Reforming the Aboriginal cultural heritage legislation in NSW

Questions & answers 1: The reform process to date

What is the Government releasing for comment?

The NSW Government has released a paper proposing new legislation and a new administrative system for protecting Aboriginal cultural heritage (ACH). The proposed model is a major step forward in recognising the value of ACH and the importance – for Aboriginal and non-Aboriginal people alike – of protecting objects, sites and other items of significance to Aboriginal culture.

It is intended to be a more efficient and effective process for ACH protection and social, environmental and economic benefits for NSW.

The NSW Government is seeking your input on its model for protecting and managing ACH in NSW.

Why was a review of ACH legislation needed?

Across NSW, Aboriginal people, heritage professionals, landowners, the resource and property development industries, farmers, local government and various kinds of community organisations have told the NSW Government there is a need to reform the ACH laws in this state.

The National Parks and Wildlife Act 1974 (NPW Act) is the oldest legislation in Australia managing Aboriginal cultural heritage. Although it has been amended multiple times, it does not deliver the outcomes expected and needed for the people of NSW. The NPW Act only protects Aboriginal cultural heritage objects and places of significance; it does not protect or acknowledge many other important aspects of Aboriginal culture, tradition or beliefs.

New legislation will address these failings in the current system and respond to the concerns and needs of Aboriginal and non-Aboriginal stakeholders. It will deliver a more efficient and effective process for heritage protection and development approvals.

To ensure alignment with the other relevant legislative reform processes and ensure seamless and consistent approaches are adopted, this reform process has considered the NSW planning system, and the reviews of both the NSW Aboriginal Land Rights Act 1983 and the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

How did people have a say in the review process?

The NSW Government released an issues paper for public consultation and provided the opportunity for all interested parties to provide comment and respond to critical issues related to the reform of Aboriginal culture and heritage legislation in NSW.

The paper sought views on the following critical issues:

- Aboriginal culture and heritage protection
- managing Aboriginal culture and heritage
- ownership of Aboriginal culture and heritage
- speaking for Country
- land-use planning and development processes
- public natural resource management process.

Aboriginal community workshops and a series of multidisciplinary round-table workshops were held throughout NSW.
What were the key issues raised during previous consultation?

There was great diversity about what the important issues were and how they may be resolved in a new model. All input received during the consultation process was considered by the independent ACH reform Working Party and by the Government when developing the proposal for reforming the ACH legislation. The Government model is based on finding common ground in all perspectives to discover a balanced solution.

For Aboriginal people, the most important issue is better protection for cultural heritage so they can keep significant cultural values safe and continue to practise the culture that is integral to their spiritual and physical wellbeing.

Some of the major concerns and issues raised by Aboriginal people included:

- the need for a new definition of Aboriginal cultural heritage that encompasses more cultural values and is broader than ‘objects’ and ‘places’
- identifying the people with cultural authority and knowledge of cultural practices to make decisions about Country
- introducing mechanisms to support strategic and proactive protection and conservation outcomes to highlight and prioritise the protection of landscapes or areas, rather than creating the small, isolated conservation outcomes that arise from responding to threats of harm at a project level
- increasing the opportunities available for Aboriginal people to have earlier input into the planning process to ensure ACH values can be considered and impacts can be avoided, minimised and appropriately managed.

For industry, consistency and transparency are critical. Industry needs agreed processes for planning and development that fairly balance interests, minimise delays and changes to decisions, and increase the level of certainty around investment in projects.

Some of the major concerns and issues raised by industry and other stakeholders included:

- a simplified consultation process that clearly identifies who proponents must consult for all ACH matters
- a regulatory process that responds to the specific needs of different developments
- a clear process for resolving differences or disputes that may arise during negotiations
- certainty of timeframes and the outcomes to be delivered through the regulatory process
- the ability to better respond to unexpected finds when developments have already commenced
- long-term benefits that serve the broader local Aboriginal community and future generations.

For local and state government agencies, it is also important to increase efficiency and reduce duplication, red tape and delays. But even more vital is a process that establishes best practice, reduces the potential for conflict and increases local opportunities for social and economic development.

What were the common issues raised?

Shared concerns from all stakeholders during public consultation included:

- the current legislation does not adequately protect Aboriginal objects and sites
- the need for Aboriginal control of decision making around Aboriginal culture and heritage regulation and the establishment of an Aboriginal Heritage Commission
- clarifying who speaks for Country
- the need for up-front regional assessments and mapping
- the need to address what is significant Aboriginal culture and heritage
- the need for respect and understanding to be built into processes.

All reports from the workshops and copies of the submissions received are available at: www.environment.nsw.gov.au/achreform/ACHconsult.

What did the Working Party recommend?

The Working Party was established to provide the NSW Government with independent recommendations to reform the current ACH legislation.
Members were appointed based on their individual skills, expertise and experiences in managing and protecting Aboriginal cultural heritage and represented both Aboriginal and non-Aboriginal stakeholders.

The Working Party developed recommendations seeking a fair and equitable balanced model for all stakeholders involved in the process. These recommendations were grouped into themes and informed the Government proposed model for new ACH legislation in NSW.


What are the key principles of the proposed Government model?

The proposed new approach to ACH protection draws on four important principles:

- **respect for Aboriginal culture** – to recognise Aboriginal people's responsibility and authority over their own cultural heritage and their right to expect protection for significant cultural values
- **legislative balance** – to recognise the different needs and interests of groups within the whole community and deliver social, economic and environmental outcomes in the best interests of all people in NSW
- **Government efficiency** – to reduce red tape, duplication and unnecessary state intervention in local issues
- **best practice principles** – to raise the benchmark of Aboriginal cultural heritage protection performance.

What are the key benefits of the proposed model?

- The creation of a **new stand-alone Act for Aboriginal cultural heritage** – replacing the Aboriginal cultural heritage components within Part 6 of the *National Parks and Wildlife Act 1974*.
- **New definitions and objectives** – to increase protection of Aboriginal cultural heritage.
- Recognition of Aboriginal people who hold the **cultural authority to make decisions** about Aboriginal cultural heritage management.
- **A stronger voice for Aboriginal people** – in consultation, planning and decision making.
- A strategic and inclusive **upfront planning process** for identifying, protecting and managing Aboriginal cultural heritage – by creating statutory maps and Plans of Management.
- Creating stronger links between Aboriginal cultural heritage processes and the planning system to deliver more **efficient and effective processes** that meet both systems’ needs.
- **Government oversight and support** at local, regional and state levels.
- **Clear offences, exemptions and defences, with enforceable penalties**.
- A **clear and streamlined regulatory process** – with flexibility to ensure the regulatory response to the nature and scale of development is fair and equitable.
- Clear processes and requirements for assessing ACH values and for **managing unexpected finds**.
- **Greater certainty about requirements for consultation and compliance**.
- **Mandatory timeframes** for each step of the process.
- **Dispute resolution and appeal processes**.

How is the Government seeking public comment?

The Government is seeking feedback on the proposed model to highlight what is expected to work well, and to provide solutions to any sections that cause concern. All stakeholders with an interest in Aboriginal cultural heritage protection and management in NSW are strongly urged to consider the proposed Government model and provide feedback to ensure their views are considered.

Information about the proposed ACH model and the ACH reform process is available to help you provide feedback (available at: www.environment.nsw.gov.au/achreform) or you can request a copy by contacting the Aboriginal Cultural Heritage Secretariat.
Questions have been posed about the proposed Government model to help stimulate discussions and help people explain their concerns. These questions are based around key themes to make it easier to consider the complex issues. They include:

- standalone legislation
- local Aboriginal people, making local decisions about managing sustainable cultural outcomes
- a new definition for Aboriginal cultural heritage to increase protection to encompass more ACH values
- links with the planning process to simplify the process, making heritage matters apparent upfront
- tools to support Aboriginal cultural heritage conservation and strategic planning processes
- a flexible regulation process to deliver tailored solutions rather than a one-size-fits-all approach.

The Government is also holding public consultation workshops to assist the public to be more informed about the proposed model.

The current phase of public consultation seeks the views and solutions of all stakeholders. There are several ways for you to have your say:

- **Online** Make a submission online at: [www.environment.nsw.gov.au/achreform/haveyoursay.htm](http://www.environment.nsw.gov.au/achreform/haveyoursay.htm)
- **Attend a workshop** Details can be found at [www.environment.nsw.gov.au/achreform](http://www.environment.nsw.gov.au/achreform)
- **By mail** Post your written submission to:
  
  Aboriginal Cultural 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** Fax your written submission to: 02 9585 6366
- **By email** Email your submission to: ach.reform@environment.nsw.gov.au

For more information on the public consultation process, see Fact sheet 2: How to have your say in the reform (download at: [www.environment.nsw.gov.au/achreform/ACHmedia.htm](http://www.environment.nsw.gov.au/achreform/ACHmedia.htm)).

The closing date for consultation is **14 February 2014**.