19 April, 2018

NSW Office of Environment and Heritage
PO Box A290
SOUTH SYDNEY, NSW 1232

Email: ach.reform@environment.nsw.gov.au

DRAFT ABORIGINAL CULTURAL HERITAGE BILL 2018

Tamworth Local Aboriginal Land Council (TLALC) writes to make a submission on the draft Aboriginal Cultural Heritage Bill 2018 that is currently on public exhibition. Representatives of the LALC attended the public consultation workshop held at Tamworth on the 2 March 2018 and provide this submission based on that workshop and further consideration of the draft Bill.

The New South Wales Aboriginal Land Council (NSWALC) along with Local Aboriginal Land Councils (LALC) across NSW have long advocated for comprehensive new laws to protect Aboriginal heritage. The current laws:

- Do not provide decision making rights for Aboriginal peoples;
- Focus on destruction rather than protection and allows Aboriginal heritage to be destroyed;
- In NSW they are outdated where in all other States/Territories have standalone or updated Aboriginal Cultural and Heritage legislation;
- Are reactive and don’t consider Aboriginal heritage before planning and development decision are made; and
- Include inappropriate and limited definitions of what can be protected.

The TLALC supports the draft Bill and makes the following comments:

1. **New Act** - Provides a new stand-alone Act that has increased clarity and links with the planning and development process. Any new laws relating to Aboriginal culture and heritage must integrate with and complement planning and local government laws to ensure that Aboriginal heritage is properly considered in strategic planning and development assessment processes. In this instance, consideration needs to be given to including **ALL** types of development including complying development being required to address Aboriginal cultural heritage matters.
2. **New definitions** – the proposed Act is far superior to the existing legislation and provides new definitions that reflect a more respectful and contemporary understanding of Aboriginal Cultural Heritage values, which recognizes both tangible and intangible cultural heritage as well as a whole of landscape values. The definitions however must be accompanied by enforceable mechanisms to protect Aboriginal heritage, including cultural and intellectual property rights.

3. **New decision makers** – the proposed Act provides that Aboriginal people are to make key decision via a State level body along with compliance and coordination functions. TLALC supports building on existing organisations such as NSWALC and LALC’s to create a unified, accountable and workable system that complements the roles of these organisations and building on the Aboriginal Land Rights system. It is critical however, that these organisations are appropriately resourced to carry out these roles.

   It is understood that the formation of the Local Panels is yet to be determined and it must be recognized in forming these Panels that the appropriate people are fairly and transparently appointed to speak on behalf of and make decisions for the local people.

4. **Planning and development process** – It is understood that it is proposed to replace Aboriginal Heritage Impact Permits with Aboriginal Cultural Heritage Management Plans that will require Aboriginal heritage to be considered before planning approvals are obtained. The TLALC strongly supports the proposal to bring assessment of Aboriginal heritage upfront so that it occurs before and informs development applications. Reconsideration needs to be given to the role played by the Aboriginal Cultural Heritage Authority and the requirements for this process to also apply to complying development and State Significant development.

   The proposed Act must empower and support the rights of Aboriginal peoples and they must have the right to refuse an activity or development. Proper criteria and consultation processes must be developed and must include provisions for assessing cumulative impacts and compensating Aboriginal people for the destruction of Aboriginal heritage.

   Timeframes associated with consultation with Aboriginal people in relation to development applications must be culturally appropriate with allowances for cultural priorities such as sorry business.

   Consultation must occur with peak Aboriginal organisations on all supporting regulations, policies, minimum standards and other supporting documents as they are developed to support the new Act.
5. **Mapping and database** – Any registers and maps developed as part of the new Act should be used as a guidance ‘tool’ for proponents only and must not be used as the sole decision making tool. Consultation with Aboriginal people must also be undertaken during the assessment process of development applications and also the development of any strategic planning documents.

6. **Compliance and enforcement** – Local Aboriginal communities should have key roles in determining penalties for individuals or organisations that have damaged or destroyed Aboriginal heritage. Any fines should be directed to the local Aboriginal community where the offence occurred. It is important strong penalties for harming or desecrating Aboriginal cultural heritage are set out in the new legislation.

Mechanisms to actively monitor compliance with provisions of a new Act, coupled with a stronger enforcement of breaches of the Act must be included. Suitable resourcing is also required to ensure that monitoring and compliance is achieved.

7. **Further changes needed include** – Inclusion within the proposed Objectives of the Act a clear objective requiring **protection** of Aboriginal cultural heritage and recognition of the Aboriginal Land Rights Act.

Thank you for the opportunity to provide feedback on the draft Bill. We look forward to considering the supporting regulations and policies upon development.

The TLALC strongly supports recognition that Aboriginal cultural heritage belongs to Aboriginal people and that genuine decision making and control for Aboriginal peoples to protect their cultural heritage is critical.

Yours sincerely

[Signature]

Harry Cuthmore
Chairperson