Feedback re DRAFT Aboriginal Cultural Heritage Reforms

The ‘structure’ of this feedback follows that of the OEH Public Workshops and is intentionally kept as succinct as possible.

By way of a summary: TBLALC does not agree that ‘authority’ in regard to ACH should be concentrated or centralised. We believe both the authority and the responsibility for ACH should be made as local as possible.

OVERVIEW:

The constitutional recognition of ACH as ‘living’ and ‘belonging’ to Aboriginal people and the recognition of ‘intangible’ ACH are necessary. Of course, the fact that they are necessary should, in itself, be seen as an embarrassment for the existing legal system of Australia. What other group of people have to argue that their culture is alive and belongs to them and that it has intangible elements? That the original people of this land have a culture is a statement of the obvious which is beyond debate. Frankly, it is humiliating to Aboriginal people to even have to discuss this subject.

Decision making should reside with Aboriginal people, but not with a governing authority. Aboriginal people have managed their affairs via intricately interwoven tribal communities across and even beyond the entire continent for multi-millennia. A central authority, especially one that is fully controlled by the Minister, cannot succeed. Aboriginal people will not, cannot, hand-over ‘management’ of their culture to a central body. It is an impossibility.

Better information management is the key to better management. Of course, the most vital aspect of ACH ‘information’ is ‘lore’ and knowledge – much of which is not ‘mapable’ as it is traditions, stories, dances, ceremonies, songs, languages and history (usually ancient history). Landscape and environment are living parts of ACH. ‘Locations’ are just one part of a much-bigger picture. TBLALC has already progressed a long way down the path of compiling and managing ACH in its region. The management of the information must be done locally; it cannot be centralised. TBLALC is also well advanced in terms of applied
assessments and site specific management plans. By working with the Tweed Shire Council we have already developed and implemented a constructive and practical compliance process.

DECISION MAKING BY ABORIGINAL PEOPLE:

TBLALC agrees that LALC’s should be accredited to manage ACH locally but we believe NSWALC, rather than a government agency, should be funded to perform this function. TBLALC already have the management and administration framework to perform this function. There are no reasons why the necessary skills can’t be developed and applied locally by LALCs.

The necessary laws protecting ACH have been in existence for 45 years. All that is required is to facilitate their enforcement at (before) the time and in the place where harm may occur. local government, not state government, is best equipped to do this. Compliance is facilitated by consultation and education. Enforcement, where it is needed (which is much reduced in a consultative framework) would become galvanizing if local councils were empowered to impose on the spot fines for breaches. The historical non-application of breaches and fines for causing harm to ACH is legendary. TBLALC suggest that all that is required is an appropriate amendment to the Local Government Act. The current legal framework is sufficient; it just ‘sits’ in the wrong place (the NPWS Act) and it has no ‘teeth’. Stand-alone ACH legislation may be beneficial however the main point is that the law needs an applied local focus upon protection supported by swiftly applied local penalties for causing harm.

BETTER INFORMATION MANAGEMENT

TBLALC agree that mapping is vital but it must be the Aboriginal people’s mapping. We do not believe centralised mapping of ACH will ‘work’. As mentioned earlier much ACH can’t be mapped. To put this as blatantly as I can, white men’s maps of ACH have to be read with Aboriginal knowledge. There are many aspects of Aboriginal lore that Aboriginal people don’t want to be mapped. Certainly, there are vital aspects of Aboriginal culture which will never be ‘deposited’ in a central, government owned database. If it is genuinely a central philosophy of the proposed new framework that ACH ‘belongs’ to Aboriginal people, then the legislators and administrators should be comfortable in allowing them to be the ‘keepers’ of it. This is quite simple: facilitate the information management skills within LALC’s and let them manage their own cultural heritage. Again, TBLALC has already gone a long way down this track.

IMPROVED PROTECTION, MANAGEMENT AND CONSERVATION OF ACH

The specifics at this stage are unclear but basically this section of the reforms refers to an ACH Fund. In the absence of specifics it is difficult to comment. It is undeniable that protection of ACH requires a greater commitment to funding. In terms of administration of funds TBLALC’s preference is that it be focused upon skills development in local communities (LALC’s). As such we believe NSWALC is already equipped to manage the allocation of funds.
GREATER CONFIDENCE IN THE REGULATORY SYSTEM

The system outlined for assessment, management plans, integration with planning and compliance and enforcement has already been implemented by TBLALC in cooperation with the tweed Shire Council under the Aboriginal Cultural Heritage Management Plan. Our experience to-date has been that there has been no need for dispute resolution or appeals and reviews. We believe that this is due to the fact that the process that is applied is proactive and consultative. In fact, our experience to-date has been that the general community are quite enthusiastic and receptive to learning about ACH, the applicable laws and regulations and receiving assistance in compliance.

Yours sincerely

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