



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

Reform of Aboriginal Culture and Heritage laws in NSW

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 24 October 2017.*

NSW Government draft model for new Aboriginal culture and heritage laws

The NSW Office of Environment and Heritage (OEH) released the Government's draft model for new Aboriginal culture and heritage laws on 11 September 2017.

Please refer to the back page of this document for a list of Government consultation dates and locations and details about having your say.

NSWALC welcomes your advice and feedback on the proposals to inform NSWALC's positions.

Reform process to date

In 2010 the NSW Government commenced a process to reform Aboriginal culture and heritage laws. NSWALC did not support the 2013 Government proposals for reform and made recommendations for new laws to provide decision making rights to Aboriginal people and provide proper protections for Aboriginal heritage.

In recognition that key elements of the Government's proposed 2013 model were not broadly supported, the Government has revised its proposals and is now seeking feedback.

The updated reform proposals have the potential to be significant improvements on the current system primarily outlined in the *National Parks and Wildlife Act 1974 (NSW)*, and on the 2013 Government reform proposals.

NSWALC will undertake further analysis of the reform proposals once a draft Bill is available.

LALCs are encouraged to carefully consider the Government's proposals, particularly to build on LALCs proposed Culture and Heritage functions.

Key features of the 2017 Government model:

Establish separate Aboriginal Culture and Heritage legislation for NSW in the form of a new *Aboriginal Cultural Heritage Act*. Current provisions in Part 6 of the *National Parks and Wildlife Act 1974 (NSW)* (**NPW Act**) would be removed. Implementation of the new framework is expected to take a number of years given the new functions, processes, capacity building and resourcing arrangements.

Provide better definitions that reflect Aboriginal people's understandings of Aboriginal culture and heritage, including tangible and intangible Aboriginal culture and heritage, and cultural knowledge.

Recognise that all Aboriginal cultural heritage belongs to Aboriginal people.

Establish a State-level Aboriginal controlled body known as the Aboriginal Cultural Heritage Authority (**ACH Authority**) proposed to undertake all key roles currently done by Government and have significant decision making, oversight, regulatory, compliance and advisory functions, independent of the Minister.

However, it is proposed that the Minister appoint members to the Authority. The proposals outline

that this is to ensure the Authority will be able to make legally binding decisions. Recognising the need for the Authority to have legitimacy in the community, and that Ministerial appointments have not previously been supported, the Government is seeking feedback on options for undertaking a community driven process to nominate Authority members.

Build on the Aboriginal Land Rights Network. NSWALC is proposed to be part of the State level Authority, and LALCs existing Culture and Heritage roles are proposed to be expanded to include local coordination and support if LALCs meet a certain criteria set out in policy. The criteria is proposed to be developed by the Authority, and the Authority will be required to consult with the Land Council network prior to finalising and implementing the policy. Government will provide resourcing and capacity building to support LALCs undertake new functions.

Establish Local Aboriginal Cultural Heritage Consultation Panels. LALCs (who wish to take on these functions and who meet the criteria) are proposed work with and coordinate local Panels. Panels are proposed to operate according to policies and procedures of the Authority. Feedback is sought on who should sit on panels, though this is not proposed to be defined in legislation.

Roles for Government are proposed to be reduced, though the Minister will retain some oversight and decision-making functions. Transitional and capacity building arrangements are flagged. The draft Bill will 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.

New regulatory, assessment, protection and conservation mechanisms including:

- Government issued 'Aboriginal Heritage Impact Permits' (AHIPs) to be replaced with 'Aboriginal Cultural Heritage Management Plans' (ACHMPs) negotiated between proponents and Aboriginal peoples following clear steps and negotiation protocols
- Aboriginal peoples will be able to refuse a development
- Updating mapping systems

- Aboriginal heritage to be considered before planning decisions are made and clearer links with the development assessment process
- Due diligence to be replaced with a new Assessment Pathway that will require consultation
- Review of the list of 'low impact' activities.

Updated compliance and enforcement to reflect the range of new offences, however there will still be some defences. The Aboriginal Cultural Heritage Authority will have responsibility for undertaking compliance. Maximum penalty amounts will be set out in the draft Bill.

Requirement to publish annual and three-yearly Reports on the status of Aboriginal heritage.

NSWALC position

NSWALC has continued to advocate that new laws **properly protect Aboriginal heritage and provide genuine decision making and control to Aboriginal peoples** at local and State levels including:

- a. Any new laws must build upon existing Aboriginal controlled administrative and governance structures ie. Land Rights and Native title
- b. New laws provide rights for Aboriginal people to refuse an activity or development in line with the United Nations *Declaration on the Rights of Indigenous peoples*
- c. That all Aboriginal heritage is protected, and that cultural and intellectual property rights are protected
- d. A genuinely independent Aboriginal Culture and Heritage Commission (or similar body) be established to undertake key roles Government currently undertakes
- e. In recognition that there are differing views and approaches across the State, sufficient flexibility is needed for local Aboriginal people to be able to determine the structure and composition of local decision making groups
- f. Minimal roles for Government
- g. Government provide proper funding

NSWALC's policy positions can be accessed on the NSWALC website including NSWALC's [Principles for Reform](#) and [NSWALC's 2014 submission](#).

Have your say!

Submissions to OEH on the draft reform proposals are due **early March 2018**. All LALCs and Aboriginal community members are encouraged to make a submission. Submissions can be made via the following:

- **Online** at: <http://www.environment.nsw.gov.au/aboriginal-cultural-heritage-consultation>
- **By email:** ach.reform@environment.nsw.gov.au
- **By mail:** Aboriginal Culture and Heritage Reform, NSW Office of Environment and Heritage, PO Box A290, Sydney South NSW 1232
- **By phone:** Record your submission (up to 5 minutes) by calling 131 555
- **By providing feedback at OEH workshops:** See below

Public consultation

OEH will be hosting a series of 19 public information sessions, followed by a series of 19 workshops to discuss the draft Bill. **Please note that some of the original workshop dates have changed.**

There will be a *general information webinar* 24 October 2017 from 6pm to 7.30pm and a *regulatory proposals webinar* on 9 November 2017 from 11.30am to 1pm.

For more details about public consultation and how to register please visit the OEH website:

<http://www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage/legislation/draft-aboriginal-cultural-heritage-legislation-2017-consultation>.

Please check the OEH website to confirm workshop details. To **book an information session by phone**, please call Jackie Puckeridge from Marcia Ella Consulting on 0481 959 813.

Location	Information session 9am–1pm	Workshop 9.30am– 2.30pm	Venue
Albury	16 October	28 November	Albury Entertainment Centre
Gosford	18 October	29 November	The Erina Centre
Griffith	20 October	1 December	Aboriginal Community Centre
Ballina	23 October	4 December	Ballina Surf Club
Muswellbrook	26 October	6 December	Muswellbrook RSL
Queanbeyan	13 October	7 December	Jerrabomberra Community Centre
Narrabri	27 October	11 December	Narrabri Bowling Club
Sydney	6 October	13 December	SMC Conference and Function Centre
Bathurst	25 September	1 February	Rydges Mount Panorama Bathurst
Bega	4 October	6 February	Bega Valley Civic Centre
Nowra	5 October	7 February	Shoalhaven Entertainment Centre
Penrith	17 October	9 February	Penrith Panthers
Coffs Harbour	22 September	13 February	Coffs Harbour CEX
Port Macquarie	20 September	14 February	Port Macquarie Panthers Club
Newcastle	18 September	16 February	Newcastle Museum
Bourke	9 October	20 February	Bourke Bowling Club
Dubbo	11 October	22 February	Taronga Western Plains Zoo Dubbo
Wentworth	28 September	27 February	Wentworth Shire Town Hall
Broken Hill	8 November (10.30 – 2.30)	1 March	Musicians Club

More Information: Please visit the 'More than Flora and Fauna' page of 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.