Reforming the Aboriginal cultural heritage legislation in NSW

The independent Working Party

The Working Party was established to provide the NSW Government with independent recommendations to reform Aboriginal Cultural Heritage (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 considered the following when developing its recommendations:

- stakeholder feedback
- the effectiveness of the current NSW legislation
- the success of other jurisdictions’ legislation and policies for protecting and conserving ACH
- the roles of Aboriginal people in making decisions and managing their cultural heritage
- how to balance protecting Aboriginal cultural heritage with the demands of NSW economic growth
- processes for identifying significant ACH items, places and landscape values
- ways to integrate negotiated outcomes within regulation for ACH
- dispute resolution and mediation processes
- linking ACH processes with environmental planning, development control and natural resource management processes
- Government responsibilities.

What did the Working Party recommend?

The Working Party developed 23 recommendations seeking a fair and equitable balanced model for all stakeholders involved in the process. These recommendations were grouped into six themes that informed the Government’s proposed model for new ACH legislation in NSW:

- standalone ACH legislation
- a new administrative structure
- processes to consider ACH early in the planning processes
- local decisions by local people – who speaks for Country
- streamlined conservation and regulation processes
- funding ACH conservation outcomes.

Which of the recommendations were supported by the Government?

The Working Party recommended numerous changes for ACH management which are supported by the NSW Government. These include:

- all ACH matters would be contained within new stand-alone legislation
- a definition of ACH would be included in the legislation that protects all ACH values (both tangible and intangible values)
- a new web-based ACH Register would be created to provide clear and early advice on all aspects of ACH in land-use decision-making
- ACH matters would be accessible via the maps, which will allow them to be considered much earlier in the planning process
- all stages of the consultation process will include clear mandatory timeframes for decision making
Government would be responsible for maintaining the ACH Register and will provide regional ACH Officers to support stakeholders to navigate through the regulatory process.

The Government would retain primary responsibility for administering the new ACH Act.

**Which of the recommendations were not supported by the Government?**

- The Government does not support creating a new ACH Commission. However, the roles and responsibilities of the existing state-wide Aboriginal Cultural Heritage Advisory Committee (ACHAC) will be increased.
- At the time of formulating its recommendations, the Working Party did not have access to recommendations arising from the review of the *Aboriginal Land Rights Act 1983* and the reform of the *NSW Environmental Planning Act 1979*. Therefore any recommendations in relation to these Acts were reviewed.
- The Government has recently created a Heritage Division to manage its heritage responsibility for NSW. Therefore, the Government does not support creating a new ACH Office.
- The Working Party recommended replacing Aboriginal Heritage Impact Permits (AHIPs) with ACH Approvals. Instead, the Government has proposed Project Agreements which further streamlines the regulation process and supports Aboriginal decision making in relation to ACH.