



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 23 February 2018.*

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 and a consultation draft Bill on 23 February 2018.

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

Submissions are due **6 April 2018**.

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 increased protections for Aboriginal heritage.

The Government has now revised its proposals and is seeking feedback.

NSWALC is undertaking analysis on the draft Bill and will distribute further advice shortly.

Upon initial review, some elements of the reform proposals have the potential to be improvements eg.

- Decision making by Aboriginal peoples
- Clearer links with planning system
- Proponents to seek Aboriginal heritage approvals prior to development consent
- Compliance and enforcement by ACH Authority
- Mapping to be undertaken and owned by Aboriginal people
- LALCs may be delegated new functions

However other elements require further analysis and consideration eg.

- Minister to retain some decision making
- Map review to trigger further consultation with Aboriginal people
- Very short proposed timeframes for negotiation and determination (to be set out in Regulations not in the Bill)
- Still broad defences if Aboriginal heritage is harmed
- Will require resourcing to implement

LALCs are encouraged to carefully consider the proposals, particularly for LALCs to undertake 'local coordination and support' functions.

An overview of key proposed structures and their functions is provided on page 3.

Key features of draft Government model include:

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**) to be removed.

New definitions to reflect Aboriginal people's understandings of Aboriginal culture and heritage, including tangible and intangible. New definition of 'harm' which will apply to Objects, ancestral remains and declared ACH.

Objects of Act to 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**) to undertake key roles currently done by Government and have key decision making, oversight, regulatory, compliance and advisory functions. Independent of the Minister.

It is proposed that the Minister retain some decision making functions and appoint members to the Authority. However, recognising the need for the ACH 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 / select / elect ACH Authority members.

Build on the Aboriginal Land Rights Network. NSWALC is proposed to be part of the ACH Authority, and LALCs may be delegated '*local coordination and support*' roles. It is essential that Government provides resourcing and capacity building to support LALCs undertake new functions.

Establish Local Aboriginal Cultural Heritage Consultation Panels. Proposed to provide local advice on local ACH. 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 proposed to be reduced, though the Minister will retain some oversight and decision-making functions. The ACH Authority may choose to delegate certain functions to government agencies.

New regulatory, assessment mechanisms, 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 local ACH Panels (following clear steps and negotiation protocols). To be approved or refused by ACH Authority.
- Aboriginal heritage to be considered before planning decisions are made (with some exceptions) and clearer links with the development assessment process.
- Due diligence to be replaced with a new Assessment Pathway, however still requires checking a map to trigger consultation.
- Updated mapping systems.
- Review of the list of 'low impact' activities.
- Conservation tools proposed to include intangible cultural heritage agreements and ACH declarations.

Updated compliance and enforcement to reflect new offences, however broad defences proposed to be retained. The ACH Authority will have responsibility for compliance. Maximum penalty amounts for the most serious offences proposed to be \$1,650,000 for a corporation & \$300,000 for an individual.

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

Implementation of the new framework (if passed by NSW Parliament) is expected to take a number of years given the new functions, processes, capacity building and resourcing arrangements.

NSWALC position

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

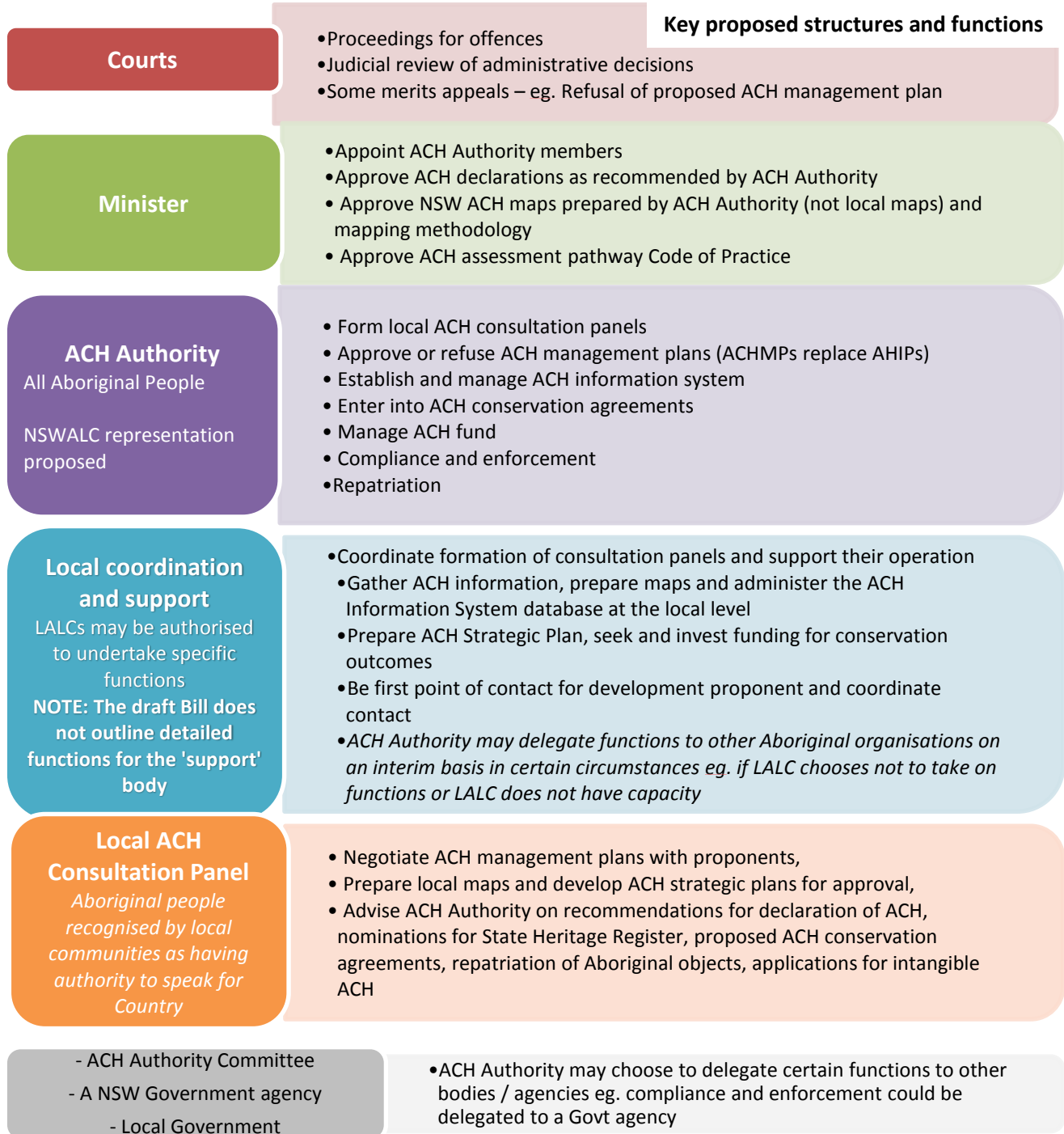
- a. Any new laws must build upon existing Aboriginal controlled administrative and governance structures ie. Land Rights and Native title.
- b. New laws provide rights for Aboriginal people to refuse an activity or development in line

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.
- e. Government currently undertakes.
- f. Minimal roles for Government.
- g. Government provide proper funding.

- h. 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.

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 **6 April 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 (option 3)
- **By providing feedback at OEH workshops:** *See below*

Public consultation

OEH are hosting 20 workshops to discuss the draft Bill. **Please note that original workshop dates have changed.**

To assist you to engage in the workshops, you can view a *general information video* (Video 5) and a *regulatory proposals video* (Video 4) on the OEH website (see below link).

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 contact OEH directly or check the OEH website to confirm workshop details.

Location	Workshop 9.00am– 2.30pm	Venue
Tamworth	2 March	Ibis Styles Tamworth, 80-90 Ebsworth Street
Sydney	5 March	National Centre for Indigenous Excellence, 180 George Street, Redfern
Ballina	7 March	Ballina Surf Club, Lighthouse Pde
Wentworth	7 March	Wentworth Shire Town Hall, 24 Adelaide St
Queanbeyan	9 March	Riverside Oval, 14 Carinya St
Narrabri	9 March	The Crossing Theatre, 114 Tibbereena St
Penrith	12 March	Penrith Panthers, 123 Mulgoa Rd
Newcastle	13 March	Newcastle Museum, 6 Workshop Way
Bourke	14 March	Bourke Bowling Club, Cnr Richard and Mitchell St
Gosford	14 March	The Erina Centre, The Hive, Erina Fair
Dubbo	16 March	Taronga Western Plains Zoo, Obley Rd
Albury	20 March	Albury Entertainment Centre, 525 Swift St
Bathurst	20 March	Bathurst RSL Club, 114 Rankin St
Bega	22 March	Bega Valley Civic Centre, Zingel Place
Coffs Harbour	22 March	Coffs Harbour CEX, 1 Vernon St
Port Macquarie	23 March	Port Macquarie Panthers Club, 1 Bay St
Muswellbrook	26 March	Muswellbrook RSL Club, 113 Bridge St
Broken Hill	26 March	Musicians Club, 276 Crystal St
Nowra	28 March	Shoalhaven Entertainment Centre, 42 Bridge Rd
Griffith	28 March	Aboriginal Community Centre, 5 Wiradjuri Place

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