



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

Reform of Aboriginal Culture and Heritage laws in NSW

This information sheet provides information about the NSW Government's proposed model for new Aboriginal Culture and Heritage laws.¹

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 3 October 2013.

NSW Government proposed model for new Aboriginal culture and heritage laws

The NSW Office of Environment and Heritage (OEH) released the Government's proposed model for new Aboriginal culture and heritage laws on 30 September 2013. 11 consultation workshops are due to commence on the **6 November 2013**. Please refer to the back page of this document for a list of consultation dates and locations.

Comments and submissions on the proposed model are due by the **14 February 2014**.

¹ The proposed Government model is outlined in a document titled 'Reforming the Aboriginal Cultural Heritage system in NSW: A NSW Government model in response to the ACH Reform Working Party's recommendations and public consultation' available on the OEH website at: <http://www.environment.nsw.gov.au/achreform/ACHproposedmodel.htm>

Key features of the Government's proposed model

Parts of the proposed Government model are based on recommendations by a Working Party established by Government in 2012.² However a number of recommendations were not supported by Government, including the creation of an independent Aboriginal Commission and directly building on the ALC Network.

The Government's model proposes:

Establishment of separate legislation in the form of a new *Aboriginal Cultural Heritage Act*, to protect, conserve and manage Aboriginal culture and heritage in NSW. Current provisions in the *National Parks and Wildlife Act 1974* (NPW Act) would be removed. However, some elements of the current system which NSWALC has criticised in the past including the due diligence system are proposed to be retained in the new law. Current penalties for harming Aboriginal heritage are proposed to be retained.

New Government appointed Local Aboriginal Culture and Heritage Committees are proposed to be established by the Minister for Heritage. The new Committees are to be a 'one-stop-shop' for all Aboriginal culture and heritage issues. Membership of the Local ACH Committees is proposed to include Aboriginal Owners, Native Title holders, representatives of registered Native Title claimants, representatives of Indigenous Land Use Agreements, representatives of Elders and family groups with cultural authority. The Committee **does not automatically include Land Council representatives**.

² The Working Party's recommendations to Government are available on the OEH website at: <http://www.environment.nsw.gov.au/resources/culture/heritage/20130139achrefdiscussion.pdf>

No detail about governance or administrative structures, including how Local Committees are to be structured, resourced, funded, or supported. It is not clear if the Committee will operate on a voluntary basis or be remunerated. The Committees will be asked to complete complex and sensitive tasks including consulting with the Aboriginal community, mapping Aboriginal heritage values, and developing detailed Plans of Management. The proposed model does not appear to build on existing structures of ALC network, or acknowledge the culture and heritage functions of the LALCs or NSWALC as outlined in the ALRA.

The proposals are likely to have significant implications for LALCs, particularly for those who currently undertake culture and heritage and sites work.

Local Aboriginal Land Councils are proposed to have a role only if the **options relating to ALC boundaries** are supported. If 'Option 1' below is pursued it is proposed that LALC's statutory culture and heritage role would be 'extended' to include roles to actively manage ACH matters within their boundary, and that each LALC would be required to form a Local ACH Committee.

The paper outlines four options for boundaries:

OPTION 1: Local Aboriginal Land Council network boundaries,

OPTION 2: Nine Regional Aboriginal Land Council boundaries to establish Regional committees,

OPTION 3: 152 Local Government and Shire boundaries,

OPTION 4: 11 Local Land Services boundaries,

ALTERNATIVE OPTION: The paper also proposes that new boundaries could be created if none of the above four options were 'viable'.

Increased role for the Aboriginal Culture and Heritage Advisory Committee (ACHAC) who are proposed to develop minimum standards, policies and have a role in deciding membership of Local ACH committees.

Expanding the definition of Aboriginal culture and heritage to include both tangible and intangible aspects, that would more closely align with Aboriginal peoples definitions, rather than

only focusing on 'objects' and 'places' as is currently in the NPW Act. However, in practice, the new model will classify Aboriginal culture and heritage (ACH) values in a tiered system, with a corresponding scale of consultation and assessment required:

- Low or no ACH value: No consultation, no project agreement (see below) required,
- Incomplete ACH value: consultation and project agreement required, or
- High ACH value: consultation and project agreement required.

'Flexible regulatory processes' which includes replacing the current Aboriginal Heritage Impact Permit (AHIP) process with 'flexible **project agreements**' that are agreed locally between the Local ACH Committee and the proponent. Project agreements will only be required for activities that occur in 'high' or 'incomplete' Aboriginal culture and heritage value areas. No minimum standards for such negotiations appear to be proposed for inclusion in legislation. In addition, there do not appear to be any processes for Local ACH Committees to refuse developments.

'Streamlined consultation and assessments' which includes allowing activities in areas of 'no or low Aboriginal culture and heritage values' or categorised as 'low impact' to proceed without any assessment or consultation with any Aboriginal people.

Very short mandatory timeframes in which the Local ACH committees and Aboriginal communities will have to respond to requests from developers. If the committee does not respond the proponent within the timeframe (10 days) the proponent can proceed with the activity. The Local ACH Committee must "negotiate and agree on assessment actions required"³ within a further 10 days.

Emphasis on 'upfront planning' which appears to reduce Aboriginal peoples ability to have a say on individual activities or projects. This includes the proposed 'upfront' development of 'Plans of Management' which are to outline Aboriginal

³ Page 32, NSW Government model, available at: <http://www.environment.nsw.gov.au/achreform/ACHproposedmodel.htm>

heritage values, management actions and conditions. There appears to be a focus on a mapping system, rather than consultation with Aboriginal people.

A number of options for ***funding and resourcing the new system are proposed***. However the OEH has advised that economic analysis has not been undertaken and it is not clear how the new structures are proposed to work in practice including the operational aspects of the committees, and new mapping and register processes and systems.

A significant role for government is to be maintained which includes providing 'oversight' and setting minimum standards. In addition, the government is also proposed to maintain a new 'Register' to replace the Aboriginal heritage information management system (AHIMS).

Requirement for Government to publish a 'State of Culture and Heritage Report' once every three years to report on the status and condition of Aboriginal culture and heritage in NSW, implications for the ongoing practice and position of Aboriginal culture and heritage, and make general recommendations for future policy and legislative actions.

Reform process to date

In late October 2011 the NSW Government announced a revised process for the reform of Aboriginal culture and heritage laws. The previous Working Party (established under the previous Labor Government) was disbanded, new timeframes for the reform process were announced, and the Working Party's terms of reference were revised. A 'community consultation' process⁴ commenced with little warning, with some communities given less than 7 days notice.⁵

⁴ The OEH hosted 25 community workshops in November and December 2011. Summaries of these workshops are available on the OEH website at: <http://www.environment.nsw.gov.au/achreform/ACHmedia.htm>

⁵ NSWALC has raised a number of concerns with the NSW Minister for the Environment and the NSW Minister for Aboriginal Affairs about the revised reform process. See for example, Joint Submission by NSWALC and NTSCORP to the NSW Government 'Our Culture in

A new Aboriginal Culture and Heritage Reform Working Party was subsequently constituted in May 2012 with the aim of advising the Government on options for the protection and management of Aboriginal culture and heritage in NSW by October 2012. The Working Party comprised individuals, rather than representatives of key stakeholder groups and, as such, ***NSWALC did not have a position on the Working Party.***

The reform process has stalled for the past 12 months. After the current consultation period, the OEH has advised that a draft Exposure Bill is due to be considered by Cabinet by mid 2014. **It is not clear whether the Government intends to release a draft Exposure Bill, that will outline the detail of the legislation, for public comment.**

NSWALC proposed reform models

NSWALC held consultations with the Aboriginal Land Council Network on three proposed models⁶ for reform during 2012. An ***Outcomes Paper*** is available on the NSWALC website at: [http://www.alc.org.au/media/87820/Aboriginal%20Culture%20and%20Heritage%20Reforms%20Pr oposal_FINAL_lowres.pdf](http://www.alc.org.au/media/87820/Aboriginal%20Culture%20and%20Heritage%20Reforms%20Proposal_FINAL_lowres.pdf)

More Information

If you would like additional information about the contents of this document, please visit the NSWALC website www.alc.org.au, call the NSWALC Policy and Research Unit on 02 9689 4444 or email us at policy@alc.org.au. NSWALC submissions, reports and fact sheets on Culture and Heritage issues are available on the NSWALC website at www.alc.org.au.

The OEH consultation materials including the proposed Government model, the Working Party's report, fact sheets, and a questionnaire are available on the OEH website: www.environment.nsw.gov.au/achreform

Our Hands', December 2010, available on the 'More than Flora and Fauna' page of the NSWALC website http://www.alc.org.au/media/78829/120112%20nswalc_ntscorp%20broad%20reform%20submission%20final.pdf.

⁶ NSWALC's three proposed models are available at: http://www.alc.org.au/media/80340/protecting%20the%20past,%20guarding%20the%20future_models%20o%20reform%20aboriginal%20c&h%20laws%20in%20nsw_revised%20240512.pdf

Have your say!

Submissions and comments are due to the OEH by the **14 February 2014**. All LALCs are encouraged to make a submission outlining concerns and issues with the proposed Government model.

Submissions can be made via the following:

- **Online** at: <http://engage.haveyoursay.nsw.gov.au/achreform>
- **By email:** ach.reform@environment.nsw.gov.au
- **By mail** to: Aboriginal Culture and Heritage Reform Secretariat, NSW Office of Environment and Heritage, PO Box 1967 Hurstville BC NSW 1481
- **By phone:** Record your submission by calling the free message line 1800 881 152
- **By fax to:** 02 9585 6366

OEH Consultations November and December 2013

The OEH advises that all consultation workshops will start at 10am and conclude at 1pm.

LALCs are encouraged to attend consultations to raise any concerns and issues about the proposed Government model.

Location	Date	Venue and address
Dubbo	6 November 2013	Western Plains Culture Centre, Auditorium, 76 Wingewarra Street
Queanbeyan	8 November 2013	Queanbeyan Bicentennial Hall, 253 Crawford Street
Broken Hill	12 November 2013	Broken Hill Council Chambers, 240 Blend Street
Bourke	14 November 2013	Diggers on the Darling, Gundabooka Room, 23-25 Sturt Street
Cessnock	20 November 2013	Potters Brewery, Wine Country Drive, Nulkaba, Hunter Valley
Tamworth	22 November 2013	Community Facility, Heritage Room, Cnr Peel and Darling Streets,
Ballina	27 November 2013	Lennox Head Cultural Centre, Mackney Lane, Lennox Head
Sydney	3 December 2013	Redfern Community Centre, 29-53 Hugo Street, Redfern
Port Macquarie	5 December 2013	Panthers, Renaissance Room, 1 Bay Street
Griffith	16 December 2013	Griffith Regional Theatre, Burley Griffith Room, 1 Neville Place
Nowra	19 December 2013	Shoalhaven Entertainment Centre, Studio Theatre, Bridge Road