



**New South Wales  
Aboriginal Land Council**

## **NSWALC position on Aboriginal culture and heritage reform**

### **Principles for reform:<sup>1</sup>**

1. Recognition that Aboriginal communities are the rightful owners of Aboriginal cultural heritage in NSW.
2. The establishment of a legislative system which affects a practical balance between:
  - the recognised need to preserve and enhance Aboriginal cultural traditions;
  - the need to deliver social justice to Aboriginal people in NSW to redress the significant cultural, economic, and social dispossession which they have suffered;
  - the need for Government to ensure the economic, social and cultural advancement of other (non-Aboriginal interests) in NSW.
3. Respect for Aboriginal cultural connections, authorities for Country, and contemporary beliefs, values and practices.
4. Recognition that Aboriginal cultural heritage is part of a broader Aboriginal relationship with the land including:
  - land rights;
  - land use and sustenance: hunting, gathering and fishing practices;
  - religious, spiritual and cultural beliefs and practices; and
  - intangible cultural property: dance, drama, art, music.
5. Provision for the protection and management of culturally significant areas on private and public lands.

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<sup>1</sup> The Principles are based in those outlined in the 1996 'DRAFT NSW Government Green Paper: the Future management of Aboriginal Cultural Heritage in NSW'.

6. The establishment of management processes which:
  - recognise cultural rights and responsibilities of local Aboriginal communities, traditional owners and custodians;
  - allow for the advocacy of Aboriginal interests; and
  - are clear, transparent and accountable.
7. The identification and mapping of cultural areas/zones in NSW, as a basis for the operation of an Aboriginal Heritage Commission. Such mapping should:
  - be consistent with native title interests; and
  - recognise the diversity of Aboriginal interests across the State.
8. Every opportunity should be given to Aboriginal communities and other land users to discuss, negotiate and resolve land use proposals at community levels.
9. The establishment of:
  - centralised and co-ordinated monitoring of inter-agency policies and programs which affect Aboriginal cultural heritage; and
  - a co-ordinated and consultative approach between all levels of Government on the development of policies and programs affecting Aboriginal cultural heritage.
10. Support and encouragement for greater understanding of Aboriginal cultural heritage and management and protection policies through a range of education programs and research work.
11. Recognise the need for clearly defined accountability to Aboriginal communities as well as an effective appeal process.
12. The establishment of an effective system of prosecution, penalties and reparations.
13. Support international standards and instruments including the United Nations *Declaration on the Rights of Indigenous Peoples*, as the basis for broader reform of Aboriginal heritage management in NSW.

## **NSWALC response to proposed Government model**<sup>2</sup>

### **Aboriginal control, management and decision-making**

1. Aboriginal people must be the sole determiners of Aboriginal cultural heritage.
2. The role of Aboriginal Land Councils, including their advocacy and support roles must be recognised. LALCs should be able to provide a body corporate role auspicing and holding assets for the local committees.

### **Funding and resourcing**

3. Structures and mechanisms need to be appropriately resourced by the Government and proponents. Building on the existing structures of the Land Rights Network is supported if properly resourced and funded.

### **Boundaries**

4. Boundaries in a new system should be based on Aboriginal Land Council boundaries. Protocols and agreements will need to be developed where cultural boundaries may cross over.

### **Administrative structures**

5. Support for genuinely Aboriginal controlled organisations to operate at both the State and local levels to ensure proper leadership, oversight and decision-making.
6. An independent Aboriginal Culture and Heritage Commission should undertake key roles including decision making powers. The Commission should have reporting and compliance functions.
7. Proper administrative and governance structures are needed to support decision-making, and also need to take into account cultural values.

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<sup>2</sup> Proposed NSW Government model as outlined in 'Reforming the Aboriginal Cultural Heritage System in NSW' released in October 2013, available at: <http://www.environment.nsw.gov.au/achreform/ACHproposedmodel.htm>

## **Roles for Government**

8. Roles for Government should be kept to a minimum. Key oversight functions to lie with the Independent Aboriginal Culture and Heritage Commission with appropriate resourcing. Functions of Commission include oversight of Committees, approval of plans and approval of any project agreements.

## **Methods of protection**

9. All Aboriginal heritage is important. Classifying Aboriginal heritage as 'low' value is not supported.
10. 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.
11. Processes that further weigh the process in favor of development are not supported. Proper criteria and guidelines must be developed. 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.
12. Any timeframes must allow for meaningful consultation and must be culturally appropriate with allowances for cultural priorities such as sorry business.
13. New laws must empower and support the rights of Aboriginal peoples. Aboriginal people must have the right to refuse an activity or development.

## **Compliance, penalties and enforcement**

14. Active monitoring and compliance is needed in a new system.
15. Proper appeal processes that allow Aboriginal peoples to challenge decisions are needed including merit appeals.