

## SUMMARY

### ***Aboriginal Cultural Heritage (Culture is Identity) Bill 2022***

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On 22 June 2022 the *Aboriginal Cultural Heritage (Culture is Identity) Bill 2022 (ACH Bill)*<sup>1</sup> was introduced into NSW Parliament by Reverend the Hon. Fred Nile.<sup>2</sup>

The Bill is designed to better protect and support Aboriginal Cultural Heritage (ACH).

*This document provides a brief snapshot only and is not a substitute for legal advice &/or independent consideration of the issues. This document is current as at 22 June 2022.*

#### Key features

1. **ACH will be in the hands of Aboriginal people** - Aboriginal people will make decisions about ACH, not government.

A new **State-level Aboriginal Cultural Heritage Council (ACH Council)** will be appointed, with equal composition of native title holders, Aboriginal Land Councils and Aboriginal Owners.

**Ministerial roles / functions are limited.** The ACH Council is not subject to the direction and control of the Minister.

Key functions of ACH Council include to protect ACH, make key decisions, develop guidance materials, compliance & enforcement, & appoint Local Aboriginal Cultural Heritage Services (**Local ACH Services**).

**Local ACH Services** will be appointed by the ACH Council, following consultation with the Aboriginal community. Roles include administration, cultural knowledge inputs, engage & negotiate with proponents, & consult with local Aboriginal people.

**Local Aboriginal Land Councils (LALCs)** will have consultation rights & may be appointed as ACH Services. The ACH Council has a function to

work in partnership with Aboriginal Land Councils to promote ACH.

The proposals are inclusive of native title groups, Aboriginal Owners and land rights and consistent with Native Title laws.

#### 2. **Improved conservation mechanisms**

New protected areas can be declared, conservation agreements can be made, and there will be new protections and management arrangements relating to repatriation.

#### 3. **Improved regulatory, investigative compliance mechanisms**

Proponents will have to obtain ACH approvals prior to seeking planning approvals.

New powers to investigate where harm to ACH is suspected.

The ACH Council will have powers to issue stop work, remediation and prohibition orders.

#### 4. **New offences and penalties significantly increased for serious and material harm**

Penalties for serious harm by a corporation are nearly \$20m plus \$1.1m per day each day offence continues.

New offence relating to inappropriate use of intangible ACH for commercial purposes.

#### 5. **Improved objectives and definitions of ACH**

Aligned with the United Nations *Declaration on the Rights of Indigenous Peoples (UNDRIP)*, & better reflecting Aboriginal people's views.

**NSWALC's ACH reform principles.** New laws must:

- a. Strengthen self-determination and empower Aboriginal people;

<sup>1</sup> The ACH Bill is available at:  
<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3993>

<sup>2</sup> The Bill is co-sponsored by a number of Independents and the Animal Justice Party.

- b. Be led by Aboriginal people;
- c. Inclusive and respectful of cultural and native title rights;
- d. Build on existing structures of land rights and native title;
- e. Independent of government;
- f. Improve ACH protection, promotion & repair, including rights to say no (free, prior, informed consent) including approaches to protection, regulation, intangible ACH, knowledge, languages, cultural access & use, repatriation, water, cultural practices;
- g. Have no detrimental impacts to land rights, native title or ACH

NSWALC is further reviewing the Bill to ensure that NSWALC's longstanding reform principles are upheld.

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