



# fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales  
Aboriginal Land Council

## Reforming Aboriginal Culture and Heritage laws in NSW

### Aboriginal culture and heritage in NSW

NSW is home to some of the most important Aboriginal heritage sites in the world, many of which are more than 40,000 years old. Aboriginal culture and heritage sites that exist within NSW are not just an important part of Australia's heritage and history, but are an **essential part of the culture and identity of Aboriginal communities today**.

### How is Aboriginal culture and heritage currently protected under NSW laws?

The main law for the protection and management of Aboriginal culture and heritage in NSW is the *National Parks and Wildlife Act 1974* ("NPW Act").

The NPW Act stipulates that all Aboriginal objects are considered to be 'property of the Crown'<sup>1</sup>, and gives the NSW Office of Environment and Heritage ("OEH") the power to authorise the damage or destruction of Aboriginal objects and places, through the issuing of 'consents'.

The Aboriginal culture and heritage management regime of the NPW Act has been described quite appropriately as: *'like Dracula being in charge of the blood bank'*<sup>2</sup>.

The inclusion of Aboriginal culture and heritage in flora and fauna legislation has long been criticised as outdated and a distasteful and inappropriate remnant from a time when Aboriginal peoples were considered as merely part of the environment. More alarmingly still, Aboriginal people do not have a recognised right through the current legislation to decide what happens with their culture and heritage.

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<sup>1</sup> Limited exceptions exist.

<sup>2</sup> "Kevin Humphries MP, Second Reading Debate National Parks and Wildlife Amendment Bill 2010, Agreement in Principle 21 April 2010"  
<http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/263E8D7E67261D1DCA257718000272DA>

### PLEASE SIGN OUR PETITION!

**Major reforms are needed to the laws that manage Aboriginal culture and heritage in NSW.**

**10,000 signatures are needed to ensure that this important issue can be debated in the NSW Parliament.**

### PLEASE RETURN SIGNED PETITIONS TO:

NSWALC Policy & Research Unit  
PO Box 1125  
PARRAMATTA NSW 2124

### Proposals to reform NSW's Aboriginal culture and heritage laws

For more than two decades there have been calls for the development of an Aboriginal Cultural Heritage Bill for NSW.

In 1983, when the *Aboriginal Land Rights Act* was introduced, the then Minister for Aboriginal Affairs, Frank Walker, stated the Government's intention to introduce a culture and heritage bill. He stated:

*"... there is one element missing from what could be considered an essential element of land rights legislation – that is, the provision for the protection of sacred sites and sites of significance. ... It is my intention to seek the assistance of the new Aboriginal councils that will be formed under the proposed legislation before introducing an Aboriginal heritage commission bill for the protection and ownership of sacred and significant sites."*<sup>3</sup>

This Act was never developed and NSW remains the only state without separate legislation with the

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<sup>3</sup> Former Minister for Aboriginal Affairs Frank Walker, 24 March 1983, Second Reading speech for the *Aboriginal Land Rights Bill*, quoted in Hansard at 5090, Legislative Assembly, NSW Parliament, as available from Hansard archive at [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au).

primary aim of protecting Aboriginal culture and heritage.<sup>4</sup> Instead there has been a succession of inquiries instigated and supported by both Liberal Coalition and Labor State Governments that have been aimed at reforming the regime for managing Aboriginal culture and heritage in NSW.

### What is happening now?

In February 2010, as amendments to the NPW Act were introduced into the NSW Parliament, the then Labor Minister for the Environment announced that a 'working party' would be established for a 2 year period to consider separate Aboriginal heritage legislation in NSW. The working party would report jointly to the Minister for Environment and the Minister for Aboriginal Affairs.

In so doing, the Minister acknowledged what has long been known within the Aboriginal communities of NSW; ***that the current legal protections for Aboriginal culture and heritage are not working.***

It is noted that whilst in opposition the new Coalition Government supported the call for broader reform.

**The reform process is currently underway, and it is essential that the NSW Government hear Aboriginal people's views on this issue.**

### Key principles for reform

In December 2011, the New South Wales Aboriginal Land Council (**NSWALC**) called on the NSW Government to ensure that the reform of Aboriginal culture and heritage laws are based upon the following principles:

- International human rights principles as embedded in the United Nations Declaration on the Rights of Indigenous Peoples.
- Aboriginal peoples are recognised in legislation as the rightful owners of Aboriginal culture and heritage in NSW, and as such are the only determinants of Aboriginal culture and heritage.
- Aboriginal culture and heritage must be recognised as a part of a broader relationship with the land including spiritual and cultural beliefs and practices, hunting, gathering, fishing and other land uses, as well as land rights and native title rights.

- A legislative system is established that addresses the need to preserve and enhance Aboriginal cultural traditions through effective Aboriginal control mechanisms and the need to deliver social justice to Aboriginal peoples in NSW, to redress the significant cultural, economic and social dispossession which Aboriginal people continue to experience.

#### ***Have your say!***

The New South Wales Aboriginal Land Council urges community members to tell the NSW Minister for the Environment what you think should be included in new Aboriginal culture and heritage laws.

### More Information

If you would like additional information about this document, please visit the NSWALC website [www.alc.org.au](http://www.alc.org.au), (under the 'Culture and Heritage' tab, or contact the NSWALC Policy and Research Unit on 02 9689 4444 or at [policy@alc.org.au](mailto:policy@alc.org.au).

For an overview of current site protection options, please refer to the **NSWALC Site Protection Fact Sheet** series available from [www.alc.org.au](http://www.alc.org.au).

Information about the current reform process is also available on the NSW Office of Environment and Heritage website:

<http://www.environment.nsw.gov.au/achreform/>

This document has been prepared by the NSWALC for Local Aboriginal Land Councils and Aboriginal communities across 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 January 2012.

<sup>4</sup> See discussion of culture and heritage law in other states and territories in *EDO Discussion Paper* (2009)