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
Ministers’ foreword

Aboriginal people are the custodians of a culture that goes back thousands of years, since their ancestors first settled in the land we now know as Australia. The stories and ceremonies, special places and sacred objects are embedded in the land, the landscapes, trees, hills and waterways across Australia. Their traditions have been passed down through the generations to the Aboriginal communities of today.

Over time, many elements of this ancient culture have been lost or destroyed. However, much survives despite the spread of population across the country and the rapid growth of industry, urban centres, roads, railways and other developments.

The NSW Government wants to ensure this resilient culture continues to thrive into the future for the benefit of all Australians. This means we have to work together to protect and care for Aboriginal cultural heritage (ACH) in the best ways we can.

Since 1969, in NSW, objects of Aboriginal cultural significance have been protected under the National Parks and Wildlife Act (NPW Act). At that time, NSW was only the second state to enact such protection and the legal provisions were seen as strong and progressive. Of course much has changed in the last 40 years or so in our society and economy, in the natural environment and in our understanding of the complexities of ACH.

Because of the system of protection initiated in the late 60s, many places and objects of significance to Aboriginal people have been preserved. But the system also has its weaknesses and there are too many instances where the system has failed Aboriginal people, industry and the people of NSW.

The Government is committed to implementing a new system that respects and protects ACH for future generations. At the same time it will provide a clear consistent process for economic and social development.

Through the consultation that informed our proposals, we have seen an overwhelming call for reform across the community – from Aboriginal groups and organisations, farmers and miners, land developers and local governments, rural and urban communities. While there are many views about what kind of changes need to be made to deliver better outcomes, everyone is agreed on one issue – the time has come for us to reform ACH legislation in NSW.

In 2012, we established an independent Aboriginal Culture and Heritage Reform Working Party (Working Party), with clear terms of reference and a diversity of skills and experience, to provide us with advice on the best ways to advance this priority.

During the last year, the Office of Environment and Heritage (OEH) has managed two consultation programs and provided feedback on the major issues emerging from stakeholder input.

The Working Party examined the current approach in NSW, reviewed other laws and systems in other states and territories and reviewed all of the input from consultations. In December 2012, the Working Party provided 23 recommendations on legislative reform and those recommendations have provided a solid foundation for the Government’s deliberations in the design of a new, practical and effective ACH system in NSW.

We are grateful to the Working Party for its thoughtful and thorough work and to all the people who have contributed through consultations and submissions.
The Government’s proposed model is summarised in this paper. It will form the basis for the next round of consultations and is a major step in moving us towards a sustainable future for ACH, one that provides significantly better protection and balances the competing demands and expectations in the NSW community.

Now we need to hear from the community. These are complex and sensitive issues and we want to encourage all stakeholders with an interest in ACH to continue to engage in this important process and to consider all the issues that underpin the need for reform.

People can participate through public consultations, provide written feedback or detailed submissions or propose alternative solutions to the challenges we face. Whatever your views, we want to hear from you.

We look forward to receiving your feedback over the coming months in order to progress this priority issue for the people of NSW.

Ms Robyn Parker
Minister for Heritage

Mr Victor Dominello
Minister for Aboriginal Affairs
Have your say on the proposed reform

The NSW Government invites you to review its response to the Working Party’s recommendations. This is a unique opportunity for people to voice their ideas and propose solutions for Aboriginal cultural heritage (ACH) reform. Questions have been posed on the NSW Government ‘Have Your Say’ website help you respond. The Government will consider these responses but feel free to comment on any aspect of the proposed model.

To ensure your views are considered, submit your response by the due date using any of these methods:

- send a written submission to:
  Aboriginal Culture and Heritage Reform Secretariat
  NSW Office of Environment and Heritage
  PO Box 1967
  Hurstville BC NSW 1481

- record a message using the free phone message line: 1800 881 152

- send a fax to: 02 9585 6366

- make a submission online at www.environment.nsw.gov.au/achreform/haveyoursay.htm

- email submissions to: ach.reform@environment.nsw.gov.au

- attend a regional ACH Reform workshop, see:

The closing date for responses to this discussion paper is **14 February 2014**.

A series of 11 workshops will be held around NSW in November and December 2013 to receive comments on the recommendations outlined in this paper. For details of the consultation sessions, check the OEH website at www.environment.nsw.gov.au/achreform/ACHconsult.htm

Once this phase of the consultation process is finalised, feedback on Phase 3 consultation will be provided to the Government for its consideration in drafting an exposure Bill. Further consultation opportunities will be provided to the public on the release of the draft exposure Bill.
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Executive summary

Across the NSW community – from Aboriginal people, heritage professionals, landowners, the resource and property development industries, farmers, local governments and various kinds of community organisations – the NSW Government has heard a clear and consistent call for reform to the laws that protect Aboriginal cultural heritage (ACH) in this state.

The legislation, first enacted in 1969, no longer delivers the kind of outcomes we expect either for cultural heritage protection or for social or economic development. We have come a long way in the last 40 years. We now have a more sophisticated understanding of the subtleties of ACH. At the same time, state and local governments have to manage more complex and often competing demands for conservation and development from both community and industry.

Based on consultation with stakeholders and the community and on advice from the independent Aboriginal Culture and Heritage Reform Working Party (Working Party), the NSW Government is proposing new legislation and a new administrative system for protecting ACH.

Better outcomes for the people of NSW

The NSW Government’s model for ACH protection is designed to address failings in the current system, respond to the concerns and needs of Aboriginal and non-Aboriginal stakeholders and deliver a more efficient and effective process for heritage protection and development approvals.

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.

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.

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.

The new model will deliver a more effective system that includes:

- real protection for ACH, backed by strong penalties, to address concerns about continuing loss of significant items of ACH and the challenges of prosecution for breaches
- a broader approach to identifying objects, places and other items of significance in order to reflect a more mature and contemporary understanding of ACH
- a stronger voice for Aboriginal people through Aboriginal community responsibility, at local levels, for consultation, planning and decision making on matters of cultural heritage
- better integration between ACH processes and local, regional and state planning processes to ensure appropriate Aboriginal community input into development decisions and to reduce duplication, unnecessary delays and red tape
• consistency of process at local, regional and state levels with greater regulatory flexibility to ensure that local plans can be adapted to local conditions and purposes
• providing Government oversight and support at local, regional and state levels which will be informed by advice and expertise from a statewide Aboriginal advisory committee. This will ensure when the new legislation is implemented, it will deliver the required level of protection and the expected social, environmental, cultural and economic benefits for NSW.

**Key features of the new model**

The 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 to 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 in heritage protection, to establish benchmarks for performance and deliver a diverse range of benefits.

The proposed legislative and administrative model is based on four key elements.

**Stand-alone ACH legislation**

For both pragmatic and symbolic reasons, a new Aboriginal Cultural Heritage Act will replace all the current provisions for protection included in the NPW Act. The objectives of the new Act will reflect the intent to celebrate, promote, protect and better manage Aboriginal cultural values in NSW.

The Act will include new more contemporary definitions for ACH that cover more than Aboriginal objects or places and include both tangible and intangible cultural values.

It will maintain existing provisions for care and ownership of ACH and access to Country.

It will retain the current regime of offences, defences, exemptions and penalties for harm to ACH. It will include provisions for dispute resolution and appeals processes and specify timeframes that enable fair and transparent decisions.

**Aboriginal cultural authority and expertise**

The Act will ensure Aboriginal people have both authority and responsibility in cultural heritage protection.

*At the local level,* it will provide for Local ACH Committees across all NSW regions, established as a ‘one-stop-shop’ for all consultation and decision making associated with local ACH matters, including determining the significance of cultural heritage values.

Local ACH Committees will also be responsible for mapping local cultural heritage within agreed boundaries, developing Plans of Management and making these publicly available through the ACH Register. These ACH Maps and Plans of Management will help identify
priorities for conservation, access or cultural practice and provide important data to inform land-use planning or assist with planning or development decisions at local level.

Local ACH committees will include Aboriginal people with local cultural knowledge and recognised authority to ‘speak for Country’.

**At State level**, the Aboriginal Cultural Heritage Advisory Committee (ACHAC) will continue to advise Government and take on a new strategic role, developing benchmarks, minimum standards, policies and guidelines for the new ACH Act. ACHAC members will be Aboriginal people with relevant skills, knowledge of planning and legislation and experience in ACH issues.

### Integration with planning processes

Local ACH Committees, ACH Maps and Plans of Management will outline the circumstances and requirements for engagement between local Aboriginal communities, local government and development proponents.

These elements will ensure that the strategic planning processes are able to integrate ACH information with other environmental information when conservation areas are being identified and assessed. They will also make it easier for industry and government to engage with Aboriginal people much earlier in all planning processes and to avoid the delays which are currently associated with the timing of requirements for consultation and the assessment of cultural heritage values.

The new Act will also introduce more flexible regulatory processes to ensure that assessment, action and ongoing management can be designed to fit the scale of a project, a ‘fit-for-purpose’ rather than a ‘one-size-fits-all’ approach. The new Act will replace Aboriginal Heritage Impact Permits (AHIPs) with flexible Project Agreements, negotiated at the local level.

The new regulatory approach will also enable streamlined assessment and consultation processes. Projects where impacts are assessed as ‘low or no impact’ or occurring in an area mapped as having ‘low or no cultural heritage value’ will be able to proceed, subject to other planning approvals. Any activities in areas of ‘high value’ or ‘incomplete’ ACH information will require consultation with the Local ACH Committee.

The new administrative arrangements will also provide for greater certainty, establishing mandatory timeframes linked with each assessment stage in the regulatory process.

### Government support and oversight

The new ACH Act will be administered through the portfolio of the Minister for Heritage.

To implement the provisions of the new Act, the NSW Government will establish a dedicated Heritage Division. It will be responsible for reviewing local ACH Maps and Plans of Management against standards before referring them to the Minister for approval. The Heritage Division will also deploy a number of ACH Officers across the State to assist Local ACH Committees and proponents.

The Heritage Division will also be responsible for monitoring compliance with the new ACH Act and for enforcement of its provisions.
A major step forward

The proposed reforms represent 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 cultural significance.

The proposed changes in law and administrative structures will deliver significantly better protection for ACH, more consistent and efficient planning and approvals processes for industry and local government and greater certainty about expectations for consultation and compliance.
Chapter 1 Reasons for reform

What the reform process will achieve

These historic reforms will fundamentally change the way that Aboriginal people, state and local governments and industry work together in NSW to protect and manage Aboriginal cultural heritage (ACH).

Reform will deliver stand-alone ACH legislation that respects ACH and protects significant cultural values.

It will create a clear process for identifying ‘who speaks for Country’ and a new process for prioritising and conserving ACH matters locally while also supporting the social and economic growth of NSW.

The key features of the proposed model are summarised below. A more detailed explanation of the model and the functions of each feature are provided in Chapter 2: The proposed model in practice.

Stand-alone ACH legislation

The Government model will remove all ACH provisions from the National Parks and Wildlife Act (NPW Act). A new Aboriginal Cultural Heritage Act (ACH Act) will be created that is specifically developed for protecting, conserving and managing ACH in NSW.

New definition and objectives

Within the new legislation, new objectives will reflect the intent to celebrate, promote, protect and better manage ACH values in NSW. The new ACH Act will also include a contemporary definition of ACH that will include more than Aboriginal ‘objects’ and ‘places’. The definition will include both tangible and intangible ACH values.

Aboriginal Cultural Heritage Advisory Committee

The Aboriginal Cultural Heritage Advisory Committee (ACHAC) will build on the existing statewide advisory role of the current NSW ACHAC. ACHAC’s enhanced role will include input at strategic levels, including developing minimum standards, policies and guidelines for the proposed ACH Act. The proposed ACH legislation will require ACHAC to be comprised of Aboriginal people with the relevant skills, knowledge of planning and legislation and experience in ACH matters.

Local people, local decisions

Local ACH Committees will be established across NSW and will be ‘one-stop-shops’ for all consultation and decision making associated with ACH matters in NSW. The Local ACH Committees will be comprised of Aboriginal people who hold cultural knowledge for their local area, as identified by legislation. Local ACH Committee members will be appointed by the Minister for Heritage.

Tools to support ACH conservation and strategic planning processes

The process for managing ACH will be clear via new statutory instruments and tools such as ACH Maps, Plans of Management and the ACH Register along with clear consultation processes and local ACH management structures.
Each Local ACH Committee will be responsible for developing local ACH Maps and Plans of Management. The ACH Maps will be placed on public exhibition before the Minister reviews the Maps and authorises approved Maps to be entered in the ACH Register. The Maps will be made available on a publicly accessible ACH Register, with appropriate restrictions in place to ensure culturally sensitive information and places are protected. Plans of Management will provide details about ACH value types, management actions and conditions.

The ACH Register can be accessed by anyone at any time to inform strategic land use at a regional level or to assist with planning decisions at the local level. The ACH Register will have the capacity to tailor ACH information to fit any boundary.

**ACH conservation**

This model provides multiple opportunities for increasing conservation outcomes for ACH values. Local Aboriginal people will determine the significance of Aboriginal values as part of a systematic mapping and planning process of all ACH values across NSW. This process will enhance conservation outcomes for ACH by focusing time, energy and resources on matters that are priorities at the local level.

Local prioritisation and strategic planning for activities that are required for conservation, access and cultural practice will be outlined in each Plan of Management (PoM), as will local aspirations and priorities related to managing Country and the care and ownership of ACH. The existing legislative provisions for care and ownership of ACH and access to and management of Country will be maintained in the new model.

**Links to planning processes**

ACH will be considered early in all planning processes providing upfront easy access for all to ACH Maps and relevant ACH information to inform land use planning and decisions. By providing access to relevant ACH information, it will be possible to consider the management of ACH values much earlier in the planning process, thus increasing the opportunities to plan to avoid impacts with the result being better conservation and protection outcomes than is currently possible. The information will be provided in a way that enables the strategic planning processes to combine ACH information with other important environmental information when considering areas suitable for conservation, development or major infrastructure.

**Flexible regulatory processes**

*Fit-for-purpose* The regulatory process for assessment, action and ongoing management has been designed to consider the size and scale of individual projects – to ensure a ‘fit-for-purpose’ approach is possible, rather than a ‘one-size-fits-all’ approach. Access to mapping and ACH information within Plans of Management and the ACH Register will simplify the regulatory process. Access to this information can occur at any stage of the planning process. To ensure mutually agreeable fit-for-purpose outcomes, the new ACH Act will replace AHIPs with flexible Project Agreements that are negotiated and agreed on by the Local ACH Committee and the project proponent.

*Streamlined consultation and assessment* The new fit-for-purpose process will also make it clear which activities require consultation and assessment and which are able to proceed with caution. For example, activities that are categorised as low-impact, trivial or negligible, or are within an area mapped as being of low or no ACH value may proceed. Activities within areas of high value or within areas of incomplete ACH information will require consultation with the Local ACH Committee and ACH assessments to be undertaken. Previous
assessments that meet standards and requirements would be acknowledged; new assessments would only be needed when there are gaps in the assessment information. Project Agreements would be negotiated to ensure that project needs and local ACH values and priorities are considered and appropriate assessment methods are determined.

**Upfront planning for unexpected finds** Every Plan of Management will be required to outline the process for managing unexpected ACH finds after a project has commenced and is underway. This approach will further streamline the process and provide greater clarity and certainty for the proponent in relation to project planning and for the Local ACH Committee in relation to protecting ACH values.

**Certainty of timeframes** Mandatory timeframes linked with each assessment stage will enable better planning by both Local ACH Committees and proponents, provide greater certainty about timeframes and therefore to project costs.

**Appropriate Government assistance and oversight**

The Heritage Division within the NSW Government will be responsible for reviewing ACH Maps and Plans of Management against minimum standards before referring these to the Minister for Heritage for approval.

The Heritage Division will also employ ACH Officers to be located across regions in NSW. These regional officers will support and assist the Local ACH Committees and proponents and help them navigate the legislative processes.

The Heritage Division will also be responsible for ensuring compliance and enforcing, the ACH Act.

**Compliance enforcement**

**Offences and penalties in the new ACH legislation**

**Penalties** Maintain the current penalties regime and alternative sentencing provisions as per the NPW Act, including publication orders, monetary orders and conservation orders but add provisions to reflect enforcing any conditions contained within Project Agreements.

**Defences** Maintain the current defences regime, including due diligence, with minor amendments to reflect new processes and statutory instruments and tools (as per the NPW Act).

**Exemptions** Maintain the current exemptions to the offences of harming Aboriginal objects and Aboriginal Places in certain circumstances (as per the NPW Act).

**Powers** The ACH Act will include powers that reflect those outlined in Chapter 7 of the *Protection of the Environment Operations Act 1997* (POEO Act). These include powers to enter premises, seize evidence, issue stop-work and rehabilitation orders, and issue directions.

A full list of penalties, defences and exemptions is provided in Appendix B.

**Appeals and dispute-resolution support**

The new legislation will provide independent dispute resolution support and appeal processes. These processes will include timeframes to enable fair, transparent and timely decisions. Appeals based on judicial review of process will be available through the Land and Environment Court (L&EC).
Why does this reform matter?
Throughout consultation, three key stakeholder groups told the NSW Government why this reform was needed and what they hoped it would achieve:

- Aboriginal communities and organisations
- industry and heritage professionals
- Government agencies.

**Aboriginal communities and organisations** stated the reform must provide for:

- greater opportunities for Aboriginal peoples’ views to be heard regarding the protection of cultural values, much earlier in the planning process
- earlier involvement of Aboriginal people so they can genuinely engage in decision making and options to avoid impacts
- proactive protection and conservation requirements in the ACH management system and planning process
- a definition of Aboriginal heritage that encompasses cultural heritage values rather than just objects
- people with cultural authority and knowledge of cultural practices to make decisions about Country
- comprehensive mapping of cultural heritage values in order to highlight and prioritise protection actions, and
- strategic and proactive ACH conservation planning instead of reactive protection on a project-by-project basis or in response to threats of harm.

**Industry and heritage professionals** stated that, to ensure they can appropriately manage and balance the competing demands of contributing to the economic growth of NSW and working with Aboriginal communities to protect and manage ACH, the reform must deliver:

- a simplified consultation process that clearly identifies with whom they 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 about the outcomes that have to be delivered
- certainty about timeframes
- the ability to plan for managing unexpected finds, and
- long-term benefits that serve the broader local Aboriginal community and future generations.

**Government agencies** stated the reform must:

- effectively integrate with other reform processes that are underway
- deliver protection for significant ACH while continuing to support the growth of NSW
- reflect contemporary views of ACH values
- develop and support positive relationships between Government, industry and local Aboriginal communities, and
- provide genuine opportunities for local communities to make local decisions, and be supported by an appropriate level of Government oversight.
The benefits of reform

The NSW Government is responsible for ensuring the reform process delivers greater cultural, social, economic and environmental outcomes for all of NSW. The Government has heard the perspectives of key stakeholders and proposed a model which achieves the key outcomes all stakeholders agreed they would like to see in a new stand-alone ACH Act. The benefits of this reform extend to all stakeholders.

Respect for Aboriginal people and their cultural heritage will be demonstrated by:

- creating stand-alone ACH legislation
- allocating appropriate Government resources to ACH management
- increasing Aboriginal input and decision making at all levels of the process
- requiring contemporary approaches and best practices for managing ACH, and
- raising awareness of, and promoting, the ACH values of NSW.

Protecting and conserving ACH will be increased by:

- including a new definition that includes both tangible and intangible ACH values
- offering new and improved opportunities for planning authorities to identify upfront what is culturally important at local, regional and state levels
- giving Aboriginal people with cultural authority the responsibility to prioritise what is important for maintaining cultural connections
- providing a blanket protection to ACH values identified by the new definition of the ACH Act
- providing formal protection to priority ACH areas
- allowing early and upfront public access to ACH Maps and Plans of Management in order for developments to identify existing ACH values and plan to avoid impacting on those values at the outset of a project
- providing new opportunities to negotiate natural resource management projects that have ACH values
- establishing Local ACH Committees to be custodians and/or owners of local ACH values on behalf of the people they represent
- providing new and improved opportunities to negotiate access to land to use it for cultural practices, and
- creating audits to monitor cumulative impacts to ACH values at local, regional and state levels.

Clarity about the requirements of process and compliance will be guaranteed by:

- creating a single entry point for ‘who to consult’ for all ACH matters within a given boundary
- allowing access upfront to maps and information through local ACH Maps, Plans of Management and the ACH Register for any given area in NSW
- making regional staff available to help people navigate the process, and
- providing new regulations, minimum standards, policies and guidelines that clearly demonstrate what is required through every step of the process.

Certainty will be provided for all stakeholders by including:

- governance requirements, roles and responsibilities of the Local ACH Committees that will be clearly outlined within the Act’s provisions
- mandatory timeframes for consultation and assessment that will ensure project negotiations are manageable and reasonable
- dispute resolution processes, for the local community and the proponent, and
- appeal processes, for the local community and the proponent.
Effective outcomes will be delivered through:

- a flexible process for implementing projects that is negotiated and agreed on at the local level to suit the specific needs
- improved early access to, and use of, existing ACH assessment information that meets statutory requirements, reducing the need to undertake additional, costly and time-consuming assessments
- the ability to efficiently negotiate Project Agreements through improved access to information which outlines predetermined local ACH priorities through the Plan of Management for the local area
- improved processes for managing unexpected finds in projects where development works have commenced, and
- maintaining the provisions within the current legislation that work well, with some amendments to reflect new standards and objectives.

Wellbeing of Aboriginal communities is improved by recognising that ACH encompasses the social, emotional and cultural wellbeing of the whole Aboriginal community and:

- establishing meaningful roles, responsibilities and opportunities that build on and support Aboriginal peoples’ knowledge and cultural connections
- providing multiple opportunities and mechanisms for Aboriginal people to build on and maintain their cultural connections with Country, and
- respecting, promoting and celebrating the rich and diverse ACH of NSW.
Stand-alone ACH legislation

The NSW Government recognises that new stand-alone ACH legislation is required to successfully achieve the objectives of the reform. Creating a new legislative base for Aboriginal cultural heritage (ACH) will provide numerous benefits to NSW and will appropriately recognise this heritage.

Who will be responsible for the new ACH Act?

The Minister for Heritage will be responsible for managing the proposed new ACH Act.

A number of administrative options were considered with the NSW Government proposing a structure where resources are appropriately allocated to ACH strategic planning which also support ACH conservation and management at the local level (Figure 1). The Government recently finished reviewing the management of heritage within OEH and its links with other partners and agencies, such as the Heritage Council (HC), ACHAC, the Historic Houses Trust (HHT) and the National Trust (NT). This review concluded there was a need to create a new division within OEH dedicated to all heritage matters (Aboriginal and non-Aboriginal). The Minister for Heritage will delegate the responsibility for managing the proposed new ACH Act to the Heritage Division to administer.

Figure 1: The administrative structure proposed to support the new ACH Act
**Heritage Division**

The Heritage Division will be responsible for managing the proposed ACH legislation. The division’s primary functions will include reviewing all ACH Maps and Plans of Management (PoMs) as well as administering and maintaining the ACH Register. It will also assist the ACHAC by providing secretariat services and assist in developing minimum standards, guidelines and policies.

The Heritage Division, via its Regional ACH Officers, will provide support to the proponents and Local ACH Committees in developing Project Agreements. It will undertake responsibility for enforcement of and compliance with the proposed ACH legislation.

The Heritage Division will also be responsible for providing advice to the Government and Minister. This includes publishing a State of ACH Report every three years.

**Aboriginal Cultural Heritage Advisory Committee**

The Government acknowledges the need for a central advisory body of Aboriginal people, whose role will be a state-level advocate for ACH matters.

The advisory roles of the NSW ACHAC already established under the NPW Act will, in the proposed ACH legislation, be extended to include new strategic roles. The legislation will ensure ACHAC members comprise Aboriginal people with relevant skills, knowledge of planning and legislation and experience in ACH matters. The Heritage Division will work with ACHAC to develop minimum standards, policies and guidelines for the proposed ACH Act.

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**Stand-alone legislation – summary**

The proposed new ACH Act:

- raises the profile of ACH
- sends a clear message of respect for Aboriginal people by removing ACH from the ‘flora and fauna’ legislation (the NPW Act).
- focuses on conserving ACH
- is able to better align to the planning reform
- includes a body of Aboriginal people to provide strategic advice for NSW
- includes an appropriate level of Government oversight, and
- recognises that Local ACH Committees need to make local decisions.

**New definition and objectives**

The new ACH Act will start with a set of objectives that promote awareness of, and respect for, ACH and compliance with the proposed new ACH law (Box 1).
Box 1: Objectives of the new ACH Act

The legislation seeks to protect the ACH values identified as important to Aboriginal people of NSW:

- Aboriginal spiritual and cultural heritage values exist in the land, waters and natural resources of NSW
- Aboriginal people are critical determinants of ACH values
- the wellbeing of Aboriginal people is intimately tied to the wellbeing of their Country
- the social fabric of NSW and Australia is enriched by providing opportunities to share, understand and celebrate ACH values.

Feedback from previous public consultation sessions called for stand-alone legislation that includes a broader definition of ACH, one which recognises the cultural values within a landscape, the cultural beliefs and connections to an area, the cultural resources, physical evidence of occupation, and places and features of cultural significance.

The clear definition of ACH within the new Act is essential for establishing what aspects of this heritage can be protected (Box 2). The definition will be extended beyond ‘objects’ and ‘places’ to include and protect ACH values required to continue practising Aboriginal culture. The definition requires intangible ACH values to be linked to an area of land if it is to be afforded legislative protection (Figure 2). This is the only practical way that intangible cultural values can be protected. For example, a song line needs to be described by landscape features, and if those features are protected, the song line is protected. This is similar to the Aboriginal Place declaration process that currently exists in the NPW Act.

Aboriginal languages are critically significant to intangible ACH values and they can be used to describe ACH values associated with landscapes. However, protecting and regulating languages (along with the intellectual property rights associated with ACH) would be impractical so they will not form part of this new legislation. The use of languages and associated intellectual property rights relating to ACH are currently afforded protection under Commonwealth laws and not within the purview of the state. Nevertheless, the NSW Government will continue to support the continuing practice of Aboriginal languages through Government programs and initiatives.

Box 2: Definition

Aboriginal cultural heritage means the practices, representations, expressions, knowledge and skills – as well as associated objects and artefacts – that Aboriginal people recognise as part of their cultural heritage, insofar as these values are reflected in the landscape.

After this public consultation process has been completed and the review of the input is received, the definition of ACH will be refined for the draft Bill. Before the Act commences, Local ACH Committees will be required to map the ACH values in their area. Each ACH Map will be supported with a Plan of Management. Each Local ACH Committee will be required to include, in their Plan of Management, a description of how the intangible value links with the associated land.
Local people, local decisions

Establishing Local ACH Committees

The model will align with and complement both section 82(2)(b) and (c) and section 170 in the NSW Aboriginal Land Rights Act 1983 (ALR Act). For the purpose of developing cultural heritage strategies in Community Land and Business Plans, the Local Aboriginal Land Councils (LALCs) are currently responsible for identifying and consulting with Aboriginal people with a cultural connection to Country under section 82 of the ALR Act.

In recognition that changes to the ALR Act are underway and that there are many other Aboriginal people who do not belong to a LALC but who do have a cultural connection to Country, the proposed Local ACH Committees will expand upon section 82(2)(b) and (c) and section 170 of the ALR Act and include non-LALC members and representatives of people with cultural connection to their Country.

Local ACH Committee composition

It would be inefficient, costly and time-consuming to require proponents to consult with all the people identified with a cultural connection for every proposed land-use activity. To address this, the Local ACH Committees, when established, will comprise up to 10 nominated identified people with connection to Country, who have knowledge and understanding of the cultural heritage practices and priorities for their Country (Figure 3). Positions on the Local ACH Committee will be held for five years. The Local ACH Committee will have a balance of males and females, and different local groups with cultural association will be represented to ensure the broader interests of the local Aboriginal community are represented.
How committee members will be appointed

Potential Local ACH Committee members must demonstrate that they meet the membership criteria and are nominated as a representative of a group with cultural connections to the area. The Heritage Division and ACHAC will manage a nomination process for approval by the Minister for Heritage.

Local ACH Committee member criteria

Local ACH Committee membership must be drawn from:

- Aboriginal Owners as per section 170 of the Aboriginal Land Rights Act 1983 (ALR Act)
- Native title holders as per the Native Title Act 1984
- representatives of registered Native title claimants
- representatives of Indigenous land-use agreements, and
- representatives of Elders and family groups with cultural authority.

Local ACH Committee members must have the ability to represent local ACH interests and demonstrate an understanding of heritage management, planning and environmental processes. If the Local ACH Committee was supported by an organisation where a local board exists (e.g. a LALC or a Local Land Service Aboriginal Reference Group) a member of that board or group will be required to be part of the Local ACH Committee to ensure consistency and transparency in decision making.
It will be necessary for the Local ACH Committee members to have existing knowledge of cultural values for their area in order to execute their duties effectively. This knowledge could include:

- traditional stories and songs associated with areas
- sites or areas with established links to traditional stories and songs
- areas with established traditional, historical and contemporary cultural connections
- areas with natural resources of medicinal or other cultural value
- areas of known ceremonial practices
- areas with long chronological or intense occupational periods
- sites or areas with rare cultural heritage values
- areas with values for the continued practice of culture, and
- burials/burial grounds.

**Local ACH Committee roles and responsibilities**

The Local ACH Committee will be responsible for all decision-making processes for ACH for the local area. They are solely responsible for identifying the ACH values of the area, mapping these, describing these in the Plan of Management, liaising with other relevant cultural knowledge holders for the area, and identifying local priorities for conservation, management and innovations to ensure sustainable cultural connections are maintained.

The Local ACH Committee will be responsible for providing updates to all other Aboriginal people within the relevant boundary whom they represent and who have a cultural association to that Country.

A key role of the Local ACH Committee will be creating and maintaining the ACH Maps and Plans of Management to enable ACH matters to be considered, managed and integrated into strategic planning. The Local ACH Committee will be responsible for developing and coordinating ACH protection, priority projects and negotiating with proponents to decide how ACH values are to be managed for individual projects. All project decisions and negotiations must be consistent with the approved Plan of Management.

**Local decision making**

Aboriginal people must have an increased role in deciding how ACH is to be managed both now and in the future. The Government model proposes that each Local ACH Committee will make decisions at the following crucial points:

- identifying the significance of the ACH values in their local area using set criteria to help guide decisions and provide consistency
- liaising with the local people they represent before deciding what is to be included in the ACH Maps
- liaising with the local people they represent before deciding on the information required in their Plans of Management
- deciding which areas to nominate for formal protection (Aboriginal Places or heritage listing)
- deciding what conditions should be negotiated for each individual Project Agreement
- deciding what cultural values are required to continue practising culture locally
- deciding and negotiating how impacts will be managed for each individual Project Agreement
- deciding on local priorities to list in the Plan of Management for conservation, protection and maintenance activities, and
- deciding on which programs will best meet the local priorities listed in the Plan of Management.

**Local ACH values**

Consideration was given to whether the new legislation should define significance or use significance criteria to decide the best management approach. The Government determined that establishing significance criteria would remove local communities’ authority to define their own heritage and values. The Government recommends control over identifying, defining and assessing the values of heritage objects, places and landscapes should become the role of the Local ACH Committee within a framework that allows consistency with Government support and oversight. This approach aligns with the objectives of the proposed ACH Act and Justice Evatt’s recommendations for the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cwlth).

The level of significance allocated to different areas or sites will be reflected in the Plan of Management and map. Within the Plan of Management, different methodologies will be proposed for managing different ACH values, to ensure there is a local tailored approach to managing the values, rather than one-size-fits-all. An additional advantage of this approach is that a proponent is able to refer to the Plan of Management at the outset of their project and reliably gauge the level of ACH work required in a project area.

There are three categories of ACH value that are to be mapped for the ACH management process. These are:
- areas that contain ‘no or low ACH value’
- areas that contain ‘high ACH value’, and
- areas that contain incomplete information about the ACH values (‘incomplete ACH values’).

**Local ACH boundaries**

Consideration was given to developing or using existing statutory boundaries for the Local ACH Committees. The Government prefers to utilise and build on existing structures and operational boundaries. As part of this consultation process, the Government is seeking stakeholder views about the proposed boundaries.

**Option 1** Utilise the Local Aboriginal Land Council boundaries and extend their statutory responsibilities to include roles to actively manage ACH matters within their areas. Each LALC would be required to form a Local ACH Committee that includes people with cultural knowledge and connection who may not be members of the LALC.

**Option 2** Utilise the nine Regional Aboriginal Land Councillor boundaries (as per the ALR Act) to establish Regional ACH Committees.

**Option 3** Utilise local Government and shire boundaries to establish Local ACH Committees.

**Option 4** Utilise the 11 regional boundaries of the Local Land Services to establish Local ACH Committees.
If the consultation process identified none of the four options was viable, the Government would consider creating new ACH operational boundaries.

**Local management of ACH values – summary**

- Builds on and acknowledges other legislation identifying connection to Country.
- Identifies local people with connections to Country and cultural authority.
- Provides certainty about who to consult with and who makes decisions.
- Comprises up to 10 men and women who are nominated by local people to represent their interests in ACH.
- Members of the Local ACH Committee are to have demonstrated knowledge of heritage and planning process and hold cultural knowledge for the local area.
- Local ACH Committees develop ACH Maps and Plans of Management which link to strategic planning and local planning processes.
- Local decisions will be focused on identifying conservation priorities, negotiating project agreements, managing access to land, and identifying offsets and natural resource management (NRM) projects in order to sustain cultural connections and practices.
- Boundaries for the local areas are yet to be determined.

**Tools to support ACH conservation and strategic planning**

To support strategic planning for ACH conservation and to consider ACH in strategic planning processes, the new legislation will introduce the following statutory ACH instruments and tools:

- local ACH Maps
- local Plans of Management
- an ACH Register
- State of ACH Report (NSW)
- Project Agreements.

**The role of the ACH Maps and Plans of Management**

The ACH Maps will visually show areas of high ACH value, areas of low or no ACH value, and areas where knowledge of the ACH value is incomplete. Each Local ACH Committee will map, according to criteria set within the regulations, where known and incomplete ACH values are located within the map’s boundary.

For every ACH Map created, a Plan of Management will be developed according to the criteria set in the regulations. The purpose of the Plan of Management is to outline the specific strategies for managing each type of ACH value identified in the map. The Plans of Management may:

- document how and why an object, area or place is significant, and how the significance needs to be conserved
- describe what cultural activities can be undertaken in association with mapped objects, values and places
• describe the level of access to land that is required to maintain and manage cultural heritage objects, values, places and practices
• develop and record cultural heritage conservation and management strategies
• identify areas that require future assessment and mapping in order to identify, record and determine the significance of ACH objects, values or places
• detail recommended methodologies to be applied for mapped objects, values, places or site types
• detail the level of consultation required
• detail procedures for management of unexpected finds, and
• identify areas that do not require further assessment or mapping or have limited cultural heritage values.

The Plan of Management will be developed to describe the ACH values and priorities of the Local ACH Committee along with the agreed strategies by which conservation activities and priorities can be achieved. It is an essential ACH conservation planning tool which can guide local and strategic land-use decisions by planning authorities. Minimum standards will be created that align with the planning reform to ensure the Plan of Management could be used as a code-based assessment if needed for certain types of projects. Table 1 shows the steps for creating both the ACH Maps and Plans of Management.

**Table 1: Process for developing, approving, reviewing and updating ACH Maps and Plans of Management**

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
<th>Step 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local ACH Committee consults with the local Aboriginal community and assesses the ACH values within its boundary.</td>
<td>Local ACH Committee determines the significance of the ACH values and develops maps and Plans of Management (guided by minimum standards).</td>
<td>Heritage Division reviews maps and Plans of Management to ensure they comply with minimum standards.</td>
<td>Maps and Plans of Management are placed on public exhibition for broad public review and input.</td>
<td>Minister considers public input (against factors to consider outlined in the legislation), approves maps and Plans of Management, and lists these on the ACH Register.</td>
</tr>
</tbody>
</table>

**Review and update process**

*Periodic reviews and updates of ACH Maps and Plans of Management will occur as required by regulation. The legislation will also require statutory reviews of all ACH Maps and Plans of Management every five years.*
**Project Agreements**

The current AHIPs will be replaced by new Project Agreements that are negotiated between the proponents and the Local ACH Committee. Project Agreements will be required for certain activities in areas that are mapped as having incomplete or high ACH values. Proponents and the Local ACH Committee will work through the regulatory process together to develop a Project Agreement.

With the strategic planning and approvals occurring earlier via the ACH Maps and Plans of Management, Project Agreements will not require additional planning approval. They will be required to meet the minimum standards set in the regulation and conditions within the Project Agreements will need to be consistent with the ministerially approved Plan of Management.

See pages 31–36 for further information on the proposed regulatory process.

**The ACH Register**

The ACH Register is a database which will hold all known and relevant ACH information in NSW and will be able to produce ACH reports and maps at any scale in NSW.

The ACH Register will ensure accurate and timely ACH information is provided that will assist Aboriginal people and the Government to make informed decisions about ACH management across the state. It will also help the Government and the general public with land-use planning decisions. It will be a legal requirement to update the ACH Register with the status of the ACH values within project areas at intervals set in the regulation (Figure 4). The Heritage Division will audit the information on the ACH Register to monitor cumulative impacts to inform local decision-making and planning authorities.

The ACH Register will need to be linked with the e-planning system proposed under the planning reform process to ensure that Regional Growth Plans, Subregional Delivery Plans, Local Plans and all other relevant statutory planning instruments consider ACH values early.

**Management of the ACH Register**

The Heritage Division will also be responsible for managing and maintaining the proposed ACH Register. Among the many relevant ACH resources, the ACH Register will include all relevant ACH information for NSW including:

- conservation agreements
- assessment reports
- Project Agreements
- site data
- ACH Maps for the local areas
- Plans of Management for the local areas
- copies of relevant historical documents.

The quality of the information entered into the ACH Register will be controlled by minimum standards set within regulations. The ACH Register will also be able to restrict public access to culturally sensitive information.

The Heritage Division will audit the ACH Register at regular intervals and provide strategic and localised ACH information for relevant parties, including each Local ACH Committee for managing local ACH priorities. The Heritage Division and ACHAC will use the results of the audit to support, monitor and review conservation priorities, policies and practices across NSW.
State of Aboriginal Cultural Heritage Report (NSW)

The new legislation will require the Heritage Division to develop a State of Aboriginal Cultural Heritage Report (ACH Report). This will report on the state of ACH in NSW every three years and contain information drawn from the Plans of Management, Project Agreements and data from the ACH Register. It will examine ACH trends and potential implications for the ongoing practice and protection of Aboriginal culture and heritage and make general recommendations for future policy, program and legislative action required to ensure appropriate ACH protection and management. It will also report on:

- the status and condition of ACH resources in NSW
- information about ACH programs
- the activities of the public and private sectors
- trends in economic analysis
- the costs and benefits (including economic evaluation) of ACH protection and management
- local and regional information that aligns with regional planning processes.

Tools that support ACH conservation and integration into strategic planning processes – summary

- Local ACH Committees document how and why an area is significant via maps and Plans of Management.
- Local ACH Committees document how the ACH values are to be conserved via maps and Plans of Management.
- The ACH Register will be the central point to access all ACH material in NSW.
- The NSW State of ACH Report will help monitor effective and relevant processes for conservation and protection in NSW.
- The flexibility of the legal instrument, a Project Agreement, can be used in multiple ways to support improved ACH outcomes that meet local ACH priorities.

ACH conservation

One of the aims of the proposed ACH Act is to implement a system that not only ‘protects’ ACH values, but also enables and supports Aboriginal people to continue practising Aboriginal culture.

Protecting values and places

The Government will maintain and improve existing statutory conservation mechanisms such as declared Aboriginal Places, State Heritage Register listings, environmental conservation zones (e.g. E2) and voluntary conservation agreements. The ACH Maps and Plans of Management contained within the ACH Register will reflect the ACH values that require protection. They outline which conservation mechanism would be appropriate for achieving the desired conservation outcomes.
Figure 4: ACH data layers held in the ACH Register to create the ACH value map for NSW

The ACH data entered into the ACH Register will provide a solid basis for identifying where high, low or incomplete ACH values occur across NSW (top image).

The ACH Map would be accessible to the public via the ACH Register. However, access to culturally sensitive data layers used to contribute to the ACH Map would require consultation with the relevant local ACH Committee.

A sample of the cultural and scientific data included in the ACH Register would be:
- mapped intangible ACH values
- natural resources for ACH practices
- AHIMS site data
- historical data for specific areas
- areas subject to previous assessments

A sample of the conservation data included on the ACH Register would be:
- existing and proposed Aboriginal Places
- areas listed on the State Heritage Register
- Indigenous protected areas
- voluntary conservation areas
- areas with natural resource management projects and initiatives

A sample of the land use data included on the ACH Register would be:
- predictive modelling of the likelihood of ACH values remaining in the landscape
- cumulative impacts
- existing development

All relevant ACH data will be synthesised to identify the areas of high, low and incomplete ACH value, which will result in a final thematic ACH value map for all to access.
Local management decisions
Local ACH Committees and proponents, when considering and negotiating Project Agreements will – where relevant and according to Plans of Management – include conditions that relate to:

- conserving ACH values associated with project areas
- access by Aboriginal people to maintain, enhance or rehabilitate the ACH values of those areas
- conducting natural resource management (NRM) initiatives
- mitigation methodologies and efforts
- care or ownership of ACH values, and
- conducting cultural activities.

Access to information
Local ACH Committees will have access to ACH information to assist local decision making. Regular audits of the ACH Register will also provide information about cumulative impacts. This information will support development of Plans of Management.

Identifying local ACH priorities
In addition to negotiating conservation outcomes on a project-by-project basis, the statutory tools proposed will help Local ACH Committees provide a solid evidence base when negotiating with proponents, when seeking external funding and/or when establishing partnerships to conserve ACH.

The Local ACH Committees, via the Plans of Management, will have the ability to nominate and prioritise ACH values that are essential for maintaining cultural connection and practices in the local area. These priorities become the focus for identifying priority conservation areas, access, ownership, funding, negotiating project outcomes or offsets and NRM programs.

Ownership of ACH values and access to land
A common theme in the public consultation feedback was improving the provisions around access to Country and ownership of ACH. Under this Government model, the Plan of Management will document ownership and access aspirations and inform development of local projects and negotiations. For example, Local ACH Committees, private property owners and public land managers negotiate Project Agreements, using the ACH Maps and Plan of Management to develop mutually agreeable outcomes. These agreements can be developed even when there is no new development taking place. Templates and guidance for negotiating these Project Agreements for the purposes of accessing land provide further support to access Country.

Existing provisions for care and ownership, such as transferring the ownership of Aboriginal objects under the NPW Act, will be amended and enhanced to increase the ownership or transfer of Aboriginal cultural values or objects to the Local ACH Committee.

The Plan of Management will also allow the flexibility to discuss and negotiate ownership priorities. For example, Local ACH Committees can negotiate a Project Agreement to include conditions for collected ACH values and objects to be transferred to the Local ACH Committee. This can include temporary and long-term storage arrangements or outline agreed repatriation processes and management protocols.

The existing mechanisms to access land and Government programs which support Aboriginal people in accessing, using and protecting native vegetation, biodiversity, land,
rivers and coastal waterways will be retained and enhanced in the new ACH Act. Access to Country programs – such as joint management, hand- or lease-back programs for national parks, Aboriginal Places, voluntary conservation agreements and opportunities to support access to private land – will continue to be encouraged.

Education and awareness programs will be required for both the Aboriginal community and private landholders to outline the requirements to protect and support access to ACH values on land and the potential sources of funding that could support ACH conservation outcomes.

**Potential ACH project funding options**

It is acknowledged that while Government provides financial grants for a range of cultural initiatives, these grants will not be enough to sustain new ACH conservation areas. New innovative ways to fund Local ACH Committees to maintain, enhance and protect ACH values should be considered. The Government recognises a new funding system may be required. There is a range of options for funding and the Government welcomes everyone’s views.

**Option 1: Flexible Project Agreements**

This option, as shown in Figure 5, is based on a Working Party recommendation to allow Project Agreements to be negotiated that are sufficiently flexible to provide sustainable ACH outcomes. The intent is for Project Agreements to include conditions which would address conservation and/or socio-cultural outcomes listed in the Plan of Management ACH priority list for that local area.

Under this option, the proponent could voluntarily offer funding to support ACH enhancement projects identified in the Plan of Management. For example, Project Agreement negotiations could consider voluntary funding by the proponent of a project to support maintaining or improving local ACH values outside the impact area, rather than spending the same on works within the development area that did not deliver quality or sustainable ACH outcomes for the broader Aboriginal community. The option to negotiate conditions to provide funds to support local ACH values would be voluntary. It would need to be agreed by both the Local ACH Committee and the proponent, and require the support and approval of the Heritage Division.

Possible initiatives for funding that may appear in a Plan of Management as priorities include:

- projects to maintain, rehabilitate, enhance or re-create the ACH values (cultural, natural and built) on Aboriginal-owned land (LALC, Indigenous Protected Area, etc.)
- projects to protect or conserve areas of high ACH value
- assessment projects to identify local ACH values at risk of harm or impact
- projects to conserve significant sites
- tools and resources for the Local ACH Committee to manage their local priorities
- repatriating ACH objects or ancestral remains projects
- training in cultural and natural heritage identification and management skills
- purchasing land identified as having high ACH values (cultural, natural and built)
- raising awareness in the local (broad) community about cultural heritage values in the area
- negotiating with local landholders voluntary Project Agreements to access land with ACH values
- projects to promote traditional bush medicines and foods and/or cultural tourism initiatives.
Option 2: Development Levy

This option would require proponents to pay a levy based on a percentage of the capital investment value of the development. Payment of the levy would be limited to those projects requiring the negotiation of Project Agreements. These levy funds could be placed in a separate ACH fund managed by OEH. The fund could be under the Environmental Trust. Monies would be distributed to Local ACH Committees via an annual expression of interest process. Expressions of interest would need to reflect ACH conservation priorities in the Plan of Management (ideas outlined in Option 1). Annual project reports would be required to ensure transparency and measure ACH conservation outcomes. These reports would be available for public review via the ACH Register.

Option 3: Offsets

Within the Plans of Management, Local ACH Committees could identify land containing high ACH value which they desire to purchase with the express intent to conserve, maintain or enhance the high ACH value identified with that land. It may be possible for the Local ACH Committee to purchase these areas with funds from proponents seeking to offset their impacts on another site within the local or regional boundary. Lists of areas which could not be impacted or involve negotiating any offsets would need to accord with the ministerially approved and publicly available Plan of Management.

Option 4: Cost recovery plus conservation

This option would set the fees paid by the proponent for negotiating a Project Agreement at a level that would cover the Local ACH Committee negotiation costs and a set amount for conservation works within the local or regional boundary. These amounts would be established via the regulation and be dependent on the ACH values in the local area and the level of development.

Annual reporting would be required by each option (and set within the regulation) to show how the funds had been utilised to meet the Plan of Management conservation priorities. The annual reports would also be uploaded into the ACH Register.

Links to planning processes

To afford the best protection for ACH values, it is recognised they must be considered earlier in the planning process with input from Aboriginal people.

The Minister for Planning and Infrastructure, or an authorised delegate, considers ACH matters for projects seeking approval under the Environmental Planning and Assessment Act 1979 (EP&A Act). This Act is currently being reformed. Under the planning proposals, the range of projects requiring approval from the Minister for Planning and Infrastructure will include:

- development requiring consent that is also subject to code or merit assessments
- state and regionally significant development
- environmental impact statement assessed developments
- Part 5 environmental impact assessed developments
- state infrastructure developments, and
- public priority infrastructure.

**Conservation mechanisms – summary**

- Active planning for conservation, at all stages of the planning process, will be possible with early access to relevant ACH information via the ACH Register.
- Having earlier awareness and consideration of ACH values will provide new and increased opportunities to discuss ways to avoid impacts.
- Maintaining and enhancing existing formal protection processes.
- The increasing opportunities to negotiate outcomes for projects that support local ACH priorities will enable people to continue connecting with Country.
- Local people with cultural knowledge deciding what is required to maintain cultural connection to Country.

**Access to the ACH Register**

ACH Maps and Plans of Management (PoMs) will be made available on the ACH Register for planning authorities and members of the public to inform land-use decisions and meet the legal requirements associated with the planning and ACH management processes. The proposed e-planning system will link to the ACH Register. With the ACH mapped data being electronically available, it will be possible to extract all the relevant ACH data for any sized area, such as a newly identified growth centre or local government area, to inform planning and conservation decisions and actions. The process for integrating ACH and conservation values into the strategic planning level is illustrated in Figure 6.

All planning authorities will be required to refer to the relevant local ACH Maps and Plans of Management to inform all levels of the planning process. The Minister for Planning and Infrastructure will consult the ACH Map when developing planning policies and guidelines. The ACH information in the maps will be considered when developing regional growth plans and subregional delivery plans, and local councils will consult the Local ACH Committee to include the ACH Maps within their local land-use plans.

**Early consideration of ACH values**

The best option for early, consistent and comprehensive integration of ACH values in the planning system is to link ACH values into the proposed statewide strategic mapping process under the new planning reforms.

It is recommended that early and upfront engagement with the Local ACH Committee is included in the planning authority community participation plans proposed under the planning reform.

**Regulatory processes for planning and developments**

Access to upfront ACH mapping will allow proponents to proceed with this streamlined process at any stage of the planning system, as illustrated in Figure 7. For example, for rezoning processes proposed under the planning reform (State Environmental Planning Policies, Subregional Plans or Local Plans), or those undertaken by councils, the Planning Assessment Commission or the Minister for Planning and Infrastructure will consider ACH information early to inform their decision making.
Figure 6: Linking the ACH tools and instruments with the planning process

Using the ACH Project Agreement in the planning process

Where a proponent and Local ACH Committee have already developed a Project Agreement, that agreement will form part of the development application to show how ACH is to be managed for the project. The Minister for Planning and Infrastructure, or their authorised delegate, may request additional information if required in exceptional circumstances. However, the simplified Project Agreement process will provide the proponent and Aboriginal community with the certainty and clarity of what is required to progress the project in a timely manner.
Figure 7: Linking ACH considerations and process with the planning system

Aboriginal people have early input of ACH values into the planning process via the ACH Maps and PoM

Maps and PoM available for all stakeholders to access on the ACH Register

Conservation-driven considerations
- Planning policies
- Regional growth plans
- Sub-region delivery plans
- Local Plans

Conservation considerations including ACH and other relevant environmental factors

Types of approval under the EP&A Act:
- state significant development
- public priority infrastructure
- state infrastructure development
- Part 5 approvals
- code-based consents

Aboriginal people and proponents have input to and negotiate the Project Agreement together

A copy of the Project Agreement is provided to the relevant planning authority to show ACH has been considered and managed

The Planning Authority may choose to refer to the Project Agreement in the conditions of consent it issues.
Reforming the Aboriginal Cultural Heritage System in NSW: A NSW Government model

Clear, simple and flexible regulatory processes

The new process will be streamlined and flexible. Some elements of the existing regulatory framework will be retained. These include exemptions, defences (including due diligence), offences and penalties (see Appendix B).

Two key considerations will determine consultation and assessment processes and inform development of Project Agreements. These are:

- the type of activity that is being proposed, and
- the types of ACH values held within the landscape that is subject to the activity proposal.

Information will be available to anyone proposing to undertake activities that may impact on ACH values. This is to ensure appropriate consideration and planning for ACH can occur. This information will be accessible via:

- the ACH legislation
- the ACH Register
- relevant codes of practice, and
- the Heritage Division and Local ACH Committees.

Four categories of activities will be considered in the ACH management process:

- **Activities that are exempt** – The new process will maintain a statutory list of activities that are exempt from the regulatory process.
- **Low-impact activities** – The new process will maintain a statutory list of low-impact activities (see Appendix B).
- **Activities that are trivial or negligible** – The new process will maintain exemptions for trivial or negligible activities.
- **All other activities that have potential to harm ACH values** – The new process will include a category that captures activities that are not exempt, low impact, trivial or negligible.

The first step in the process is to determine the category of activity being proposed (Table 2). The next step is to determine the type of ACH value that may be impacted. The ACH value categories are low or no ACH value, high ACH value and incomplete ACH value.
Reforming the Aboriginal Cultural Heritage System in NSW: A NSW Government model

Table 2: Assessment and consultation requirements in ACH value areas

<table>
<thead>
<tr>
<th>ACH value</th>
<th>Consultation requirements</th>
<th>Assessment requirements</th>
<th>Project Agreement requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low or no ACH value</td>
<td>No consultation with Local ACH Committee</td>
<td>Proceed with caution</td>
<td>No Project Agreement required</td>
</tr>
<tr>
<td>Incomplete ACH value</td>
<td>Consult with Local ACH Committee</td>
<td>Partial assessment (to build on previous assessments)</td>
<td>Project Agreement required</td>
</tr>
<tr>
<td>High ACH value</td>
<td>Consult with Local ACH Committee</td>
<td>Full assessment</td>
<td>Project Agreement required</td>
</tr>
</tbody>
</table>

*Table 2: Assessment and consultation requirements in ACH value areas*

A clear, certain and streamlined process

There will be a maximum of six key steps in the new process, each with mandatory timeframes and support resources (see *Table 3*). Dispute resolution and appeal processes for Step 6 are available if required.

Table 3: The six steps in the new ACH process

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
<th>Step 5</th>
<th>Step 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determine the type of activity</td>
<td>Conduct due diligence and determine the ACH value</td>
<td>Undertake consultation requirements</td>
<td>Develop an assessment plan under CoPAI requirements</td>
<td>Undertake assessment work</td>
<td>Finalise a Project Agreement and implement project</td>
</tr>
</tbody>
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<th>TIME</th>
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The activity is not trivial or negligible, exempt or low impact

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<td>Undertake assessment work</td>
<td>Finalise a Project Agreement and implement project</td>
</tr>
</tbody>
</table>

Managing unexpected finds – time: 10 days
Consultation requirements

The level of consultation required will match the significance of the ACH value that may be impacted. For example, consultation will be required for all activities that are proposed on land which has mapped high ACH values. The level of consultation for land that has an incomplete ACH value (i.e. the area is either unassessed or assessments do not meet standards) will vary according to how much information already exists for that area. Consultation will not be required for activities proposed on land which has a no to low ACH value, except where an unexpected find occurs. In the event that an unexpected find is identified, the relevant Plan of Management will provide appropriate consultation, assessment and management guidance.

Where the legislation requires consultation to occur, the Local ACH Committee will be the local ‘one-stop-shop’ for consulting on all ACH matters. The proposed consultation process will allow the committee to choose whether it would like to be consulted on individual projects, based on its own local ACH values and priorities – as per their ACH Maps and Plans of Management. It will be the responsibility of the committee to respond to proponents’ requests for consultation about ACH matters. Mandatory timeframes will be included in the regulatory process; a non-response from a committee will enable the proponent to proceed with their activity without committee input. Consultation policies and guidelines will be developed to assist both parties to engage in meaningful and positive consultation and negotiation processes.

Code of Practice Archaeological Investigation (CoPAI) Assessments

Project assessments will be discussed by the proponent and the Local ACH Committee, as outlined in Step 4 of Table 3. The purpose of this step is to discuss and agree on the local ACH priorities to consider, along with the assessment’s timeframes and methodologies. Cultural protocols that must be taken into consideration need to be discussed and incorporated into the project at this stage.

Negotiations and processes for designing a suitable ACH assessment plan will be a mandatory requirement of the amended CoPAI. Amendments to the CoPAI will include resources, a range of methodologies suitable for differing ACH values and pro-formas to be used for negotiating the assessment requirements for each project. The amended CoPAI will be developed to simplify the negotiation process for Local ACH Committees and proponents when they discuss plans for an ACH assessment.

The amended CoPAI will continue to be linked with a Regulation and, as such, all planned ACH assessments developed in Step 4 will be a legally binding requirement. Step 4 will provide proponents and the Local ACH Committees with certainty of what assessment is required and undertaken for the project. The mandatory timeframe for the development of a planned ACH assessment will be 10 days.

Assessment requirements

The current CoPAI will require updating following public consultation and the enactment of the ACH Act. The Government supports the fit-for-purpose approach, where project assessments will not need to be repeated if the proposed work meets the revised CoPAI criteria. Where assessments are required, the revised CoPAI will also stipulate that this work be undertaken by suitably qualified heritage professionals.

The Local ACH Committee and the proponent will work together through a number of stages to identify the ACH values within the relevant project area, and how these are to be managed (conserved or impacted) in line with those described in the Plan of Management.

The assessment process will require documenting the effort and negotiating to ‘avoid’ and ‘mitigate’ impacts on ACH values. ‘Harm’ will remain the final option for managing ACH.
values. Statewide minimum standards approved by the Minister for Heritage to guide Plans of Management and Project Agreements will be developed by the Heritage Division and ACHAC.

**Project Agreements**

Project Agreements will be legally binding documents that provide certainty to both the Local ACH Committee and the proponent by ensuring that agreed actions and conditions are able to be monitored and enforced (see Figure 8).

Project Agreements will only be required for activities that occur in areas with high or incomplete ACH values and will outline an agreed approach to implementing projects following a review of the assessment report.

The mandatory timeframe for the development of a Project Agreement will be 20 days.

The new ACH Act will establish minimum standards to provide guidance and clarify the range of factors that must be considered when negotiating a Project Agreement.

Project Agreements for each individual project could be adapted for the scale and area to include, where relevant:

- access and conservation arrangements and protocols (i.e. behaviours adapted to ensure culturally respectful practices, such as men excluded near a women’s area and vice versa)
- how investigation, research and salvage processes should be conducted
- identifying any works not permitted
- identifying any rehabilitation programs, area maintenance and natural resource management projects
- determining how unexpected finds should be managed
- identifying areas where no further works are required
- voluntary contributions to fund a specified ACH priority identified in the Plan of Management.

The proponents will need to consult with the relevant Aboriginal Local ACH Committee to negotiate and develop a Project Agreement. If mandatory timeframes are not met throughout the negotiation process for the Project Agreement, the proponent could proceed with caution according to the Plan of Management.

If a Project Agreement was agreed to before a development consent was issued, a copy of the Project Agreement would be provided to the relevant planning authority to demonstrate the ACH requirements had been met or were in the process of being met.

Project Agreements will be uploaded to the ACH Register by the Heritage Division. To ensure transparency, timeliness and quality ACH conservation outcomes, the Heritage Division will review Project Agreements to ensure they meet minimum standards.

The Act will include provisions for streamlining the transfer of agreed Project Agreements to new owners of the land.

**Managing unexpected ACH value finds**

Identifying an Aboriginal object (or unexpected find) when development work has commenced currently causes significant costs and delays to proponents. The proposed regulatory model addresses this by including a specific process that stipulates mandatory timeframes for resolving the issue (Figure 9).
Figure 8: Regulatory process for the proposed ACH Act

Anyone proposing to undertake ground disturbance works is required to be duly diligent.

Is the activity exempt under the ACH Act or Regulation, or any other NSW or Commonwealth Act?

No

Yes

Propositor has established there are no further legal requirements to be met.

Proceed with caution

Yes

No

Will the activity involve harm that is more than any low-impact activity listed in the regulation?

Yes

No

Will the activity involve harm that is more than any low-impact activity listed in the regulation?

No

Yes

Yes

Check the ACH Register. Is the activity in a low-ACH value area?

Yes

No

Yes

Is the activity in an area where a project plan has been completed and no ACH values remain to consider?

No

Yes

The activity is in an incomplete and/or high-significance area.

The proponent contacts the relevant Local ACT Committee.

The Local ACH Committee provides formal notice of engagement within the mandatory timeframe (10 days).

The proponent and Local ACT Committee meet to develop a Project Agreement within the mandatory timeframe (10 days). Must discuss the project's needs, cultural needs, assessment needs, methodologies to be applied, and the project.

Undertake assessments (archaeological, anthropological, community etc) and reporting within the timeframe agreed in previous step.

No response is received within mandatory timeframe. Complete step with heritage action before proceeding to next step.

Agreement cannot be reached.

If unresolved within timeframes, proceed with caution according to the PAM's requirements.

If a dispute over a Project Agreement arises, either party may seek assistance from an approved independent dispute resolution service. A resolution is required within a mandatory 35-day timeframe.

Provide a copy of the Project Agreement to the ACH Register within mandatory timeframe (10 days).

Local ACH Committee and proponent finalise and agree on Project Agreement.

Work proceeds as per the final Project Agreement.

Reporting from the previous step is finalised. Propositor and Local ACH Committee negotiate, update, and agree on relevant conditions for the final Project Agreement within the mandatory timeframe (20 days from date of receipt).

Notes:
- 'Days' in all references to mandatory timeframes relate to working days.
- If a project plan is not completed within the mandatory 20 days, a request for support from an approved, independent dispute resolution service should be lodged prior to the mandatory timeframe ending.
- Appeals may be made through the Land and Environment Court.
Each Plan of Management will be required to identify the appropriate steps to take for unexpected finds for different site types or site values within their local area. These steps will be guided by minimum standards.

For activities where an unexpected find has been identified and a Project Agreement has not been required, such as low ACH value areas, the proponent checks the Plan of Management and follows the steps required for that site type.

For example, where the Plan of Management stipulates the ACH value of the site type (e.g. an isolated find) is low, the proponent may be able to continue their development works without further ACH requirements. Where a site type such as a scarred tree is the unexpected find, the proponent refers to the Plan of Management which may stipulate contacting the Local ACH Committee to develop a management strategy.

The maximum timeframe for managing unexpected finds will be 10 days. When unexpected finds are identified for projects with Project Agreements, the proponent will follow the conditions negotiated when the Project Agreement was developed and agreed (or the Plan of Management in the absence of negotiated conditions).

Flexibility of process to be fit-for-purpose – Summary

- The new regulatory system contains clear and simple steps, which also allow flexible outcomes to be developed for the unique needs of each project.
- Classifying ACH values enables an appropriate regulatory response to be applied according to the values potentially affected within an area.
- By acknowledging previous assessments, the regulatory system removes the duplication of assessments, which is costly and causes time delays.
- Mandatory timeframes will provide clarity and certainty for all associated stakeholders, with suitable dispute resolution and appeal processes available.
- An appropriate level of Government oversight is provided to the process through minimum standards, linking outcomes to approved Plans of Management; it also recognises the benefits and need of proponents and the Local ACH Committee to make decisions tailored to their local needs.
- Project Agreements are flexible instruments that can be applied to a range of features, including access to land, ownership, conservation areas, NRM projects and funding for local ACH priorities identified in the Plan of Management.
Appendix A:  Glossary

Aboriginal Place  A place declared under section 84 of the NPW Act that, in the opinion of the Minister, is or was of special significance to Aboriginal culture

ACH  Aboriginal cultural heritage

ACH Maps  Maps containing the Aboriginal cultural heritage values within a local or regional boundary. The ACH Maps inform strategic and local planning decisions.

ACH Officer  (Regional) Aboriginal cultural heritage officer

ACH Register  Aboriginal cultural heritage register

ACHAC  Aboriginal Cultural Heritage Advisory Committee as established under the NPW Act

Aboriginal cultural heritage value (ACH value)  A value assigned by local Aboriginal cultural knowledge holders to physical features on the land as being associated with ACH. These features may include tangible and/or intangible cultural elements reflected in the landscape.

AHIP  Aboriginal Heritage Impact Permit

AHIMS  Aboriginal Heritage Information Management System

ALR Act  Aboriginal Land Rights Act 1983 (NSW)

Code of Practice for Archaeological Investigation (CoPAI)  A code of practice which outlines the methodologies for conducting archaeological investigations, as identified in the National Parks and Wildlife Regulation 2009 (NPW Regulation)

due diligence  Taking reasonable and practical steps to determine whether a person's actions will harm an Aboriginal object and, if so, what measures can be taken to avoid that harm

heritage advisor  A suitably qualified person with a discipline directly relevant to assessing ACH

high ACH value area  A category on the ACH Maps that distinguishes areas of land considered to have high ACH value and could be considered for conservation

incomplete ACH information area  A category in the ACH Maps that identifies areas where there is insufficient information to determine the value and if further assessments may be needed

LALC  Local Aboriginal Land Council as defined in the ALR Act
Local ACH Committee
A group of up to 10 Aboriginal cultural knowledge holders identified under section 82(2) of the ALR Act within a specific local or regional boundary, who are nominated to represent the interests of their local community on all matters associated with managing ACH values.

Local Land Services
Local Land Services will deliver a range of land management services, including the natural resource management role currently performed by the Catchment Management Authorities. Local Land Services will commence operating on 1 January 2014.

Low or no ACH value area
A category in the ACH Maps that identifies areas with low or no cultural value remaining in the landscape.

L&EC
Land and Environment Court of NSW

NPW Act
National Parks and Wildlife Act 1974

NPW Regulation
National Parks and Wildlife Regulation 2009

NRM
Natural resource management

OEH
Office of Environment and Heritage, NSW Government

One-stop-shop
The single entry point into Aboriginal communities for consulting and negotiating Project Agreement conditions for managing ACH values within project boundaries.

Plan of Management (PoM)
The plan developed by a Local ACH Committee. The Plan of Management outlines strategies for managing the cultural heritage values identified within a local or regional boundary to inform land-use planning decisions.

Party or parties
May refer to two or more of the following interested representatives: Aboriginal community, industry, Government, miners, farmers, proponents, heritage specialists, academics and non-profit organisations. (Also referred to as stakeholders.)

Project Agreement
A Project Agreement is a legally binding agreement made between the proponent and the Local ACH Committee detailing how the ACH values in a project are to be managed by both parties.

Proponent
A person undertaking an activity, such as a development, exploration or conservation.

Stakeholder
See party.

State of Aboriginal Cultural Heritage Report
A statutory report about the state of ACH in NSW produced by the Heritage Division every three years.
Appendix B: Retained and amended provisions from the NPW Act

Transfer of care and ownership of Aboriginal objects and values
Currently the NPW Act provides for the transfer of Aboriginal objects to an Aboriginal Owner willing to accept possession, custody or control of the Aboriginal objects according to Aboriginal tradition. The Government recommends retaining and building on this provision to demonstrate respect for Aboriginal cultural heritage, and to reinforce the principle that Aboriginal people are the primary custodians of their heritage.

Due diligence
Currently the NPW Act requires anyone in NSW whose actions may affect ACH values to take reasonable steps to consider if any Aboriginal objects may be present and avoid harm. This is known as due diligence. The NSW Government recommends retaining these due diligence provisions to ensure strict liability provisions can apply, and to enable stakeholders to focus their time and energy on those projects that have the potential to impact ACH of high value. The due-diligence provisions would require some amendment to reflect the broader scope of the new ACH legislation (i.e. ACH values extend beyond objects). It is proposed the Government conduct a survey to establish the level of understanding of the due-diligence requirements. The results of this survey will inform the development of the draft exposure Bill.

Offences, defences and penalties in the new ACH legislation
Offences and penalties for the following would be included within the proposed ACH legislation:

- knowingly harming and/or desecrating ACH values identified within the ACH Maps and Plans of Management
- harming ACH values (whether or not the person knows they are ACH values) – strict liability
- failure to consult when required
- failure to provide new or updated data to the ACH Register
- failure to comply with a Project Agreement condition.

Penalties
- maintain the current penalties regime and alternative sentencing provisions such as publication orders, monetary orders and conservation orders (in some cases, up to $1.1 million).

Defences
- following conditions within a Project Agreement
- following requirements set within any relevant code of practice
- undertaking due diligence
- undertaking a low-impact activity as listed in the NPW Regulation 2009
- adhering to requirements in the Plan of Management
- complying with orders issued by the NSW Land and Environment Court.
Exemptions (retained from the NPW Act)

The NPW Act provides exemptions to the offences of harming Aboriginal objects and Aboriginal Places in certain circumstances. These are for:

- Aboriginal people and their dependents when carrying out non-commercial traditional cultural activities
- any emergency fire fighting or bushfire hazard reduction work within the meaning of the Rural Fires Act 1997 that is authorised or required to be carried out under that Act
- emergency activities carried out under the State Emergency and Rescue Management Act 1989 that are reasonably necessary in order to avoid an actual or imminent threat to life or property
- works by, or directed by, authorised Heritage Division officers to protect or conserve Aboriginal objects
- anything specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of the NPW Act.
Appendix C: Summary: Government response to Working Party Recommendations

<table>
<thead>
<tr>
<th>Working Party recommendation</th>
<th>NSW Government response</th>
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<tbody>
<tr>
<td><strong>Theme 1: Stand-alone legislation</strong></td>
<td></td>
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<tr>
<td>1. Remove all Aboriginal cultural heritage (ACH) provisions from the National Parks and Wildlife Act 1974 and develop a separate Aboriginal cultural heritage Act for NSW.</td>
<td>Supported.</td>
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</tbody>
</table>
| 2. Include a preamble or objectives in the new Act that reflects contemporary and positive views of ACH. | Supported. The current Working Party draft preamble reads:  
   - Aboriginal spiritual and cultural heritage values exist in the land, waters and natural resources of NSW.  
   - Aboriginal people are critical determinants of ACH values.  
   - The wellbeing of Aboriginal people is intimately tied to the wellbeing of their Country.  
   - The social fabric of NSW and Australia is enriched by providing opportunities to share, understand and celebrate ACH values.  
   - This legislation seeks to protect both the tangible and intangible aspects of ACH that are identified as important to Aboriginal people of NSW. |
| 3. Include definitions in the new Act of objects and landscapes in line with international standards that will provide protection for significant tangible and intangible cultural heritage values. | Supported with amendments. The draft definition is to be based on the United Nations Declaration on the Rights of Indigenous Peoples. The proposed Government amendments to the Working Party definition read:  
   
   Aboriginal cultural heritage means the practices, representations, expressions, knowledge and skills – as well as associated objects and artefacts – that Aboriginal people recognise as part of their cultural heritage, insofar as these values are reflected in the landscape.  
   
   The Government notes that further refinement of the wording may be required following public consultation. |
### Theme 2: Administrative structure

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<tr>
<th>Recommendation</th>
<th>Description</th>
<th>Support or Notation</th>
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<tr>
<td>4.</td>
<td>Establish a ministerially appointed NSW Aboriginal Cultural Heritage Commission.</td>
<td>Not supported. The NSW Government has made a concerted effort to address unnecessary layers of bureaucracy. The additional red tape, with the financial and time burdens associated with this administrative layer, would be prohibitive. The ACHAC is an existing Aboriginal statewide body whose remit includes advising Government on ACH management. The Government proposes that ACHAC will fulfil a number of the Working Party’s proposed functions for the Commission (e.g. guiding strategic planning and assisting in developing minimum standards).</td>
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<td>5.</td>
<td>Establish a NSW Aboriginal Cultural Heritage Office within Government to support the Commission.</td>
<td>Noted. Any NSW legislation requires administration by a Government department or agency. The NSW Government has recently completed an independent review of heritage administration in NSW and has decided to establish a new dedicated Heritage Division within the Office of Environment and Heritage (OEH).</td>
</tr>
<tr>
<td>6.</td>
<td>Empower the Commission to create minimum standards, policies, templates and guidelines.</td>
<td>See the response to Recommendation 4. The NSW Government supports the development of materials that will assist with the clarity and certainty of legislative processes, and aid the implementation of a seamless new system. Responsibility for the development of these materials will rest with the Heritage Division of OEH and ACHAC.</td>
</tr>
<tr>
<td>7.</td>
<td>Establish Regional Aboriginal Cultural Heritage Officers (ACHO) across NSW.</td>
<td>Supported. The ACH Officers will be employed by the Heritage Division. The number of positions and their locations will be determined after public consultation.</td>
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</table>

### Theme 3: Early planning process

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<tr>
<td>8.</td>
<td>Establish a statutory NSW ACH Register to which Government agencies would contribute relevant data before the new legislation commences.</td>
<td>Supported. All Government agencies will work together to share ACH information already held. A gap analysis will be conducted to establish priority areas and plans for managing areas with little information where land-use planning decisions are required. The ACH information held by Government agencies would be in various formats and require transition time to convert the data into the ACH Register. Accessing the data held on the ACH Register will need to be easy and intuitive to ensure it effectively informs land-use planning decisions. Government recognises that cultural data has sensitivities which will need to be managed appropriately.</td>
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Reforming the Aboriginal Cultural Heritage System in NSW: A NSW Government model
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<tr>
<th>9. <strong>Require Local Aboriginal Land Councils (LALCs) to develop staged ACH values maps to guide the Community Land and Business Plans (CLBPs).</strong></th>
<th>Support the intent. Stakeholders are asked to consider alternative options to the LALCs, given the ALR Act reform. The Government supports the adoption of long-term sustainable land-use planning approaches that mesh with the outcomes of the NSW planning review. The Government has agreed to consider a similar approach for this process. Based on the initial recommendations from the ALR Act review to reduce the role of CLBPs, this would not be the mechanism to build the strategic planning process into. Depending on the results of the reform, it may still be possible to use the LALC network to document ACH information to be considered earlier in the planning process. Enhanced upfront ACH mapping by the Local ACH Committee will provide a new level of clarity for proponents at any stage of land-use planning, including considering ACH matters prior to purchasing land or at any stage up to a development approval process.</th>
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<tr>
<td>10. <strong>Require consideration of the maps in all statutory planning instruments and processes.</strong></td>
<td>Supported. The Government notes this recommendation, and conceptually supports the intentions outlined in the Working Party’s recommendations for ‘Integration with other planning processes’. However, the mechanisms for this to occur depend largely on the outcomes of the planning reform process. Any mandatory requirements to consult ACH data must mesh with the new planning processes and include streamlined approaches to avoid creating new red tape. The ACH Reform Secretariat will continue to work closely with the planning reform team to ensure continuity and streamlined outcomes.</td>
</tr>
<tr>
<td>11. <strong>Enable early engagement of Aboriginal people through the use of strategic mapping and planning.</strong></td>
<td>Supported. The Government supports the early engagement of Aboriginal people in the strategic planning process to ensure ACH values are protected. The proposed approach will require the Local ACH Committee to develop a Plan of Management and include associated management strategies for protecting and avoiding significant areas or minimising harm elsewhere. The Plans of Management will be consulted when developing or updating Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Plans.</td>
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### Theme 4: Local decisions by local people

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<th>Recommendation</th>
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<tr>
<td><strong>12.</strong> Use the existing LALC framework for local decision making on ACH matters, including the negotiation of conditions in ACH Approvals, thus recognising the rights of local Aboriginal people with the cultural authority to plan and negotiate outcomes for their heritage.</td>
<td>Supported with amendments. The Government supports extending existing frameworks; however, it notes that, due to the ALR Act review, amendments to the structure will be required. These will include empowering and requiring ACHAC to work with relevant agencies to develop policies and minimum standards. The Government considers a Local ACH Committee will be in the best position to evaluate the cultural needs of its local community, and therefore must have an integral role in the planning and later negotiation of ACH management in its area with relevant parties (local government, state agencies and individual proponents). A range of boundary options has been included in the model for further discussion (LALCs, regional ALCs, local or regional councils or Local Land Services). The Government recognises the responsibility of cultural knowledge holders to make decisions about sustaining their culture. It is envisaged that knowledge holders and proponents will develop partnerships to discuss competing demands and agree on Project Agreements, thereby removing the step of gaining another approval.</td>
</tr>
<tr>
<td><strong>13.</strong> Require the LALCs to enhance the ACH objectives and strategies within Community Land and Business Plans and to use maps of ACH values to develop Plans of Management and to inform the CLBP.</td>
<td>See response to recommendation 12.</td>
</tr>
<tr>
<td><strong>14.</strong> Enable the LALC to negotiate directly with private property owners and public land managers to develop voluntary access agreements and access conditions within ACH Approvals.</td>
<td>Support the intent but note the response to recommendation 12. The Government is supportive of voluntary based initiatives. There will need to be clear policies and templates established to ensure that agreements for the purpose of accessing land are not difficult or burdensome for either party.</td>
</tr>
</tbody>
</table>
15. **Retain and enhance provisions to transfer ownership of objects from the Crown to people with cultural authority.**

**Supported.**

The Government supports the transfer of objects to the rightful cultural knowledge holders. Policy and processes will need to be developed to assist in the seamless and safe transfer of objects and their long-term management.

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**Theme 5: Streamlined process**

16. **Approve amendments to the Environment Planning and Assessment Act 1979 and the Aboriginal Land Rights Act 1983 to ensure the seamless and consistent delivery of ACH matters.**

**Supported.**

The Government agrees with this recommendation. The need to remove duplication or contradictory provisions between Acts requires Government agencies to continue to liaise to deliver seamless legislation and red-tape reductions. The ACH Reform Secretariat will continue to work closely with the Planning reform and ALR Act review teams to ensure continuity and streamlined outcomes.

17. **Ensure consistency and clarity in the consultation processes by requiring all Government processes to follow the LALC model for consultation on ACH matters with Aboriginal communities.**

**Supported using a Local ACH Committee.**

The Government agrees that consistency in approach is imperative for fair and equitable processes. The Government supports the need for clarity and consistency being delivered via the Local ACH Committee being the ‘one-stop-shop’ for consulting on all matters associated with ACH management.

18. **Include revised appeal/resolution processes and mandatory timeframes in the legislation.**

**Supported.**

The Government supports the inclusion of mandatory timeframes to ensure timely delivery of the process. Dispute resolution will be provided via existing and experienced dispute resolution service providers when the proponents and Local ACH Committee cannot agree on the draft Project Agreement. The dispute resolution process will be able to listen to both perspectives and provide a final decision on how to proceed. This process will minimise lengthy delays and costs in the process. Appeals may be made to the Land and Environment Court.
<table>
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<th>Recommendations</th>
<th>Support/Concerns</th>
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<tr>
<td>19. Replace AHIPs with ACH Approvals to be negotiated at a local level and approved by the Commission.</td>
<td>Not supported. The Government’s strategic planning focus will result in the ACH Maps and Plans of Management receiving whole-of-government approval, which will remove the need for further approvals and allow the proponent and Local ACH Committee to negotiate relevant and fit-for-purpose Project Agreements. The Project Agreement, once entered into the ACH Register, will be considered a legally binding document for both parties.</td>
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<tr>
<td>20. Apply effective and flexible processes appropriate for the different ACH values identified.</td>
<td>Supported. The Government supports the recommendation to remove unnecessary red tape and streamline the process. The Government-proposed regulatory system further refines the filters needed to develop appropriate responses rather than the current one-size-fits-all approach.</td>
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**Theme 6: Funding ACH outcomes**

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<tr>
<td>21. Provide adequate funding for the operation of the Commission, the ACH Office and the ACH Act.</td>
<td>Support the intent but see response to Recommendation 4. The recommended role of the ‘ACH Office’ will be fulfilled by the newly created Heritage Division in OEH. The Government will prepare an economic analysis of the final proposed system to accompany the exposure Bill. This document will include potential savings and costs for establishing all aspects of the new ACH Act.</td>
</tr>
<tr>
<td>22. Allow flexibility in ACH Approvals to provide for a range of approaches to meet ACH priorities as articulated in the Plan of Management.</td>
<td>Supported. The Government agrees with a new emphasis on partnership and cooperation between proponents and the local Aboriginal community to devise suitable approaches according to local needs. If this can be achieved by enhancing transparency and efficiency of negotiations, the Government will be keen to receive feedback during the public consultation sessions. The Government notes that clear policies will be required to guide how funding is to be managed when the final process is determined.</td>
</tr>
<tr>
<td>23. Ensure sufficient resources and training are provided to enable the LALCs to effectively engage in the process.</td>
<td>Support the intent. The Government will prepare an economic analysis of the final proposed system to accompany the exposure Bill. This document will include potential savings and costs for establishing all aspects of the new ACH Act.</td>
</tr>
</tbody>
</table>
Appendix D: Bibliography


