUNG: Areas that have not got native title or recognition by the registrar—which seems to be dysfunctional, at this stage—I would like to then have the other local community roots included in that. I can understand that native title will not be happening in certain areas, due to the historical events that have led up to 234 years of settler colonisation. That is impossible in some areas. But if there is native title then that should be prioritised over and above, and they should be the primary representative body of that area.

The Hon. PENNY SHARPE: Just to be clear, within that—obviously, there are way too few areas that have had proper recognised native title—where people are going through the process and are able to be registered, the claimants would also be incorporated somewhere into that system as well?

MICHAEL YOUNG: Yes, absolutely. Absolutely. If the processes have already started and their application has been accepted, then it should be waiting for those outcomes and they should be given a seat at the table while that process is going forward.

The Hon. PENNY SHARPE: Thank you. Mr Syron, did you want to add anything to that?

ROBERT SYRON: No. I agree 100 per cent. Not so long ago, we were in the process of trying to negotiate an ILUA with the Dungog Shire Council. With all the evidence and history, they even recognised us on their own website, but they still won't acknowledge us as the traditional owners, and simply have just gone and closed deals with the local Aboriginal land council. We were just completely excluded from that. But, hopefully, in the future we will be pursuing our native title.

The CHAIR: Thank you. Mr Young, when you said "in the absence of native title holders", whether registered applicants or holders, you then said you would hope the local groups would be represented. What were you referring to in that sense?

MICHAEL YOUNG: It's such a broad issue. A lot of the time it's—we go back to the basic law, which is you don't speak on other people's countries. That is a basic tenement within the Aboriginal laws. But they've been emboldened by legislation like this, not only to speak on other people's country but to also take control of that. We have to be careful of the structure, of the type of people that are going to be admitted onto these committees. I think that good people are hard to find. We need to focus on those people that are going to deliver the best outcomes for us. And listening is one of those key principles. Negotiation—we really need to talk about that. Historicals, we have to look at the historicals as well. Settler colonisation is still happening today, whether you believe it or not. We still see the effects of that, and the continuing battles that we have to come up to try and represent ourselves again and again and again. Yet, we are still waiting for that that is going to deliver. We just feel that this one is just—this legislation tends to favour developers as opposed to native title holders or Aboriginal people. That's just being blunt. The reform needs to happen, we do agree with that. But this is not the right way to do it.

ROBERT SYRON: Can I just add something to that too, please? So my family members, the Elders in our group, six or seven years ago, maybe longer, they had spent seven years writing to the local council and requesting some sort of monument for the contribution that my great-great-grandfather Malookut Lightning contributed to the community, not only as an Aboriginal man, an initiated Aboriginal man, but also to the local farmers. Eventually, we ended up getting a brass plaque in recognition of the Cook family from the Barrington. I think it cost $1,200. That took 10 years to get that—10 years.

The Hon. ROSE JACKSON: Thank you to both of you for coming along. Certainly, the concerns that you have raised have been raised by others. We're definitely aware from all of the evidence that we've received that there are genuine concerns with the legislation as it's proposed now. It's been suggested that because this process has been taking a long time, there have been a lot of different attempts at this over the years, a better way to proceed might be to accept, yes, this is problematic, there are faults in it, there are things that will need to be addressed but that can be done later through amendments or review of the legislation once it's in place. I wondered if you would be willing to respond to that and perhaps outline some of the risks that you see with just proceeding with this legislation and saying, "Yes, we know that there are problems with it, but let's just kind of give it a go and we'll try and fix that up later", which is perhaps the tenor of some of the other evidence that we've received?

MICHAEL YOUNG: I think I outlined earlier that one of the negative responses for this legislation would be a lateral violence rise within the communities. Out here, I could understand that native title holders, if they do find out about this and the land council has suddenly gotten the authority over their culture, their heritage, their stories, there will be violence out there. I've personally been involved in some violence with land council members. I won't list them at the moment, obviously. But that is one of the things that is not a consideration within this legislation, because it's pitting two people against one another within the same community.

The native title holders, also, it took 18 years for us to get our determination in 2015. That should be upheld—State and federally. The other one is the part 4A handback of Mungo. Mutawintji has gone through that process; Mungo is next. It should proceed. Why hasn't it proceeded? These are the questions. To progress this legislation and then say, "We'll fix it up as we go along", we have seen that before. To tell you the truth, we don't trust that type of logic. So present it, tell it as it is. Come and see us. Talk to us, and tell us straight exactly what is the reason behind the mechanism behind this legislation. Then we may have another submission. Thank you.

The CHAIR: If the bill was amended to reflect the constitution of the State body, to make it better reflect a body that is closer to the voices of cultural authority, do you think that that would mean that this bill could be supported?

MICHAEL YOUNG: I think it could be modelled on a far better ideology. Like I said, I do believe that after 18 years of research, science and anthropology—all of that to put together a determination after 18 years—the research has already been done in the area, so why reinvent it? Why not incorporate it? All of that work has been done by the Federal Court into your own State legislation. I still don't understand why this one needs to replace the other, and replace others. There seems to be a drive for this, a determination for this, for other reasons. Believe me, we've been there before. We have seen it all before, so it's nothing new for us.

The CHAIR: Thank you. That concludes this part. Do either of you have any final comments that you would like to make?

ROBERT SYRON: Yes, I strongly believe that native title should be number one, and then registered Aboriginal owners who have gone through the legal process of establishing their connection to the country that they claim they are from. That is pretty much it.

The CHAIR: We hear that loud and clear.

MICHAEL YOUNG: I concur. I would also like to say that I would like to see part 4A and the full hand back of Mungo progress and stop this meddling in our heritage culture that has been happening out here, which has adversely affected native title holders. It really needs to progress. The existing structure needs to be progressed. We have not been given a reason why it hasn't progressed and yet we see the destruction of our culture, and for what other means? The AAG was never a body that had the authority to go out and make these decisions and yet we are still fighting. Here we are sitting here, waiting for someone to knock on the door, to inform us, to let us know, to include us in the meetings, to have a seat at the table. So it has been a mess. On the stop orders in the legislation, they had a stop order on that but it didn't stop them from doing what they wanted to. It is abundantly plain to see that they don't respect native title holders. So if that is to be reflected in this new legislation then I don't think there is going to be much progress under this present model.

The CHAIR: Thank you both so much for your time and appearing at the hearing today. We really appreciate your time and thank you for your evidence and knowledge.

(The witnesses withdrew.)

Ms VIRGINIA ROBINSON, Secretary, Dharriwaa Elders Group, before the Committee via videoconference, affirmed and examined

Ms WENDY SPENCER, Project Manager, Dharriwaa Elders Group, before the Committee via videoconference, affirmed and examined

The CHAIR: I now welcome our next witnesses. It is lovely to see you both virtually, if not in person. Would either or both of you like to start with an opening statement?

VIRGINIA ROBINSON: Culture is identity and I am going to be using the DEG, which is the Dharriwaa Elders Group, inquiry submission. The DEG's inquiry submission mistakenly assumed the bill was prepared by the New South Wales Government. We were surprised that it suddenly appeared and thought that the reason we hadn't heard anything about its development was an indication of the lack of respect by the New South Wales Government for Aboriginal cultural heritage. A new system for managing and protecting Aboriginal cultural heritage must be designed by Aboriginal cultural heritage custodians and improved by reviews. There has been no contact between the Dharriwaa Elders Group with Fred Nile's office, the New South Wales Aboriginal Land Council nor Heritage NSW regarding a standalone Aboriginal cultural heritage bill. So no-one has yet done the work to develop a system that would work in DEG's view.

This bill makes a good start but needs more work. Necessary changes couldn't be achieved by amendment now because Aboriginal cultural heritage custodians are not yet fully engaged. It won't be cheap, but a proper ACH system is required to support New South Wales Aboriginal families so their ACH and values flourish and for the implementation of Australia's obligations under the United Nations Declaration on the Rights of Indigenous Peoples. DEG doesn't seek to represent anyone except its Walgett members and the views and values of founding members, who were Gamilaraay, Yuwaalaraay, Ngayimbaa, Wayliwan and Yuin. All these people came together to support those in the group they recognised could speak for places in country.

The founding members named their group after Dharriwaa, a common meeting place—which is Narran Lakes—meaning it is not owned by any one species or tribe, but a place where all can meet together. No native title has been determined yet for DEG's area of interest, which covers portions of Yuwaalaraay, Gamilaraay, Wayilwan and Ngayimbaa countries. In fact, NTSCORP anthropologists are working today to consider boundaries, and we know Walgett is a border town. Many in Walgett have not yet traced their native title. There are constant threats to ACH from knowledge-holder deaths and development. DEG is what you have when no support for living ACH in local communities like Walgett is funded. Maybe this support will come in future from native title body corporates. DEG will find out.

Regarding decision-making and primary work of the new ACH system at the local level, DEG's core offering to this inquiry is the conviction that ACH custodianship and management must be held at the local level by properly resourced non-profit, Aboriginal-controlled companies that support cultural knowledge holders—usually Elders—for that area, including knowledgeable Elders who have bloodline connections to this country but may live elsewhere. These local companies must be supported to manage and transmit their knowledge, and control their own IP and information databases. It is ridiculous to locate knowledge in one State-held repository.

DEG proposes that the ACH services described in the bill would be delivered by these local Aboriginal companies, supported by contractor or staff professionals and registered training organisations. These local services would hold the local knowledge, and protect and promote living ACH. Each community is unique and the knowledge holders for each local place would ideally be supported to control an independent ACCO because ACH maintenance is a daily and constant activity. The activities of these local companies cannot be undertaken by regional or nationwide companies with branch offices because the knowledge resides locally and with a diaspora that would need to return to country to manage these matters—not a local Aboriginal land council or a native title body corporate, where they could be outnumbered by others not prioritising ACH.

The New South Wales ACH council would support, resource and enforce local decisions. DEG proposes that the State body supporting these local companies must be representatives elected by the local companies. They could meet in native title national, regional and State groupings and work in a distributed network from their home communities. This would ensure the cultural authority of the New South Wales body and that the New South Wales body, if called the ACH council, would be acting according to local ACH custodians' instructions. There are many useful functions and roles for a New South Wales ACH State representative body or council.

The right of veto is essential. Singular and cumulative ACH destruction is not accepted by DEG. What is the point of legislation to protect ACH when, theoretically, protection determinations of ACH custodians can be overruled? Should there be appeal rights for developers against local ACH decisions? We need legal advice. Aboriginal groups and individuals currently don't even have standing in matters relating to ancestral remains.

DEG requires that Aboriginal representatives have standing in any court proceedings regarding ACH protections, including any appeals against protections.

State-significant development—or SSD—proposals must provide the same ACH protections as non-State-significant developments. We would like time to discuss the implications and different scenarios of SSD with legal advisers. Aboriginal custodians of country should have standing in the decision to categorise a proposal as an SSD. For example, DEG believes that SSD status given to Santos CSG operations in the Pilliga Forest is wrong for many reasons and unlawful in a climate emergency. SSD projects are typically referred to IPC. The IPC didn't listen to us re Santos in the Pilliga. DEG was completely ignored by the IPC, so that process will not protect ACH. All development would need to be negotiated and processes we could respect undertaken. That is not the world we are currently in.

There won't be any ACH in a few generations if you don't actively support knowledge transmission and access to places on country for Aboriginal people now. The biggest outrage for the Walgett Aboriginal community is not being able to walk country and access waterways wherever and whenever we want to. Intellectual property protections and data management are important, but, importantly, knowledge must be directly connected and used by knowledge holders for knowledge transmission activities so it is kept alive. What is intangible heritage? It is what we do, family ties, memories, stories, language, ways of thinking, values and the knowledge that makes places and things significant. It will be a big task to support living Aboriginal cultural heritage. It is possible. A process to draft a new ACH management system in a respectful, thorough way with all the New South Wales Aboriginal voices that could be heard in this process is the opportunity.

WENDY SPENCER: That statement was emailed to one of your Committee workers.

The CHAIR: Thank you. Can I start by saying at the outset that your submission is really appreciated. It was such an incredibly well-written submission. The sharing of your perspective and your approach to matters of cultural heritage and helping the Committee understand the definitions behind things have been so valuable. I thank you greatly from the outset because we know that the timing has not been generous; it's actually been harsh and undesirable. We've made that point. It has been a little bit out of our hands in that sense, and we just recognise—as I say, thank you so much for the effort, given such short time.

I will start by asking about one part. Then I will hand over because other members of the Committee will have questions. One of the things that you have put forward, which has been put forward in a novel way, is this idea that the cultural heritage council actually gets constituted the other way around—so from local groups and the local cultural authority holders suggesting who should be on that State body, that council. Is that something you can just elaborate on a little bit?

WENDY SPENCER: I'm deferring to Virginia to answer that question.

VIRGINIA ROBINSON: I just think it makes sense at the local level, rather than someone that doesn't know us and we don't know them and they don't know how our cultural heritage—

The CHAIR: It was something that was quite unique in the submissions that had been written. It was really valuable input, thank you.

VIRGINIA ROBINSON: It makes sense, I think. I think it makes a lot of sense, don't you?

The CHAIR: Yes, absolutely. Reverend Nile, do you have some questions?

Reverend the Hon. FRED NILE: Yes, dealing with the submission by Virginia Robinson and Wendy Spencer. In your submission you mention, "Aboriginal cultural heritage at best of the area is stated to be valued by the New South Wales Government for its cultural potential." Division 5, section 50 of the bill recognises the rights of Aboriginal persons to use Aboriginal cultural heritage for commercial benefit. This section of the bill is something your community would support or not support?

WENDY SPENCER: We have a response to that in our submission; I'm just trying to find it now. Were you reading from a particular page in our submission, Mr Nile, that we could just go to now? Didn't the group say, Virginia, that they didn't think that non-Aboriginal people should be making commercial benefit from Aboriginal cultural heritage?

VIRGINIA ROBINSON: Yes, that's right. That's what we decided as a group.

WENDY SPENCER: I'm just trying to find the statement in the submission now.

The CHAIR: From memory, I think it was the discussion about it seeming to be a new opportunity that people are potentially capitalising on. Was it the cultural heritage tourism?

WENDY SPENCER: Yes. We talked a bit about that in the beginning bit I think. Are you asking us whether we think it's all good and fine for anyone to be exploiting Aboriginal cultural heritage, or specifically Aboriginal people and which Aboriginal people? Sorry, I'm just not quite sure what we're being asked. I'll look for the spot where we've mentioned that in our submission as well.

The CHAIR: That's alright. Reverend, perhaps you could elaborate a bit more on what you're actually asking of the witnesses there. What they're asking is: Are you asking if the prospect of non-Aboriginal people capitalising on cultural heritage is appropriate or not? Is that what you're asking?

Reverend the Hon. FRED NILE: I was referring to your submission—

WENDY SPENCER: Yes. Which page, please?

Reverend the Hon. FRED NILE: —the submission from these members. They made that point.

The CHAIR: Yes.

WENDY SPENCER: We did somewhere in it.

Reverend the Hon. FRED NILE: I was commenting on it.

The CHAIR: And what were you asking about that? They've made it fairly clear that the view of the Dharriwaa Elders Group is that that's not appropriate.

The Hon. ROSE JACKSON: I think he was just asking for an elaboration on it.

Reverend the Hon. FRED NILE: Yes, but that's not what's in their submission.

The CHAIR: Yes.

Reverend the Hon. FRED NILE: Their submission says it is.

VIRGINIA ROBINSON: Have you got the page that you're reading that from?

The CHAIR: Is there a reference there, Reverend?

WENDY SPENCER: On page 2, if I could just—

Reverend the Hon. FRED NILE: Division 5, section 50 of the bill recognises the rights of all Aboriginal persons to use Aboriginal cultural heritage for commercial benefit.

WENDY SPENCER: We commented on that on page 8. We said:

> Part 5, Division 3, 73 must be altered to create an offence for any person recklessly using and/or commercially benefitting from tangible or intangible ACH if they have not been authorised by the ACH Council which has commissioned advice from the relevant local ACH ACCOs supported by their local ACH Service.

That's what we said there, and there were some quotes from our workshop that we did. Virginia, in fact, you said that, "Destroying even one bit of ACH is not okay." They also said that:

> Aboriginal people are experts in our own cultural knowledge and should be supported to appear in Court if necessary to defend Protected Areas and ACH from harm. The DEG is unsure that individuals or local ACH ACCOs would delegate that right to others i.e. ACH Council delegates for this role. The local voice must be preferenced and heard when ACH is being defended.

The CHAIR: Thank you, that makes it very clear. Is that clear to you, Reverend Nile?

Reverend the Hon. FRED NILE: Yes, and the other point of confusion is that in this submission you state that the members of the board can be sacked by the Minister. The board is independent and cannot be sacked by the Minister in the bill we're debating, the culture is identity 2022 bill.

VIRGINIA ROBINSON: What are you asking?

The CHAIR: I think Reverend Nile is clearing up that point and trying to assure you that the way the bill is drafted, the Minister doesn't have control to sack the council members.

Reverend the Hon. FRED NILE: Yes, that's correct.

The Hon. ROSE JACKSON: One of the points that I thought that you made in your opening statement and your submission that was really important is just the resource intensity, in a way, of the protection of cultural heritage, both in the time—I think you described it as a daily occurrence and that was the first time, in a way, I've heard that articulation of just the amount of time that you as Elders have to put into playing that role as holders of cultural knowledge—and also presumably in the support that's needed in resource terms to ensure that that's done properly. I just wanted you to elaborate a little bit on that because I thought it was a really important point that you made both about time and about resources that this isn't something that we can just legislate and then just

kind of leave; that actually there needs to be an understanding of the time and the resources that are required to get this right.

VIRGINIA ROBINSON: Sorry, what was that last—

The Hon. ROSE JACKSON: I just wanted you to elaborate on the time and the resources that you thought were required to get this right.

VIRGINIA ROBINSON: I'll just take an example that we're currently involved with. It's a place called Dungalear, a station, a property. Back in the days of the protection era, that property was chosen by the Aboriginal Protection Board, so they put the Aboriginal people there. They lived there; they worked there for years and years and years. Naturally there were going to be remnants left of their culture where they lived on this station. We've spent weeks going through trying to find out who destroyed the remnants of those camps where Aboriginal people camped and lived on this property. There's nothing to be seen now. It has all been destroyed; it has all been cleared. We are spending a lot of time, especially with the EDO—the Environmental Defenders Office—to get our legal issues correct as to what we want to now do about the destruction of what took place on Dungalear station. It's time-consuming. There's not a lot of staff. There's not a lot of days where—Elders one day might be sick and one day they aren't—we can get together as a group always. We do things by consensus. So it all takes time. It all takes money. It all takes people power to get these things going.

The Hon. SCOTT BARRETT: This came up a bit earlier: What are the differences in approaches to Aboriginal cultural heritage between regional and metro areas? How might this bill have impacts on you in Walgett that might be different to people in Woollahra?

VIRGINIA ROBINSON: It's a bit different—very different. You've got concrete everywhere; God knows what's buried underneath whatever is in Sydney. Here, we can see. We know through our stories and knowledge that's been passed down. We know where our cultural sites are; we know our stories; we know the land. But in Sydney, that's a different matter. I don't know how people can say, "Well, yes, over there on that corner is a burial ground". It's all under concrete, roads. There must be millions and millions of cultural heritage aspects in Sydney, in a metropolitan area. I don't know; I have no idea how you could compare both out here in the bush and out in the middle of the metropolitan area.

WENDY SPENCER: Can I also add that we don't know about what happens in the city. We're a little local group in Walgett, so that's our knowledge and expertise. We don't know how they do things there. We'd love to be able to network with the city groups and the groups all around New South Wales. We've started doing that in our peak body, the Aboriginal Culture, Heritage and Arts Association. They get a few resources to bring us all together, usually once every two years. But apart from that, we don't really know.

The CHAIR: We've had quite a lot of evidence presented to the inquiry so far that native title holders and registered native title applicants are very high up, if there is such a term. I don't think there's a hierarchy here, but for the sake of convenience of terms, they have been through a very long process of proving their connection to country and their cultural authority. Would you agree with that? Is that something that you recognise, as the Dharriwaa Elders Group?

VIRGINIA ROBINSON: Yes, we do. We don't criticise national native title bodies or native title claimants. We're for native title.

The CHAIR: From where you are in the Walgett area, where do you place the local Aboriginal land council's authority to speak for cultural heritage and country?

VIRGINIA ROBINSON: As a member of the Dharriwaa Elders Group, personally, I don't. I don't find the Walgett Local Aboriginal Land Council to be a functional Aboriginal land council. There's not a lot I can point to about the Walgett—

The CHAIR: No, that's very helpful.

Reverend the Hon. FRED NILE: Could I just add another clarification? In the submission from this group, you state that members of the board can now be sacked by the Minister. The board is independent and cannot be sacked by the Minister in the culture is identity bill, the one we're debating. They cannot be sacked.

The CHAIR: Thank you, Reverend. That point is very clear.

WENDY SPENCER: I think the land council, though, possibly can be.

VIRGINIA ROBINSON: Yes, maybe it's different for the land council.

The CHAIR: As in the Local Land Services?

WENDY SPENCER: I think the point that we made was that the land council network is governed by an Act.

The CHAIR: Yes, I see.

VIRGINIA ROBINSON: Going by this land council, they seem to prioritise housing, and that's about it.

The CHAIR: Yes, and that is consistent with some of the evidence that we've heard that there are possibly those conflicting objectives—that it's no particular fault of any organisation, but there's conflicting legislation and objectives. We just heard some evidence that there is an imperative on the local Aboriginal land councils to pursue the economic development of their organisation and members, and that often may well be in conflict with the protection of cultural heritage on sites.

VIRGINIA ROBINSON: Certainly.

The CHAIR: You made it very clear that there is the need to have what's been referred to as a right of veto. I prefer to say it as a right to prioritise the protection of cultural heritage when it's faced with the prospect of destruction. Do you have anything in particular around how you see that working? We've heard some evidence that the earlier that engagement happens, the better. Can you visualise how that could be operationalised?

VIRGINIA ROBINSON: I'll get Wendy to speak to that point, please.

WENDY SPENCER: I think the group said that they wanted more legal advice and discussion about that, first off, and also that there's no level playing field. You'd need to set up a layer of professionals between the knowledge holders and the developers. We do have direct experience of trying to work with opal miners and their representatives here, and also with landholders, and it's not a great experience. There are some that are friends, but it's very difficult—particularly for Elders to be engaging with those people who have little education or understanding about the Aboriginal community that live in their place, or the other way around. They have little understanding of the Aboriginal community that's around them, so there'd need to be a way for the knowledge custodians to be able to be on a level playing field when those negotiations are occurring with their legal representatives.

VIRGINIA ROBINSON: Better education.

The CHAIR: If the framework provided that right, do you think that that would level the playing field out a little bit?

VIRGINIA ROBINSON: Yes, what I'm thinking is we need to stop—landowners and miners need to stop their thinking that Aboriginal culture is a joke. I've heard it many times: "Oh, we've got some rocks on our property; I wonder what they are"—this kind of thing. You often get some very negative comments about Aboriginal culture situated in sites on their land, and I think there needs to be a lot more education. Put a sign up at their front gate saying, "I have such and such on my property, and I'll never touch it." I don't know. It's a constant battle, as Wendy said. We do have good relations with some landowners, but most we don't, and some of those landowners—

The CHAIR: I'm familiar with some of the work with the opal miners, so I've certainly seen some of that firsthand.

VIRGINIA ROBINSON: Yes. These landowners, people that own the properties around Walgett, know what's on their country. They know, and those ones that we've developed good relationships with can take us straight to what they know is on their property. We already know some of them—some places, some sites—but landowners certainly know what's on their land.

The CHAIR: I can tell from your submission that the Dharriwaa Elders Group is engaged in so many matters of the wellness of your community and your group. Do you think that if cultural heritage laws were centralised and focused more on the mechanisms that seek to proactively protect—rather than the mechanisms at the back, where we're trying to protect once they're threatened by harm—

VIRGINIA ROBINSON: Absolutely, absolutely.

The CHAIR: Do you think that would be something good for the community broadly and widely?

VIRGINIA ROBINSON: Yes, absolutely. You are quite correct.

WENDY SPENCER: It's an opportunity, as we said in the last paragraph there of our statement. But it's going to be hard.

VIRGINIA ROBINSON: I know we've said that it won't be easy, but at least that opportunity is there.

WENDY SPENCER: And doesn't the group think, Virginia, that the Elders group wants a system that is different to the one that is currently in place, which is just about providing permits for destruction and very rarely about any prosecution or protection?

VIRGINIA ROBINSON: Yes.

WENDY SPENCER: There is not enough staff on the ground to protect. There is not enough resourcing for enforcing the current Act.

VIRGINIA ROBINSON: That's correct, yes.

The Hon. ROSE JACKSON: I just wanted to—

VIRGINIA ROBINSON: Just one other thing, Madam. Because the bill deals with archaeology only and the intangible knowledge that gives it cultural significance, the reference to "culture is identity" must be taken from the title. It is blackwashing. Culture is more than identity. Culture is about more than archaeology and history. It's living memories and practices. It's the wellspring of Aboriginal people and it makes us feel good. Culture is much bigger than this bill and much bigger than identity.

The Hon. ROSE JACKSON: That was similar to what I was going to ask about. I was noting the reference in your submission to the current way that the New South Wales Government deals with Aboriginal cultural heritage, which you describe as cultural tourism at best and this sense that it is just this dead and historic physical thing, and noting the importance that you mentioned in your submission and in your comment just then about the idea that it's also living and intangible and it's not just dead sites that people can go and have a look at. That's actually what I was going to ask you about. Perhaps you felt as though you addressed that in that comment, Ms Robinson, but if there was anything else you wanted to add, that would be great.

VIRGINIA ROBINSON: No. I would just like "culture is identity" taken out of the title of the bill. I mean, really, the Dharriwaa Elders Group has a separate system for identifying and approving confirming identity. We don't use culture or cultural sites to determine people's identities. The Aboriginal kinship system is a very complicated and very important system. It has nothing to do with culture, scarred trees or artefacts or whatever. It's a very complicated system and only Aboriginal people can defer to who are Aboriginal and where they come from and who they are. I find that a bit insulting.

The CHAIR: You made that point really well in your submission and you have made it well again. Thank you so much. If there is anything finally that you would like to say, Ms Robinson or Ms Spencer, please feel free.

VIRGINIA ROBINSON: I would like to invite the Committee to Walgett.

The CHAIR: Wonderful. I would certainly like to come. This Committee, as I said at the outset, is very constrained. We literally have to report to Parliament in the second week of November, and this term of Parliament will sit for the final time before the end of this year and then there is a State election in March next year. Your evidence now will form part of this inquiry and it will be on the public record forever. Whatever happens with this bill, as we walk towards the development of standalone cultural heritage laws, will feed in to that process. We thank you very much for your invitation. As I said at the outset, we thank you so much for the time, effort and knowledge that you have put into your submission. It's incredibly valuable to the Committee. We have had a very short time, so your engagement assists us greatly. Thank you for appearing today and for your time and effort. We are very grateful.

VIRGINIA ROBINSON: The Elders who take part in all these conversations and groups and subgroups when we get together will be pleased to know that you have heard our submission and seen us and heard us. Thank you.

The CHAIR: Thank you both. Please thank all the Elders on behalf of the Committee.

VIRGINIA ROBINSON: Will do.

(The witnesses withdrew.)

The CHAIR: I now welcome everybody to the public forum for 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 land and 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 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, and the reason for this deadline is the New South Wales Parliament will meet for the last time in mid-November before the State election in early 2023.

Before we commence, I make some brief comments about the procedures for today's forum. The speakers were asked to register in advance for the forum. Those of you who have registered to speak will be speaking. What you say today is being transcribed and streamed live to the Parliament's website and will be included as evidence to the inquiry. It is also important to note that, while all participants are covered by parliamentary privilege, committee hearings and public forums are not intended to provide a forum for people to make adverse reflections about others under the protection of privilege. In that regard, it is important that participants focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. Finally, I sincerely thank those of you who have come along today to share your views. I now welcome the forum participants.

Dr TIM OWEN, sworn and examined

Mr KEVIN DUNCAN, sworn and examined

Mr GREGORY BONDAR, sworn and examined

The CHAIR: Mr Bondar, would you like to make a statement and a presentation?

GREGORY BONDAR: Yes, thank you, Madam Chair. If I may and for the record, I'd like to declare that I do have, possibly, a past conflict of interest, having known Reverend the Hon. Fred Nile for quite some time. I was the State and Federal director for the Christian Democratic Party at one time, so I've worked closely with the proposer of the bill. But I come here not as a proponent of Reverend Nile but as a proponent of the bill. If I could just have that recorded, please. Thank you. Madam Chair, Committee, thank you very much for the opportunity. I represent an organisation called Christian Voice Australia. We are a national non-denominational organisation and we advocate on issues of cultural, social, economic and religious issues of concern. I think it's important, Madam Chair, that I outline my particular background both for the relevance of this particular bill and for my own credibility. I was chief executive of the Tharawal Local Aboriginal Land Council, the Dharawal people, who are actually the peaceful sector of the land councils. I come here, in a way, in peace because, having been chief executive of this particular land council, I can tell you that I got very much involved in all sorts of areas of Aboriginal management, including the Aboriginal Land Rights Act.

I was a member of the Sydney/Newcastle Alliance for Culture Rights and Economic Development, I was in the committee of the Wollondilly Aboriginal advisory committee and the list goes on. I just want to make sure that I have a very close connection with the people of the Tharawal Local Aboriginal Land Council. Whilst at the land council, I was very much responsible for the protection and conservation of Aboriginal cultural and heritage environment within the boundaries. If you look at a map—if you haven't already done so—may I urge you to look at the extent of the Tharawal land council region because it is quite extensive. It goes down to Nowra and right up to the Sutherland area, so it is quite extensive. It gave me the opportunity to work closely with National Parks, the Minister for Aboriginal Affairs and, of course, the Minister for Environment at the time.

But more importantly, and for the Committee's benefit, I undertook a week course called certificate in Aboriginal site awareness held by the New South Wales Office of Environment and Heritage. That was fascinating because I actually got the opportunity to be taken out. Right under your noses, within a few kilometres of various built-up areas, there were places of concern to those Elders that lived within this area. I managed to look at rock carvings, areas of sacred sites—and these areas, of course, are not for mentioning, but they are there—and it gave me a really good insight into the management of cultural and heritage aspects of the Indigenous population. Madam Chair, if the object of the bill is to provide a modern framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage and to recognise the fundamental importance of Aboriginal cultural heritage to Aboriginal people, then this bill is a must—if that is the intention of the bill, and I suspect it is.

Madam Chair, without holding up too much of your valuable time and that of the Committee, let me make three key points, if I may. In my own experience as chief executive of the Aboriginal land council, where I had 17 Indigenous staff report to me, I got involved in all sorts of cultural, artistic—in particular, we went out and developed our own economic enterprises including market gardening and what have you. It really gave me as a CEO the opportunity to work with these people and to value their cultural heritage from a different perspective. Now, I know there are land councils, and I have worked with them. When I arrived at the land council we had a rating out of 100 at that time of around about 52; when I left we were at 98. That is how much we improved that land council through working with the local community, through enterprises, through governments and what have you.

Now, not all land councils are going to agree, but cultural heritage is critical to the Indigenous people of Australia. I had onsite meetings with major developers—and I know I can't mention a particular name but, let me tell you, it was a very large Sydney property developer—where they wanted to build a block of units. We went out there with some Elders and, for the life of me, I didn't realise how much heritage there actually was to be observed if one opened one's eyes. The developer was told, "You are not to build here. There is no way you can build here without upsetting the cultural heritage of this place." I was blind to that before.

One of the key points is that through my experience—and I'm talking retrospectively, Madam Chair—this has opened up my eyes to the need for such a bill. Secondly, I think the bill also awards custodianship of Aboriginal cultural heritage to the Aboriginal community, rather than the Minister. Dare I say—you will look at my background—I've worked for a Minister. Ministers are not perfect. In point of fact, governments inherently are bad managers of cultural and heritage aspects. That's why you have outside organisations and you should be

divesting yourselves from trying to manage cultural heritage aspects. While I agree that there is a role for government, I think we have to appreciate that there are opportunities for partnerships as well. But I caution the Committee: If government wants to form partnership with Aboriginal communities, then it is done with a lot of caution.

The third point I want to make, Madam Chair, is that we totally support the idea of the State-significant development and State-significant infrastructure veto powers in the bill. It protects the Aboriginal cultural heritage from being continually—pardon the pun—bulldozed. That's critical. The beauty of Reverend Fred Nile's—Reverend, I know we're old colleagues. But the beauty of this particular bill is that it is aimed at preventing the destruction of Aboriginal heritage by awarding true custodianship of sites, objects and remains to the newly created State agency, the Aboriginal cultural heritage council. I recommend the spirit of this bill. I know there will be disagreements, but, Madam Chair, I highly support, through the people I've spoken—I've spoken to some Indigenous colleagues and I've spoken to other organisations. I recommend the spirit of this bill be put to the appropriate process in Parliament. Thank you very much, Madam Chair and Committee.

Reverend the Hon. FRED NILE: Hear, hear!

The CHAIR: Would you like to go next, Mr Duncan?

KEVIN DUNCAN: Yes. I would like to acknowledge the Committee and all parties involved in the Committee. I would also like to acknowledge the Eora peoples, the Gadigal peoples of this land. I'm here on their country. I am of the Gomeroi people and the Awaba people. I was born in Moree in north-western New South Wales. That is also my mum and dad's side and also my mum's side in the Awaba people, which is the Newcastle-Central Coast regions and Lake Macquarie.

I put my hand up to speak on behalf of not just my people but my family, my grandchildren, that I come here with my voice. I am the voice of my ancestors, that I come here to speak to this Committee. This heritage bill is, I think, one of the most important bills since the Aboriginal Lands Right Act itself. I honour Mr Fred Nile for being part of that and Mr Neville Wran, who was way ahead of his time with regard to the Aboriginal Lands Rights Act and to giving some form of compensation back to New South Wales Aboriginal people. Our people, naturally with regard to colonisation and the effect that it's had on our people, which has affected us right up to here in 2022, where we sit right now—in regard to talking about full autonomy of our heritage, we're the only Indigenous people on this earth that don't have full autonomy of their own heritage. I think right here, right now in 2022, I guess you can say it's about time that this would be acknowledged.

Australia became a signatory to the world Indigenous people's rights by Mr Kevin Rudd, when he signed that agreement. They're not required to implement those articles, I suppose, of the world Indigenous peoples' rights into their governments, but I hope that they could take those articles to heart and to mind and introduce and look at a lot of those articles that are found within the world Indigenous peoples' rights, which would affect a lot in regards to the changes that we are talking about here with this new heritage bill. I'm not sure how far the New South Wales Government would go in regard to implementing some of those articles of the world Indigenous peoples' rights.

I know there is, in-depth, a lot of articles there that touch on every aspect of what we're all talking about here in regard to a body or a form and how this may come about in representing our people here to have a voice. I guess it's a voice of respect, a voice of dignity, a voice of righteousness, and I think that's what this voice would be in regard to establishing such an Aboriginal heritage body, that we can have some form of control and autonomy of our heritage. We have been incarcerated for well over 100 years in Australia. My mother was incarcerated; my father was incarcerated. I, too, was incarcerated until I turned around 15 years old. So it wasn't that long ago that we had some form of say, a voice, with our culture itself. It desecrated our people, our language, our customs, our traditions, all of these things that we as human beings in this world have the right to be who we are and to practise who we are.

I guess in regard to the body, I'd like to know how the structure of the body would be formed. Who would make these decisions in regard to who sits on that body and who represents who? I know there are native title peoples as such and there are also traditional owners and there are also land councils. I think even though the New South Wales land rights Act is one of the most amazing Acts in Australia, we actually operate under a Minister at the moment. It doesn't give us full autonomy as a land council. We're still guided or controlled by an Act of Parliament and also in the way that the council operates that only members can benefit from the land councils. I'm a member myself of a land council, but the majority are not represented. There are a whole lot of social, economic and problems as such with our people and yet the majority of us are not represented by land councils under that current setup of membership of a land council. Cultural heritage naturally is one of those important issues that is covered within the land rights Act, so if you're not a member, then you have no say in regard to your own heritage, and that's totally wrong I say.

Also, it creates divisions amongst our people. In regard to the New South Wales current planning laws and how they operate under National Parks and Wildlife, under OEH, under forests New South Wales, all of these current Acts in relation to the planning laws and the destruction of Aboriginal culture too, they call it, or they used to call it, "a consent to destroy". I worked as a heritage officer for many years, trying to preserve and protect our heritage. I've worked with Forestry New South Wales, so I've seen the damage. I've witnessed the damage in regard to our heritage and culture—even including national parks and conservation laws, national heritage laws, native title laws. I don't know how the body would work with all these Acts of law in regard to the concerns. Aboriginal culture too—I'm not sure how that would work with all these bodies.

Removing our heritage out of the National Parks and Wildlife Act into this body would give us full autonomy in regard to us spiritually and physically, and our connections, and to revive some of those things that we have been held back from in identifying properly as who we are and who we have the human right to be as Aboriginal people—our laws, our customs, our traditions, our beliefs. These should be respected properly and taken into account, and our self-determination should be respected too. This was something that was really big in the New South Wales land rights Act. Self-determination was at that time one of the big statements. But I don't see that in 2022, since the land rights Act, because I don't see that self-determination in our communities. All I see is the death and destruction of our people, and especially our young people.

We were, and we are, a proud Aboriginal people. We had sovereignty. We enjoyed these lands before European contact for tens of thousands of years. We had systems and laws in place. The kinship structure, which was mentioned earlier, is a law unto itself. It shows us how we treat one another—how we treat our wider family, the environment. It gives us that responsibility—and one of the most important words here is responsibility—that we have as Aboriginal people to our lands and to our culture.

I guess, as a sovereign people, that we were at the peril of early Europeans when they arrived here. We were at their peril right now because, after we were incarcerated for over 100 years, we then had to fight for our freedoms and our justice. That's something that really hurts us deeply, too, as Aboriginal people. I've seen it in my mother's eyes; I've seen it in my father's; my grandparents, I've seen it in their eyes—just the fight for us to survive and to get through this colonisation, as it affected us pretty badly, and to have the right to be who we are. In regard to how the bill might work and what rights it might give us in regard to a voice, I say they talk about a national voice now in Canberra, but what is our voice here right now in New South Wales in regard to our culture and heritage? What voice do we have in the New South Wales Parliament?

Some history of my family—my mum's side comes from the Awaba people, which is now called Lake Macquarie. I am a descendent of Willian Bird, my grandfather, and Biraban, who were well written about and well known. It was the first Aboriginal mission that was established in 1826 when the Reverend Threlkeld established that mission up on Lake Macquarie. My grandfather represented our people in the New South Wales court system, trying to fight for the survival of our people. Our people were arrested and sent to Cockatoo Island and Norfolk Island and eventually to Tasmania for virtually fighting for their livelihood here.

Naturally, we being close to where colonisation happened, it affected our people immensely—the massacres, the smallpox and the destruction. Reverend Threlkeld recorded that in 1847 when the mission was near its ending. He said that from thousands of Aboriginal people, there remained less than 70 of my people, which is pretty amazing. I am happy that I sit here as one of those 70 people of ancestors who survived and that I survived. It almost wiped my family off the face of this earth, off the map of this earth, and yet I can now sit here and express my grandfather's and my people's voices in person.

Reverend the Hon. FRED NILE: Hear, hear!

KEVIN DUNCAN: The State at that time was called New South Wales, the whole east coast of Australia. The Colonial Secretary recognised my grandfather's work and presented him with a breastplate. He threw the breastplate aside because he said that he wouldn't be seen walking around with a breastplate around his neck. They called him Master William, King of Sugarloaf Mountain, yet he was only 17 years old. His older brother, Uncle Biraban, also received that breastplate. They both sit in the Powerhouse Museum to this day, those breastplates. But what they did there was pretty amazing. The Colonial Secretary of New South Wales at that time gave back what is known as what I believe to be the first land handback to Aboriginal people. Our family still have that document to this day, as the first Aboriginal land grant of 800 to 1,000 hectares on the western side of Lake Macquarie. But then coal was discovered and the land was taken.

The regions of our area of Sydney, Central Coast, Newcastle and Lake Macquarie—we see land councils there. But these are made up of people who have, I guess, migrated from other Aboriginal nations into our traditional lands in those places. Under the current land rights Act, these groups were formed as such in that way, but they always don't represent the true voice of traditional custodians of those lands. People might have the audacity to say, "Europeans are the invaders," when I believe that some of these other Aboriginal people who

have come from other areas, especially in the Sydney, Newcastle, Central Coast and Lake Macquarie regions, they too are invaders of our lands. I truly believe that. Because we too are fighting for our identity against our own people, which is pretty amazing.

Because of money, greed and selfishness, there is a lot of that now that creeps into it because the land has become a commodity and not a spiritual and cultural connection of that land. Under the Act, it gives the right for those to make decisions against people who have true blood and connections to those places. When we look at our birthright and our inheritance right, as such, it's very hard to prove under native title. You almost have to be in a lap-lap, living in a cave, to actually even prove your connection in that way. It's very, very hard for an Aboriginal person to prove native title today. It's Aboriginal law versus Westminster law, and how do those two laws work in with each other? That's something in New South Wales that we have to think about too. Thank you.

The CHAIR: Thank you, Mr Duncan. Mr Owen, did you want to say a few things?

TIM OWEN: Thank you. I acknowledge the Gadigal people on whose land we meet and pay my respects to all First Nations people of New South Wales. My words spoken today derive from long-term collaboration and discussions with First Nations Elders across the State. I would also like to acknowledge the words spoken by Mr Duncan and Mr Bondar, and agree with all of them. My name is Tim Owen. I hold a PhD in Aboriginal archaeology. I am a principal at Sydney-based consulting company GML Heritage. I am an academic associated with both Sydney university and Flinders University in South Australia. I have worked professionally in the First Nations heritage field for the last 19 years. I have appeared several times in front of the New South Wales Land and Environment Court and in front of numerous planning and assessment committees.

I work with Aboriginal communities across New South Wales and in South Australia on a range of cultural, academic, conservation and Aboriginal cultural heritage impact projects. I intend to highlight three aspects associated with ACH reform in New South Wales: the current ACH position, that reform is required now, and comment on the proposed ACH bill. ACH—or Aboriginal cultural heritage—is a very limited resource. It is progressively dwindling. This is exacerbated by the current NPW Act. Under this legislation, the definition of Aboriginal objects excludes all aspects of intangible ACH and does not recognise the rights of Aboriginal people as the owners of their culture and heritage.

The NPW Act's objectives are to conserve Aboriginal objects, places, features and social values. However, practical function of this Act does not prevent impact to these aspects. The worst offending impacts are New South Wales' major SSD and SSI projects, which are able to circumvent the NPW Act, often disempowering local Aboriginal people through the process. I highlight the Shenhua Watermark coalmine project in the Liverpool Plains as an example of how Aboriginal people and their ACH can be sidelined and impacted. This project disempowered the native title applicant through the consultation process and clearly demonstrated the failings and manipulation of current government policy by both the proponent and Aboriginal people from out of area.

When the NPW Act fails, the only recourse for Aboriginal people to prevent ACH impact is either the Federal ATSIHP Act or the New South Wales LEC. However, as I am sure you are all aware, going to the LEC costs millions of dollars. This is beyond the practical means of most Aboriginal people and groups. The ATSIHP Act seldom results in a positive outcome for Aboriginal people. For instance, the case I just noted, the outcome was that the former Federal environment Minister, in her findings on the Shenhua mine, found that the Federal Government was satisfied that the Gomeroi peoples'—they are the native title applicant—specified areas were under direct "threat of injury or desecration" for the purposes of the ATSIHP Act, the protections offered by New South Wales State law were "not sufficient to protect the specified areas"; however, the expected social and economic benefits of the Shenhua Watermark Coal Mine "outweighed the impacts of the mine on the applicants"—that's the Aboriginal community—and "outweighed the loss of heritage value … as well as the potential adverse social impacts on the community, including … Indigenous people".

It is an absolute classic case of demonstrating how legislation at every level is failing. I would therefore state that Aboriginal cultural heritage reform is needed. Aboriginal people have been promised ACH reform since 2010 or thereabouts. However, the Aboriginal community holds major concerns, especially in absence of government buy-in to this particular and current bill.

At the NSW Aboriginal Archaeology Future Forum, which was hosted on 26 August this year by the Australian Minister, Aboriginal Affairs NSW presented on an update on Aboriginal cultural heritage legislative reforms. However, their presentation contained no mention of this bill. I asked the representative specifically to outline their inputs into the bill and received a response that, as a private member's bill, Aboriginal Affairs had no input but rather was undertaking their own process, which would be reported to Parliament. We inquired about the time frames for that and were told that there were no time frames. The proposed ACH bill obviously aims to address some of the main issues in New South Wales; however, implementation will require a fundamental shift

in everyone's mindset and significant changes to New South Wales land use planning, not to mention significant capital investment by this Government in its implementation.

I support the new ACH definition. It represents a seismic shift in thinking and better aligns with Aboriginal peoples' concepts of ACH. Part 4 of the bill deals with conservation and protection, and should lead to some significant places being protected. However, it fails to understand that many places for which protection will be sought are not currently identified or known. Most matters I represent through the New South Wales legal system have arisen because of identification ensuant of an impact assessment. It can be foreseen that applications for protected areas will be seen by many as land loss. The Government should therefore foresee the considerable pressures this process will place on the Aboriginal people and communities. Part 6 through part 8 of the bill—management of activities which could harm ACH—hold levels of complexity which could take years to understand and implement.

Most of the legal matters I have presented would never reach agreements through the proposed methodology, notably because the Aboriginal communities I work for have viewed the proposed impacts of the projects as entirely incompatible with their ACH values and are therefore similarly unmitigable. Even at a simple level, the part 6 management plans are asking Aboriginal people to now authorise destruction of their own heritage. Finally, the proposal for local ACH services is already causing friction, fractions and issues within Aboriginal communities. Many see the designation of areas as simply a way for local Aboriginal land councils to formalise power. Whilst in many instances it would be appropriate for a land council to become the ACH service, in many places such as western Sydney—due to the long history of politics, disempowerment and local land rights issues—it would not.

The bill's part 6 at section 80 still requires consultation with local Aboriginal people, which does not resolve the perennial issue of Aboriginal traditional owners, as was outlined by Mr Duncan. It does not empower the rightful owners of the ACH to speak and make decisions for that ACH. It needs to be thoroughly reviewed, in my opinion. In summary, the bill takes a giant step in the correct direction but, in my opinion and the opinion of many Aboriginal groups and people, does not resolve some of the fundamental issues which currently exist. We understand the urgency of this long-term reform and support the momentum behind this bill, provided that it brings the Aboriginal community along and seeks to resolve some of the more complex matters that directly impact the health and mental wellbeing of New South Wales First Nations peoples today.

Reverend the Hon. FRED NILE: Hear, hear!

The CHAIR: We don't have a whole lot of time, but I'm sure there are some questions from the Committee. Dr Owen, have you been involved with the Government's reform process at any point in the lead-up to the 2018 bill and subsequent to that?

TIM OWEN: Yes, I have attended public forums but also I've been the representative for ICOMOS—hopefully you understand who ICOMOS are. I was their formal representative to the prior 2018 bill, being asked to input and provide cultural comment to what has now become Heritage NSW.

The Hon. SCOTT BARRETT: Mr Duncan, I want to make some statements and assumptions and then get you to comment on them because I might be well off the mark. I'm guessing there are lots of Indigenous people who don't have a direct link or a direct contact with heritage sites. What impact does it have on those people? I'm from Orange. I'm thinking of some people in town there. What impact does it have on those people when Aboriginal heritage is damaged, even if they don't have a connection to it? Conversely, what impact would it have to enshrine this protection into legislation?

KEVIN DUNCAN: You are talking about Aboriginal people who don't have any direct—

The Hon. SCOTT BARRETT: Yes, that direct—I'm guessing there are people around who I'd know in Orange who have never visited a cultural site.

KEVIN DUNCAN: I know that Aboriginal people tend to just take it as it is, I suppose, in regard to having a voice or an opinion. Usually the ones that are in land councils would have all of those opinions and voices because they don't usually take it to a public forum but only to the members who are members of the land council of that area, as such. But people who are not members would have no voice at all.

The Hon. SCOTT BARRETT: I guess what I'm thinking is even those people who don't have the direct contact, when they see or hear of Aboriginal sites getting damaged or whatever—

KEVIN DUNCAN: It impacts on them very—

The Hon. SCOTT BARRETT: They would still think, "Here we go again. They're kicking the blackfellas."

KEVIN DUNCAN: Yes, it does impact on all Aboriginal people because these sites are like family. That's the way that we treat it—as family—because it's embedded in our social laws, as such, in the kinship structures. They're not just trees and sites and animals and plants; they are actual family. So it's those religious and spiritual connections to those things.

The Hon. SCOTT BARRETT: Conversely, to enshrine protection into standalone legislation, would that have a positive impact on these people?

KEVIN DUNCAN: Yes, definitely, it would have a positive impact on them.

The Hon. SHAYNE MALLARD: Mr Bondar, thank you for your submission. I don't know if you've read the transcripts and submissions over the last two days of hearings—these are the last few minutes of the hearings—but, clearly, there's a division between land councils and land title-type representation that's emerged. We've had some pretty strong criticism of the land councils. We've had them called "pro-development". We've had them called "real estate agents". We've had accusations about people who are not Aboriginal but claiming to be Aboriginal being on land councils, developer influences and outsiders. Earlier today we heard that they had an objective of economic advancement for Aboriginal people. Since you are an ex-CEO of a land council and you've been involved in this bill, do you think land councils are the appropriate bodies to administer the council that's proposed in Reverend Nile's bill? How do you respond to those accusations and criticisms that we've heard for the last two days of hearings?

GREGORY BONDAR: That's a great question because I have been through all of that, I have to tell you. As chief executive, I've been through negotiations with developers, I've been through accusations of doing something for economic benefit rather than for cultural or pastoral care. Let me tell you that land councils have to look after their own welfare, their own economic wellbeing. Without economic and entrepreneurial activities, they would be penniless in a lot of ways. So I can understand why a lot of land councils have been accused of being all of those things you've mentioned.

The critical issue is, though, at the end of the day—and I remember I said to you that the bill ought to be accepted in the spirit of what is intended. I recall—and just to my friend here Kevin Duncan—when I was at the land council, we took about 30 Indigenous children to the sites that we inspected to show them the significance of passing down cultural and heritage learning. It doesn't matter what you call a land council. They are not the panacea, but it's the only avenue you have at the moment, apart from what's being proposed in the bill. You've got to look at the regulations that will come out of the bill because that's where you'll dictate how this will all work. I accept the criticisms that people have done, but there are reasons for those criticisms. My understanding is land councils have the ability. They do have the structure but they'll need to be guided in managing a bill of this nature.

The Hon. SHAYNE MALLARD: Would it be right to say to you that your view would be land councils still have to be involved in this bill? We're hearing clear evidence that there needs to be a broader base of engagement—I'm accepting that myself—but not at the exclusion of land council members. Mr Duncan, you're a member of a land council and you've come here very passionately and you're not clearly looking to pillage the cultural heritage of our wonderful Aboriginal people. So they have to be at the table; they have to be part of the process.

GREGORY BONDAR: Correct.

The CHAIR: Dr Owen, in your statement and evidence you gave the Shenhua example of how the registered native title claimants, their voice when they went to speak for country was completely alienated and other voices were listened to. How does that play out? Were those other voices land councils? Were they registered Aboriginal parties? How did that happen?

TIM OWEN: I speak with my understanding of the matter, so hopefully it's correct. The current process for consultation invites a proponent to require Aboriginal people to register when you undertake a project. It doesn't matter whether the project is very, very small or is very, very big; it is the same process. Under that registration process, Heritage NSW currently holds a list of who you should invite. The issue that exists is who is on that list and there is another matter of how you get on the list, but then with that list there is nothing to stop a party that is on that list that is then sent a registration invitation to then pass it on. So we have seen examples—this is not the case study I was saying—where an invitation to register is just passed from person to person to person to person. So then as a non-Aboriginal heritage practitioner, I have no right to then question who is registering. I have no ability to say, "Please tell me how you're connected." In the example you were saying, or I cited, there are around about 80 registered parties.

The CHAIR: We heard earlier, I think there was 114 or something at one point.

TIM OWEN: Then you have to remember that a registered party could just be one individual or it could be in this instance a land council and the land council could have a membership of 400 people or it could be in this instance the registered native title applicant who has a membership of several hundred people. But then a proponent is allowed to weight opinion however they want to across those registered parties currently. So a proponent might call a public meeting and 10 people might turn up out of 100, and then nine people might agree to a particular action and then the tenth, who is representing say 500 people, might disagree but then the proponents say, "Nine of you agreed and one of you disagreed." There is no requirement for weighting there, and they can then just table, "The majority of the people at the meeting agreed with action X."

The CHAIR: That clears up a few questions I had of where the actual breakdown or the alienation commences, because clearly we've heard many voices where they have been thrown out of the process at some point and had to find re-entry points. As you said, the LEC is so difficult and the ATSIC Act has almost impossible thresholds to reach in protection. I know we are literally running overtime now so I am very grateful. My last question is to you Dr Owen about this bill. If there is a State body, such as the Aboriginal cultural heritage council, that is an Aboriginal-controlled, Aboriginal-constituted State body that then works with the localised cultural heritage service bodies, do you think that it could be functional if there was representation from native titleholders or native title, land councils and other voices? How do you see the constitution of that body? What should it look like?

TIM OWEN: To not answer your question first, I see it operating the same way as the New South Wales Heritage Council under the Heritage Act. All of the Aboriginal community I've talked to would see it as Aboriginal people having responsibility for their own heritage. The composition of it, which is your question—under the Act it specifically says that it should be a variety of people; it shouldn't just be formed by members of land councils. It actually says—I think there are seven bodies, and three of the positions can go to land councils or four positions can only go to land councils. As long as the people on it are acting honestly and are able to check and balance each other, then a range of people from across the State with different levels of experience should create a functioning council of Aboriginal people who are able to speak for Aboriginal heritage. To answer another question you haven't asked, "What happens when the ACH service says no?"—it gets referred up to the council and the council says no. What happens next? That would be my question to everyone: What happens next? Because the only recourse, then, for a proponent is to go straight to the Land and Environment Court.

The CHAIR: Sorry, do you mean "says no"?

TIM OWEN: No to a—so a proponent comes along and puts up an idea—

The CHAIR: Yes, and says no to the destruction of cultural heritage.

TIM OWEN: Yes.

The CHAIR: Then it gets protected under the Act, doesn't it? Isn't that the answer—or not?

TIM OWEN: Yes, but then what happens? The Act is then silent on what happens next, so if it goes to Land and Environment Court—which presumably a lot of Aboriginal people will say, "We don't want to give permits or permission to impact ACH"—I can imagine the Land and Environment Court will become very busy. The question is who's funding, then, the ACH council on all their visits to the Land and Environment Court? I think we just have to sit back and look at the practical realities of implementation and the consequences of Aboriginal people actually saying no.

The CHAIR: Are there any final things that you would like to say? We are over time, and I apologise for running over time.

KEVIN DUNCAN: I'd just like to ask one question in relation to the Act or the bill. In regard to what has happened in the past, and acknowledging those things in the past of Aboriginal people, will compensation ever be considered?

The Hon. SHAYNE MALLARD: You're talking about previous destruction?

KEVIN DUNCAN: Yes.

The CHAIR: I don't think that this Committee is able to answer that right here and right now, but I think that that's a very good question to close this session on, so thank you. Thank you all for coming today—for your time, your knowledge and your evidence. The Committee is very grateful to all of you. That concludes the public hearing session for this inquiry. Thank you to everybody.

(The witnesses withdrew.)

The Committee adjourned at 17:38.