



New South Wales
Aboriginal Land Council

Summary of key NSWALC positions compared to 2017 Government proposals

A brief summary of NSWALC's policy positions to date compared to the current 2017 Government proposals for new Aboriginal Culture and Heritage laws is outlined below.

A more detailed comparison is available on the NSWALC website. Once a draft Bill is available, NSWALC will provide further analysis of the proposals. We encourage you to provide feedback.

NSWALC Position	2017 Government proposal
Genuine decision making and control to Aboriginal peoples at local and State levels, building on existing structures of Land Rights and Native Title.	Aboriginal peoples will make most decisions via a State level Aboriginal Cultural Heritage (ACH) Authority and local ACH consultation panels supported by LALCs. Land Rights and Native Title incorporated – <i>see below</i>
A State level, genuinely independent Aboriginal controlled body to provide key roles government currently undertakes.	<p>A State level Aboriginal Cultural Heritage Authority, composed of all Aboriginal peoples, proposed to be established to undertake all key roles currently done by Government. Will have significant decision making, oversight, approval, regulatory, compliance, mapping and advisory roles, independent of the Minister.</p> <p>However the Minister is proposed to:</p> <ul style="list-style-type: none"> - Retain some oversight and approval roles particular for matters with whole of Government implications. The Minister will not have powers to direct the Authority and the Authority will be able to employ its own staff. - Formally appoint members to the Authority. OEH advise that this is to ensure the Authority has the legal protections of the Crown. However, recognising the need for the Authority to have legitimacy in the community, and that Ministerial appointments have not previously been supported, it is proposed that a community driven process is undertaken. Feedback is sought on options for this. <p>The proposals do not describe the role of government agencies in the new arrangements except to enable the ACH Authority to delegate some of its functions to agencies should it choose to.</p>
Build on the Land Rights network and an increased role for LALCs, with proper resourcing and capacity building.	LALCs who wish to provide local roles (and subject to meeting certain requirements) can be delegated functions from ACH Authority. Functions include mapping, first point of contact for proponents, negotiating ACHMPs, coordinating local ACH consultation panels. OEH advise that LALCs will be resourced to carry out new roles. NSWALC is seeking the Network's views in particular on this proposal.
In recognition that there are differing views and approaches across the State, sufficient flexibility is needed for local Aboriginal people to determine the structure and composition of local decision making groups.	The proposed legislation does not propose to define who speaks for Country. Proposed that a Policy to guide how local Aboriginal Cultural Heritage consultation panels will be comprised and formed is be developed by the ACH Authority in consultation with NSWALC, LALCs and Aboriginal peoples once the ACH Authority is established. Feedback is sought on possible options.
That the NSW Government fund the expansion of the Aboriginal Owners Register under the <i>Aboriginal Land Rights Act (NSW)</i> to cover the whole of NSW, to enable Aboriginal Owners to be the authority to speak for Country.	As above, it is proposed that the ACH Authority will further review and consult on these matters.
Improved definitions of Aboriginal heritage and protections for intellectual property and intangible heritage.	New definitions that better recognise Aboriginal people's views of culture and heritage and new protections for cultural knowledge are proposed.
Provision of best practice protection tools and mechanisms for Aboriginal Culture and Heritage.	Proposed to replace Aboriginal Heritage Impact Permits (AHIPs) with Aboriginal Cultural Heritage Management Plans (ACHMPs) for non-State

<p>New laws must empower and support the rights of Aboriginal peoples. Aboriginal people must have the right to refuse an activity or development.</p> <p>Processes that do not allow Aboriginal people to have a say over activities and developments and/or bypass proper consultation and assessment mechanisms are not supported.</p> <p>Proper assessment and consultation processes are needed and must include provisions for assessing cumulative impacts and compensating Aboriginal people for the destruction of Aboriginal heritage.</p> <p>Any timeframes must allow for meaningful consultation and must be culturally appropriate with allowances for cultural priorities such as sorry business.</p> <p>New system must focus on protection rather than just regulating destruction.</p>	<p>significant developments that will require Aboriginal heritage to be considered before planning approvals are obtained. This could potentially be an improvement on the current system, subject to the necessary supporting policies, procedures and resourcing. Aboriginal people will be able to refuse an ACHMP.</p> <p>Mandatory timeframes will not be set out in the Bill, but will be set out in a Regulation to be developed after the Bill is finalised. OEH advise that mandatory timeframes will reflect the scale of the project. Timeframes will be based on the ACHMP tier.</p> <p>A new mapping system is proposed that is intended to trigger further assessment where ACH is present or likely. If properly designed and utilized this could be an improvement on the current system, however will still rely on proponents to check a map to trigger further consultation and assessment or not.</p> <p>Other improvements on the current system include:</p> <ul style="list-style-type: none"> - New provisions to protect intangible ACH - Clearer interaction with <i>Heritage Act 1977</i> (NSW)
<p>Roles for Government kept to a minimum, recognising that transitional arrangements will be needed.</p>	<p>Yes, however implementation and transition proposed to occur over several years.</p>
<p>LALC boundaries are utilised. Protocols and agreements can be developed where cultural boundaries may cross over.</p>	<p>OEH advise that it is not proposed to specify boundaries in legislation. The distribution of ACH consultation panels will be determined by the ACH Authority and articulated in Policy.</p>
<p>Improved links and interactions with local government and planning laws and processes.</p>	<p>Proposed to bring assessment of Aboriginal cultural heritage upfront so that it occurs before and informs development application (DA) processes. This could represent a significant improvement. However, the proposed reforms will not amend the laws relating to State significant projects, which will continue be exempt from the ACH requirements. The State significant projects regime will be updated to require proponents to complete assessment activities in accordance with ACH Authority guidelines and codes.</p>
<p>A rigorous system of compliance, offences, penalties and enforcement is needed.</p> <p>Proper appeal processes that allow Aboriginal peoples to challenge decisions are needed including merit appeals.</p>	<p>Proposed that the new legislation establish appropriate compliance and enforcement provisions including:</p> <ol style="list-style-type: none"> a. ACH Authority to undertake compliance b. Investigative and prosecution powers c. Offences, exemptions, defences and proceedings d. Merits appeal and judicial review

*This document provides information about the NSW Government's proposed model for new Aboriginal Culture and Heritage laws. This document has been prepared by the New South Wales Aboriginal Land Council (NSWALC) for Local Aboriginal Land Councils (LALCs) and Aboriginal communities in NSW. **Please Note:** While all care has been taken in the preparation of this document, the advice it contains should not be seen as a substitute for independent consideration of the issues and/or legal advice on this subject. This document is current as of 11 September 2017.*

The 2017 proposed Government model and details about **how to have your say** are available on the Office of Environment and Heritage website at:
<http://www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage/legislation/draft-aboriginal-cultural-heritage-legislation-2017-consultation>

For more information please visit the NSWALC website www.alc.org.au, call the NSWALC Strategy and Policy Unit on 02 9689 4444 or email us at policy@alc.org.au. NSWALC submissions, reports and fact sheets on Culture and Heritage reform are available on the NSWALC website.