

Workshop Summary Report Reform of Aboriginal Culture and Heritage Legislation

Kempsey
Kempsey Ex-Services Club
7 November 2011
Facilitation and Summary Report - Markwell Consulting



Workshop participants working through NSW Culture and Heritage Legislation Reform business...



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Warning

Aboriginal and Torres Strait Islanders readers are warned this report may contain names and images of people who have passed away.

Preamble

This report is a summary of discussions, outcomes and key messages from participants at a workshop which focused on Aboriginal issues associated with the reform of the NSW Aboriginal Culture and Heritage Legislation (the Reform). The workshop was one of a series of 25 workshops held across NSW coordinated by the NSW Office of Environment and Heritage (OEH). The purpose of these workshops was to seek input from Aboriginal people on the reform.

The workshop was facilitated by Mr Ken Markwell, Markwell Consulting (the Consultant), an independent Aboriginal consulting business. The Consultant was not required to undertake an analysis of the information from the workshop, rather simply provide a summary of key discussions and outcomes to OEH. This report is that summary.

The information provided from the workshops will be considered by the Reform Working Party, Senior OEH Officials and the Minister in developing new culture and heritage legislation in NSW.

To ensure transparency and accuracy of the information the Consultant provided a draft summary report to workshop participants for their comment. Comments received have been incorporated into this report.

OEH is also coordinating 5 roundtable workshops facilitated by independent consultants - Twyfords. The purpose of these workshops is to seek views from NSW Aboriginal people, key stakeholders and others on the reform.

Acronyms

New South Wales National Parks and Wildlife Service (NSWPWS)

New South Wales National Parks and Wildlife Act (NSWNPW Act)

Department of Aboriginal Affairs (DAA)

Caring for Country (CFC)

Aboriginal Heritage Information Management System (AHIMS)

Local Aboriginal Land Council (LALC)

New South Wales Aboriginal Land Council (NSWALC)

Native Title Services Corporation (NTSCORP)

Natural Resource Management (NRM)

Draft Running Sheet

DRAFT RUNNING SHEET
ABORIGINAL CULTURE AND HERITAGE REFORM
REGIONAL ABORIGINAL WORKSHOPS - NOVEMBER/DECEMBER 2011

9:00 – 9:30	Morning Tea	
9:30 – 9:45	Welcome to Country	Local Elder
9:45 – 10:15	The Reform Process	OEH COB RM
10:15 – 11:00	Structure for the Day	Facilitator
11:00 – 11:30	DVD	
11:30 – 12:30	Workshop Session	Facilitator
12:30 – 13:30	Lunch	
13:30 – 14:45	Workshop Session	Facilitator
14:45 – 15:00	Summary and Wrap up	Facilitator
15:00	Afternoon Tea	

Attendees

Name	Organisation / Aboriginal Group
Glen Rennie	CEO - Purfleet/Taree Local Aboriginal Land Council
Harold Smith	Dunghutti Elder
Timothy Waide	Health NSW
Cheryl Davis	Dunghutti
Kevin Smith	CEO - Kempsey Local Aboriginal Land Council

Welcome to Country

Uncle Harold (Blue) Smith provided participants with a Welcome to Country.

Session 1: The Reform Process

Overview of the Reform process (OEH)

Mr Emmanuel Fequandie (OEH) provided an overview of the reform process and purpose of the workshops and roundtable meetings. The presentation is provided below.

REFORM of ABORIGINAL CULTURE & HERITAGE LAW

Reform process gets underway

- Aboriginal people have been seeking reform for over 30 years – There has been many processes in the past.
- For the 1st time the need for reform is supported by all political parties in the NSW Parliament. A real opportunity exists.
- In September 2011, the Government announced a reform process to explore options for the protection and management of Aboriginal culture and heritage in NSW.
- Government has asked for recommendations by September 2012 - A 10 month window of opportunity is now available to work out what is needed, and to advise the Government on what will work.
- We can only reform NSW law – not Commonwealth law such as the Native Title or Copyright law
- This workshop is the start of that process.

Goals of the Reform – in summary

- Protect and manage NSW Aboriginal culture and heritage.
- Clarify role of Aboriginal people in management of, and decision making about their culture and heritage.
- Create clear roles and responsibilities for Aboriginal people and communities, heritage professionals, government agencies, and industry
- Link Aboriginal heritage law to NSW natural resource management and planning processes
- Ensure streamlined and flexible regulation of Aboriginal heritage

A Reform Working Party – appointed by and reports to the Minister for the Environment and the Minister for Aboriginal Affairs to be made up of:

- Chairperson – Office of Environment and Heritage - *ex-officio*
- Aboriginal Affairs NSW – *ex-officio*
- A nominee from the Coalition of Aboriginal Peak Organisations (CAPO) – *ex-officio*
- An expert in community engagement with a broad understanding of the cultural and social issues affecting Aboriginal people in NSW
- Two individuals with expertise in land management and the issues affecting Aboriginal cultural heritage
- An Aboriginal culture and heritage legal expert
- An expert in Aboriginal culture and heritage conservation
- Two individuals from industry or business with experience in issues relating to Aboriginal culture and heritage

Terms of Reference for the Working Party

- To advise Government on:
- Reviewing existing provisions
 - Reviewing laws and policies of other jurisdictions
 - Existing provisions that should be retained
 - Roles of responsibilities of Aboriginal people regarding their culture and heritage
 - Processes to identify significant Aboriginal culture and heritage items, places, and landscape values
 - Possible use of negotiated outcomes
 - Dispute resolution and mediation processes
 - Links to environmental planning, development control and natural resource management processes
 - NSW agency responsibilities

The Reform Process – Consultation

Phase 1 November - December 2011

- Series of 25 regional workshops with Aboriginal communities
- Public awareness campaign re process and timetable (internet updates, media articles, dvd, reports to regular meetings)
- Circulate issues paper and initial background material to stimulate discussion
- On line survey
- Interagency meetings + peak stakeholder consultations (property, heritage, environment, local government, industry)

The Reform Process – Consultation

Phase 2 April – June 2012

- Consultation with Aboriginal communities and other stakeholders about a range of options for legislation based on ideas gleaned from Phase 1.
- The Working Party will report to Ministers in September 2012
- After that it is a matter for Government to decide

In conclusion

- This is a unique opportunity to have your say in how Aboriginal culture and heritage in NSW is to be protected .
- The Government and the Working Party welcome your views and appreciates your time, effort and interest in this important reform process.

The Reform Process – Participants Comments

The participants had the following comments, issues and suggested improvements in relation to the reform process.

The Reform Process
Who defines / decides who the 'experts' are
Our own people are selling us out – issues of poverty
Ministers / OEH senior staff should be present at all the workshops
Written responses may pose some challenges to some Aboriginal people – i.e. literacy.
Need to use a range of communication strategies to inform people of workshops
Some difficulties in working people attending weekday meetings
Participants wish there comments not be on behalf of others
NSW government should come direct to Aboriginal people not us to them
Need more meetings with community, including more time for 1 on 1 meetings with Aboriginal people
Reform Working Party needs to b Aboriginal people only

Session 2: Culture and Heritage

Participants were asked what culture and heritage means to them. Their responses are outlined below. This was an important session to outline what culture and heritage values are important to Aboriginal people.

Culture	
Our land our country	We own it – our artefacts, rivers
Difference	Religion
Spiritual beliefs and expressions	Our ties to our country
Belonging	Identity
Mens and womens business	Mens and womens places
Sacred sites	Lores
Ceremonial sites	Camps (gunyas/ shelters)
Food	Identification of our surroundings
Burials	Bora rings
Marked/ Carved trees	Knowledge
Language	Culture is history – story time

Heritage	
Natural places	Water / land / air / fresh and saltwater (including underground water) all of country
People – your ancestors and future generations	Our legacy
Our history and stories	Art/ crafts
Respect for our Elders / knowledge holders and our values	Knowledge
Lores	Respect
Identity	Culture
Language	

Culture and Heritage Protection and Management

Participants were asked what is currently protected (or what should be currently protected) under the existing NSWNPWS legislation versus what should be protected under new or revised legislation.

Protected in this context includes recognised, valued, protected and managed.

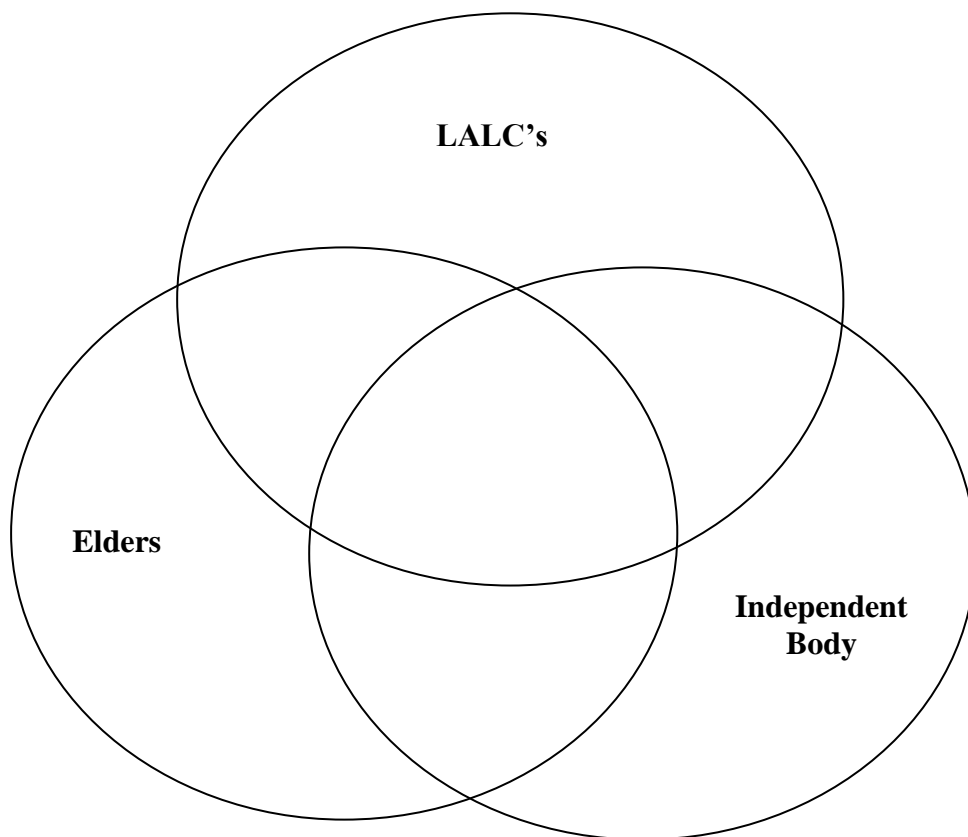
Currently Protected	Should be Protected
Our rights to our cultural heritage	Everything identified earlier under 'culture' and 'heritage'
Stone artefacts	Aboriginal values
Natural places	Private landowners (Aboriginal heritage values and places)
Story places	Natural places
Significant space (ceremony, remains, camping grounds)	Rivers
	Story places
	Historic places (i.e. Smoky Cape)

Session 3: Who Speaks for Culture and Heritage

Participants were asked to identify who speaks for country and who should not speak for country. In some circumstances there were different views on who should speak for country. In these cases those people/organisations were placed on both categories.

Importantly, Aboriginal people are indicating local circumstances must be recognised and prevail. For example in some areas Aboriginal people have established their own organisations to speak for their people and country, whereas in other areas people prefer the LALCs to have a role in speaking for them. This reflects different community circumstances across the State.

Who should not speak for Country	Who should speak for Country
NPWS	Native Title Bodies
DAA	LALCs (need to work together with Elders)
LALCs	Elders (need to work together with LALCs)
Department of Planning	Independent Aboriginal body (possibly from each nation/Traditional country)
Native Title Bodies	Grassroots Aboriginal people



The above diagram represents the collaboration required between Elders, LALCs and the proposed **new** independent culture and heritage body.

Participants were particularly interested in identifying some key elements and principles for the proposed new independent body. These are outlines below.

Proposed New Independent Culture and Heritage Body	
Adequate funding	Aboriginal people from NSW only
Qualified skilled people	Independent but with decision making capacity
Representative across NSW	Enforcement powers
Relationship with other agencies (i.e. culture and heritage unit NSWNPWS)	Education
Must ensure decisions are made by those who can speak for culture and heritage	Stand alone legislation
Develop and advocate policies / models for other agencies (i.e. consultation principles)	Accountable
Minimum 12 independent people	

Session 4: New Culture and Heritage Legislation

Participants provided ideas and thoughts on key elements required under new NSW culture and heritage legislation. This included key components of the existing legislation that needs to be retained and/or improved and new concepts and elements that the existing legislation currently does not include.

New NSW culture and heritage legislation	
Current permit approval processes are OK but improvements on communication between LALCs, Aboriginal people and developers is required	Due diligence needs to be retained but needs to be compulsory, in particular by developers.
Register of all artefacts irrespective of whether they are currently recorded. This will also ensure appropriate storage provisions in consultation with Aboriginal owners.	More Aboriginal sites officers in particular female sites officers
Aboriginal sites workers are generally seen as good, however need more locals employed and more training required	Aboriginal people to have access to land and waters for cultural purposes (i.e. foods, artefacts, etc.)
Education of Aboriginal culture and heritage	LALCs should be primary organisations for culture and heritage oversight – recognition of LALCs existing statutory obligations for culture and heritage
Approvals to go through independent body	Archaeologists need to be signature to code of ethics under the Australian Archaeological Association of Australia. They should also be members of the Australian Consulting Archaeological Association of Australia and have references from Australian Indigenous Archaeological Association.
Free access and use of sites and areas by Aboriginal people, irrespective of tenure. Mechanisms for access and use to be developed by independent body, including free access to camping sites and easy application process for Aboriginal people	

Session 5: Key Messages and Next Steps

Key Messages

The following session provide participants with the opportunity to provide key messages to NSW Parliament, Ministers, Reform Working Party, OEH and other key stakeholders on the culture and heritage reform.

These include comments specific to the reform process, stage 2 consultations, legislation and policy.

Key Messages	
Education should be mandatory on Aboriginal culture and heritage to ensure awareness and respect by all	Aboriginal cultural heritage in contemporary Australia is primarily Aboriginal but we may share
Any future workshops to include all participants	Tracker (NSW Aboriginal Land Council publication) should be used to inform people of workshops and reform process
Definition of 'expert' needs clarification	DAA is not relevant to this reform process – give them the 'axe'!
Concern over existing representation and process for the Reform Working Party	

Next Steps

1. Consultant is required to deliver workshop summary report to OEH as soon as possible
2. Consultant to provide draft summary report to participants for their comments prior to submitting final report to OEH.
3. Participants did not want their comments to be on behalf of other people.
4. Participants agreed for the summary report to be a public document, including being placed on the OEH reform website.

Addendum: Participants Comments Post Workshop

Markwell Consulting sent all participants a draft of the Workshop Summary report for their comments. The following comments were received by participants after the workshop. They reflect the participant's perspectives on the reform. Because they were provided as 'post workshop' comments, the Consultant has included them as an addendum to the Report so not to change the integrity of the workshop discussions and outcomes. The comments reflected below are verbatim extracts from workshop participants.

Attachment A: Completed Participant Workshop Evaluation Forms

Evaluation Form

NSW Aboriginal Heritage Reform - Aboriginal Workshop

[Location] Keupsey [Date] 7/14/11

How would you rate the following (place a tick in the appropriate box)

Poor	Fair	Average	Good	Excellent
1	2	3	4	5

	1	2	3	4	5
1. Value of workshop in meeting your needs				✓	
2. Suitability of introductory session (OEH)				✓	
3. Suitability of the facilitator				✓	
4. Presentation techniques/style of the facilitator				✓	
5. Usefulness of handouts			✓		
6. Clarity of objectives			✓		
7. Workshop structured to maximise participants active involvement				✓	
8. Timeliness of the sessions				✓	
9. Suitability of venue				✓	
10. Workshop organisation				✓	
11. Culturally Appropriate				✓	

What did you like most about the workshop?

ease of presentation

What do you think could have been better?

Warm lunch.

Other comments (also use back):

Evaluation Form

NSW Aboriginal Heritage Reform - Aboriginal Workshop

[Location] KEMPSEI NSW [Date] Nov 7th 2011

How would you rate the following (place a tick in the appropriate box)

Poor	Fair	Average	Good	Excellent
1	2	3	4	5

	1	2	3	4	5
1. Value of workshop in meeting your needs				✓	
2. Suitability of introductory session (OEH)				✓	
3. Suitability of the facilitator					✓
4. Presentation techniques/style of the facilitator					✓
5. Usefulness of handouts				✓	
6. Clarity of objectives				✓	
7. Workshop structured to maximise participants active involvement					✓
8. Timeliness of the sessions					✓
9. Suitability of venue			✓		
10. Workshop organisation					✓
11. Culturally Appropriate					✓

What did you like most about the workshop?

Appropriate presentation, participants felt included, opinions valued, respect to all participants.

What do you think could have been better?

DVD shown 1st.

Other comments (also use back):

fantastic.

Evaluation Form

NSW Aboriginal Heritage Reform - Aboriginal Workshop

[Location] Kempsey [Date] 7-11-11

How would you rate the following (place a tick in the appropriate box)

Poor	Fair	Average	Good	Excellent
1	2	3	4	5

	1	2	3	4	5
1. Value of workshop in meeting your needs				✓	
2. Suitability of introductory session (OEH)				✓	
3. Suitability of the facilitator				✓	
4. Presentation techniques/style of the facilitator				✓	
5. Usefulness of handouts				✓	✓
6. Clarity of objectives				✓	
7. Workshop structured to maximise participants active involvement				✓	
8. Timeliness of the sessions				✓	
9. Suitability of venue				✓	✓
10. Workshop organisation				✓	
11. Culturally Appropriate				✓	✓

What did you like most about the workshop?

the freedom of free speech.
nice presentation by facilitator
and friendly

What do you think could have been better?

more people.

Other comments (also use back):

keep up the good work.
but needs better advertising of the
work shops