Reforming the Aboriginal cultural heritage legislation in NSW

Fact sheet 1: Key features of the proposed model

Stand-alone legislation

For both practical and symbolic reasons, the Government has proposed a new Aboriginal Cultural Heritage (ACH) Act to replace the provisions for ACH currently included in the National Parks and Wildlife Act 1974. The objectives of the new ACH Act would 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 retain the current regime of offences, defences, exemptions and penalties for harm to ACH. Provisions for dispute resolution and appeals processes will be included and the Act will specify timeframes that enable fair and transparent decisions.

Preamble and definition of ACH

The following preamble has been suggested in the proposed model, to respectfully recognise contemporary views and understanding of the value of ACH.

The proposed definition of Aboriginal cultural heritage aims to illustrate the need to protect both tangible and intangible ACH values.

Local ACH Committees

The Government model will align with, and complement, sections 82(2)(b) and (c) and section 170 of the Aboriginal Land Rights Act 1983 (NSW) to identify people who have the association with and authority to speak for Country.

Local ACH Committees within clearly defined boundaries will be formed. Each will comprise 10 nominated people with a gender balance and identified connection to Country. The Local ACH Committees will create a local ‘one-stop-shop’ for consulting on all ACH matters. These people will have the knowledge and understanding of, and be able to represent, the cultural heritage, history, practices and priorities for their Country.

In instances where projects cross multiple Local ACH Committee boundaries, the relevant Local ACH Committees will select members from each relevant area, to a maximum of 10 people, to form a Regional Project ACH Committee. This committee will be the ‘one-stop-shop’ for a specific project, and will work with a proponent to negotiate and agree on outcomes for their project.
New tools and support for conservation and strategic planning

Local ACH Maps
Local 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 the ACH values are located within the map’s boundary.

The maps will be placed on public exhibition before the Minister reviews and places them on the ACH Register.

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

Through a PoM, a Local ACH Committee will identify the key ACH priorities and projects required to continue to practise culture and to protect and manage ACH values. These priorities, if mutually agreed, can be negotiated as ACH management conditions within individual Project Agreements.

ACH Register
The ACH Register is a statutory 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. There will be appropriate restrictions in place to ensure culturally sensitive information and places are protected.

The ACH Register will ensure accurate and timely ACH information is provided that will assist Aboriginal people, proponents and the Government to make informed decisions about ACH management across the state.

Project Agreements
Project Agreements provide a fit-for-purpose approach to managing ACH considerations and project needs. They will be negotiated between the proponent 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. A Regional ACH Officer will provide support and relevant guidelines, templates, criteria and standards.

Project Agreements will provide for ACH conservation, access for cultural practices, maintaining or enhancing ACH values in Country and the care and ownership of ACH values, objects and places.

State of Aboriginal cultural heritage report
The new legislation will also require the Government to deliver a state of Aboriginal cultural heritage report (ACH Report) every three years. The report will examine ACH trends and potential implications for the ongoing practice and protection of ACH 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 (including cumulative conservation and impacts)
- the costs and benefits (including economic evaluation) of ACH protection and management
- information about ACH programs
- the ACH activities of the public and private sectors
- trends in economic analysis
- local and regional information that aligns with regional planning processes.

Continued role for current best-practice tools and support
To ensure continuity of currently well-received best-practice tools, the proposed model aims to build on the following components of both the National Parks and Wildlife Act 1974 and the Heritage Act 1977, and will maintain existing provisions for care and ownership of ACH and access to Country:
- declaration of Aboriginal Places
- voluntary conservation agreements
• listing places and items on State Heritage Register
• continuity and enhanced role of the Aboriginal Cultural Heritage Advisory Council (ACHAC).

Continued role for heritage advisors
Heritage advisors with appropriate qualifications, skills and experience (such as anthropology and archaeology) will have a role in:
• assisting Local ACH Committees and proponents to undertake ACH assessments, mapping and development of PoMs as needed
• assisting with conservation, protection and rehabilitation works
• developing ACH assessment methodologies and conservation approaches, and recording scientific values.

ACH assessments undertaken by heritage advisors will be guided by a revised code and must consider the ACH values recorded in the statutory ACH Maps, PoM and Register.

Earlier ACH considerations and involvement in the planning process
The proposed model creates stronger links between Aboriginal cultural heritage processes and the planning system at the local, regional and state levels to deliver more efficient and effective processes that meet both systems' needs. Linking the ACH Register with ePlanning and providing public access to ACH Maps and Plans of Management will enable ACH values to be considered much earlier. This will increase the opportunities to avoid impacts and result in better conservation and protection outcomes.

Meeting the needs of local communities and individual projects
Each Local ACH Committee will develop a Plan of Management containing relevant ACH information for their area. The Plan of Management will outline the level of response required for managing ACH values, providing a ‘fit-for-purpose’ approach to managing ACH considerations and project needs. This approach will further streamline the process and provide greater clarity and certainty in project planning.

Clarity and certainty within a new streamlined process
Consultation requirements and timeframes will be significantly reduced. In addition, the model proposes clear processes and requirements for assessing ACH values. A requirement to undertake new ACH assessments would result only when there are gaps in existing assessment information or where the assessment does not meet the new code-based standards and requirements. The proposed model includes clear guidance for managing unexpected and unmapped ACH values. Each step of the process will have mandatory timeframes.

Figure 1: The process for managing unexpected finds for projects that have already commenced

Strong and enforceable penalties
The proposed model will:
• maintain the existing penalties for harm to ACH values
• maintain the existing offences of harm to ACH values
• maintain the existing defences for harm to ACH values
• maintain the existing powers to investigate harm to ACH values
• introduce a penalty for failing to comply with a Project Agreement
• introduce a penalty for failing to comply with consultation requirements.
Dispute resolution and appeal processes

The proposed ACH model will include dispute-resolution processes and standard judicial review rights regarding how the processes are administered under the Act. The Government is seeking feedback on a range of options for dispute resolution and appeal processes.

- The proposed Government model is available at:

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

- **Online** Make a submission online at: www.environment.nsw.gov.au/achref/haveyoursay.htm
- **Attend a workshop** Details can be found at www.environment.nsw.gov.au/achref
- **By mail** Post your written submission to: Aboriginal Cultural Heritage Reform Secretariat NSW Office of Environment and Heritage PO Box 1967 Hurstville BC NSW 1481
- **By phone** Record your submission by calling the free message line: 1800 881 152
- **By fax** Fax your written submission to: 02 9585 6366
- **By email** Email your submission to: ach.reform@environment.nsw.gov.au

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

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