Workshop Summary Report

Reform of NSW Aboriginal Culture and Heritage Legislation Community Consultations

Dubbo Ex Servicemen’s Club, NSW

17 November 2011

Facilitation and Summary Report - Markwell Consulting
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Warning

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

Preamble

This report is a summary of discussions, outcomes and key messages from participants at a Community Consultation 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 Country, Culture and Heritage Division of the NSW Office of Environment and Heritage (OEH) in the Department of Premier and Cabinet (‘the Department’). The purpose of these workshops was to seek input from Aboriginal people on the reform.

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

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.

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.
Acronyms

New South Wales National Parks and Wildlife Service (NSWPWS)
New South Wales National Parks and Wildlife Act (NSWNPW Act)
Office of Environment and Heritage (OEH)
Country, Culture and Heritage Division (CCHD)
Environment Protection Agency (EPA)
Department of Aboriginal Affairs (DAA)
Local Aboriginal Land Council (LALC)
New South Wales Aboriginal Land Council (NSWALC)
Native Title Services Corporation (NTSCORP)
Natural Resource Management (NRM)
Traditional Ecological Knowledge (TEK)
Natural Resource Management (NRM)
Catchment Management Authority (CMA)
Agenda

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

11:30 – 12:30  Workshop Session  Facilitator

12:30 – 13:30  DVD shown during Lunch

13:30 – 14:45  Workshop Session  Facilitator

14:45 – 15:00  Summary and Wrap up  Facilitator

15:00  Afternoon Tea
Attendees

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ricky Archer</td>
<td>Western CMA</td>
</tr>
<tr>
<td>Debbie Foley</td>
<td>Mudgee community member</td>
</tr>
<tr>
<td>Larry Foley</td>
<td>Mudgee community member</td>
</tr>
<tr>
<td>Tony Londsdale</td>
<td>Mudgee community member</td>
</tr>
<tr>
<td>Lee Pearson</td>
<td>Aust Govt Indigenous Land Management Facilitator</td>
</tr>
<tr>
<td>Danielle Flakelar</td>
<td>Dubbo community member</td>
</tr>
<tr>
<td>Veneta Dutton</td>
<td>Nyngan LALC</td>
</tr>
<tr>
<td>Lesly Ryan</td>
<td>Nyngan community member</td>
</tr>
<tr>
<td>Sheila Couley</td>
<td>Nyngan community member</td>
</tr>
<tr>
<td>Terrie Miligate</td>
<td>Nyngan LALC</td>
</tr>
<tr>
<td>Riverbank Frank Doolan</td>
<td>Community member</td>
</tr>
<tr>
<td>Gordon Milson</td>
<td>Gilgandra community member</td>
</tr>
<tr>
<td>Jim Earsman</td>
<td>Gilgandra community member</td>
</tr>
<tr>
<td>Mark Powell</td>
<td>Condobolin LALC</td>
</tr>
<tr>
<td>Rebecca Shepherd</td>
<td>Condobolin LALC</td>
</tr>
<tr>
<td>Cliff Foley</td>
<td>Community member</td>
</tr>
<tr>
<td>Robyn Williams</td>
<td>Community member</td>
</tr>
<tr>
<td>Aleshia Londsdale</td>
<td>Mudgee community member</td>
</tr>
<tr>
<td>Trevor Robinson</td>
<td>OEH</td>
</tr>
<tr>
<td>Allira Chatfield</td>
<td>OEH</td>
</tr>
<tr>
<td>Melanie Thorne</td>
<td>OEH</td>
</tr>
<tr>
<td>Joan Chatfield</td>
<td>OEH</td>
</tr>
<tr>
<td>Cliff Daylight</td>
<td>OEH</td>
</tr>
</tbody>
</table>

Welcome to Country

Frank Doolan, a community Elder provided participants with a Welcome to Country. This was followed by introductions with participants providing a statement about what they hoped to get out of the workshop.
Session 1: The Reform Process

Overview of the Reform Process

Chrissy Grant, Markwell Consulting Associate facilitated the workshop by focussing the participants on the following topics which was raised by the participants.

The DVD was shown to the participants to provide some background to the reform process.

The Reform Process – Participant’s Comments

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

<table>
<thead>
<tr>
<th>The Reform Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal Studies that include Aboriginal Cultural Heritage laws to be compulsory for all education at primary, secondary and tertiary levels</td>
</tr>
<tr>
<td>Look at other forum outcomes on the legislative review such as: White and Green Paper; recommendations to amend the Land Rights Act; Boomanulla recommendations; stole CMA recommendations etc</td>
</tr>
<tr>
<td>Engage the Education Department on the new Aboriginal Cultural Heritage legislation</td>
</tr>
<tr>
<td>Training and employments strategies to be informed by the Aboriginal Cultural Heritage legislation</td>
</tr>
<tr>
<td>If LALCs are going to be used in consultation and negotiations, make sure that ALL LALCs are consistent ie. Address the inequity issues where some LALCs are well resourced and others are struggling</td>
</tr>
<tr>
<td>Aboriginal people have to ask the Land Council if they are mature enough to take on the responsibility to use their structure to be involved in administrating the new legislation – if they are not then get rid of them</td>
</tr>
<tr>
<td>Administrators must have a very good understanding of legislation</td>
</tr>
</tbody>
</table>

Working Party

<table>
<thead>
<tr>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSWALC must have a dedicated membership on the Working Party</td>
</tr>
<tr>
<td>Working Party member to produce paper to communities in Phase 2 consultation in person</td>
</tr>
<tr>
<td>Working Party must be an ALL Aboriginal membership</td>
</tr>
<tr>
<td>Local interests must be represented adequately</td>
</tr>
</tbody>
</table>
Session 2: Culture and Heritage – ‘Setting the Scene’

Participants were asked what culture and heritage means to them. They identified that there was tangible and intangible cultural heritage. Their responses are outlined below. This was an important session to outline what culture and heritage values are important to Aboriginal people. This also set the scene to focus their thoughts the different types of heritage and on what they believe should be included in the reformed legislation.

<table>
<thead>
<tr>
<th>Culture</th>
<th>Heritage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant sites</td>
<td>Where you come from and your family connection</td>
</tr>
<tr>
<td>Bush foods and animals</td>
<td>Way of Life</td>
</tr>
<tr>
<td>Cultural artefacts</td>
<td>Respect</td>
</tr>
<tr>
<td>Ceremonial sites</td>
<td>Landscapes – knowledge and stories</td>
</tr>
<tr>
<td>Water being very important to</td>
<td>IP and protection of Aboriginal knowledge</td>
</tr>
<tr>
<td>Aboriginal culture for both</td>
<td></td>
</tr>
<tr>
<td>surface and underground</td>
<td></td>
</tr>
<tr>
<td>Art – rock art, traditional,</td>
<td>Traditional land management practices – water</td>
</tr>
<tr>
<td>contemporary</td>
<td>management and fire management</td>
</tr>
<tr>
<td>Totems</td>
<td>Knowledge transfer and learnings</td>
</tr>
<tr>
<td>Stories</td>
<td>Knowledge of country</td>
</tr>
<tr>
<td>Spirituality</td>
<td>Access to Country and the right to harvest,</td>
</tr>
<tr>
<td></td>
<td>hunt, gather</td>
</tr>
<tr>
<td>Retaining knowledge</td>
<td>Songs, dance, music, art, language</td>
</tr>
</tbody>
</table>

Session 3: New Culture and Heritage Legislation – ‘Getting it Right’

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.

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.

Aboriginal people also strongly believe that Protocols should be embedded in the legislation. However they are presented, the following items must be part of the Protocols by which both the Government and Aboriginal people will work together.
### Currently Protected

<table>
<thead>
<tr>
<th>Currently Protected</th>
<th>Should be Protected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal places and sites</td>
<td>Everything although information must be filtered</td>
</tr>
<tr>
<td>Stone and bones</td>
<td>Identify site types to determine priority and level of protection</td>
</tr>
<tr>
<td>Natural places</td>
<td>There should be jail terms for people who destroys Aboriginal site and important values</td>
</tr>
<tr>
<td>Story places</td>
<td>Community based cultural heritage management database that determines ownership of information, filters of access levels and who can access the information, and allows electronic documentation, reports, photos, videos, etc</td>
</tr>
<tr>
<td>Significant space (ceremony, remains, camping grounds)</td>
<td></td>
</tr>
<tr>
<td>Data (AHIMS)</td>
<td></td>
</tr>
</tbody>
</table>

### New NSW culture and heritage legislation

<table>
<thead>
<tr>
<th>New NSW culture and heritage legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management structure that includes AHIMS database; consult local communities; empower local Aboriginal communities; Aboriginal people trained in compliance and enforcement; and Aboriginal people involved in management of cultural heritage</td>
</tr>
<tr>
<td>Use existing structures such as the Land Councils to consult with Aboriginal people</td>
</tr>
<tr>
<td>Heritage professionals to be educated in Aboriginal cultural heritage and community engagement</td>
</tr>
<tr>
<td>Conservation Protection Agreements – covenants to continue to stay with the land parcel even if the developer sell the property</td>
</tr>
<tr>
<td>Reporting mechanism for site impacts making Government accountable to Aboriginal people about their heritage</td>
</tr>
<tr>
<td>Compensation through the permits process – benefits goes back to communities; used to build capacity in communities; able to build Keeping Places; used to support Aboriginal Cultural Heritage Body</td>
</tr>
<tr>
<td>Significance criteria and thresholds</td>
</tr>
</tbody>
</table>

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New NSW culture and heritage legislation

<table>
<thead>
<tr>
<th>Legislation to give less power to the archaeologists</th>
<th>A list to be developed of those archaeologists who are not doing the right thing by Aboriginal people</th>
</tr>
</thead>
<tbody>
<tr>
<td>Linkages to other existing and any future legislations and programs for Aboriginal cultural heritage</td>
<td>Preamble to acknowledge and recognise Aboriginal Nations of NSW – acknowledge Aboriginal people as the primary source of information on their heritage</td>
</tr>
<tr>
<td>Aboriginal people have a responsibility to manage natural resources</td>
<td>Aboriginal ownership and Aboriginal people’s right to negotiate</td>
</tr>
<tr>
<td>Plain English materials to provide awareness and education of the new heritage laws</td>
<td>Access rights for Aboriginal people to heritage sites</td>
</tr>
<tr>
<td>Use the State Aboriginal Cultural Heritage Advisory Body to empower Aboriginal people to steer the Government</td>
<td>Establish an Aboriginal Statutory Body to negotiate eg. Land Councils</td>
</tr>
<tr>
<td>Regulations – intent and way for Minister??</td>
<td>Acknowledgement of inclusiveness of natural resources and cultural practices</td>
</tr>
<tr>
<td>Respect for gender sites</td>
<td>Repatriation of cultural heritage materials to communities from Museums and Universities and to also include Welfare Board files</td>
</tr>
<tr>
<td>Access to National Parks as sometimes communities out west do not have access to National Parks</td>
<td>Provision for a yearly review to determine how many consents to destroy applications have been lodged and approved</td>
</tr>
</tbody>
</table>

Session 4: 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 some areas Aboriginal 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. Participants believe that it is Aboriginal business and this needs to be a separate agenda item to sort it out properly. This reflects different community capacity levels across the State.

<table>
<thead>
<tr>
<th>Who should not speak for Country</th>
<th>Who should speak for Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Don’t allow Government to tell us who can speak for Country</td>
<td>Local Aboriginal Cultural Heritage bodies that can be set up</td>
</tr>
<tr>
<td>Government such as DAA, Parks, NSWALC and the LALCs</td>
<td>Access existing networks and support them such as State Land Councils – Aboriginal</td>
</tr>
</tbody>
</table>
### Session 5: How will it work?

Participants were particularly interested in identifying some key elements and principles for the proposed new independent body. Participants were informed that their views on how it will work may fall into either inclusion in the legislation and policy design. These are outlined below.

<table>
<thead>
<tr>
<th>Who should not speak for Country</th>
<th>Who should speak for Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>people to sort it out; are Aboriginal Land Councils mature enough to take responsibility; if not working then get rid of them</td>
<td>Local Aboriginal Traditional Owners and Elders and in some cases historical Aboriginal people</td>
</tr>
<tr>
<td>Native Title bodies should advise who can speak for country and not do it themselves</td>
<td>Registered Native Title Groups</td>
</tr>
<tr>
<td>Aboriginal Owners through co-managed Parks</td>
<td>Aboriginal people must get appropriate level of remuneration</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How will it work?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explore other models for inclusiveness and representativeness of ALL interests for local Aboriginal communities eg. National Congress model; and for the structure to be supported by the legislation</td>
</tr>
<tr>
<td>Establish linkages to ALL other departments and organisational bodies dealing with Aboriginal cultural heritage – eg. Meaningful yearly or bi-yearly forums</td>
</tr>
<tr>
<td>Minister should not have the responsibility for both Aboriginal cultural heritage and planning (conflict of interests)</td>
</tr>
<tr>
<td>There has to be a timeliness of reviews</td>
</tr>
<tr>
<td>Establish an Aboriginal Heritage Commission body to administer the Aboriginal cultural heritage legislation; deliver NRM programs; and deal with planning and approvals</td>
</tr>
<tr>
<td>Resources for opportunities for Aboriginal partnerships</td>
</tr>
<tr>
<td>More Aboriginal staff in EPA Group</td>
</tr>
<tr>
<td>Why does it have to be administered by the Government? A statutory authority can deliver self determination to Aboriginal people</td>
</tr>
<tr>
<td>Aboriginal staff in an appropriate separate to National Parks</td>
</tr>
<tr>
<td>Aboriginal people to have senior positions and to also stay in National Parks</td>
</tr>
<tr>
<td>Work very closely with CMA’s and bring them under the new bureaucracy</td>
</tr>
<tr>
<td>Capacity building for communities at regional levels to empower communities to advise on cultural heritage matters</td>
</tr>
</tbody>
</table>
### Protocols

| Acknowledgement of Aboriginal people’s rights | Everyone’s opinion to be respected |
| Elders Groups are to be consulted | Awareness and education of other programs for cultural heritage property – ie. Communities are informed of what cultural property is out there and who has them (Museums etc) and what should NOT be displayed |
| Free, Prior and Informed Consent | Address IP and copyright issues |
| Clear guidelines for responsibilities, obligations and commitments for Minister, Government departments and communities | Appropriate remuneration for people involved in the process |
| Recognition of local priorities and significance | Complaints and grievance mechanisms to be included in Act that deals with Conciliation Process; Conflict of Interest; Conflict Resolution; and Mediation |
| Guidelines developed for engagement of heritage professionals | Recognise TOs input |
| Acknowledge Aboriginal histories | Succession planning in working towards empowering communities through training in governance etc |
| Gender equity across the whole process | Building community capacity to make decisions on most up to date information |
| Take people back to country to help them either ‘learn’ or remember some of their culture | Links to other legislation |
| Inclusiveness in decision making and planning; implementation, evaluation and monitoring | Open and transparent process for Aboriginal people to have same level of information as others |

### Planning

**WHAT HAPPENS NOW?**

**WHAT AND HOW DO WE WANT IT TO HAPPEN?**

| Developer’s application by accessing to AHIMS | Developer MUST do an assessment through AHIMS |
| Archaeological Environmental Assessment | MUST consult communities using new Protocols and Guidelines – eg. Ask the right questions |
| EPA provide Aboriginal consultation list | Developers and heritage professionals are encouraged to employ local Aboriginal people on projects |
| Aboriginal Heritage Impact Permit | MUST do a combined Cultural Heritage and Natural Resource Impact Assessment that would also cover water, wildlife species, vegetation etc |
### Planning

<table>
<thead>
<tr>
<th>Decision for low impact is on archaeologist’s recommendation</th>
<th>These conditions/processes MUST be compulsory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister makes the approval</td>
<td>MUST undertake the FPIC process</td>
</tr>
<tr>
<td></td>
<td>MUST have 2 local Aboriginal people and 2 other Independent bodies to make recommendations to the Minister</td>
</tr>
<tr>
<td></td>
<td>MUST have a report that goes to the Land Council to be signed off on</td>
</tr>
<tr>
<td></td>
<td>Decision makers NEED to have a sliding scale of remaining Aboriginal cultural heritage significant to make their decision</td>
</tr>
<tr>
<td></td>
<td>Minister makes the final decision</td>
</tr>
</tbody>
</table>

### Session 6: Key Messages and Options

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

| OEH needs to work with Tourism industry for compliance, education and awareness and development of Guidelines and protocols | Government has to ensure that NRM is intertwined with Aboriginal cultural heritage practices – plants and animals for bush tucker and medicinal purposes; water allocation for management for cultural flows and commercial purposes; and monitoring mining impacts |
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.

Lee Pearson, AG ILMF – Additional Comments

Who speaks for Country

Difference between speaking about Country and for Country - Everyone with information and interest can speak freely about Country. Traditional people (what term you use for the Aboriginal people of the land - TO's) speak for Country. That is to say that the final decision making should be by the TO's. Land Councils, heritage families, new comers, farmers or contemporary land owners may have important knowledge that even TOs don’t have access to which needs to be considered in NRM and environmental management, but our culture is that the TO's speak for Country and make the final decisions (or in these times recommendations).

That last comment was stated a couple of years ago by an Elder on the north coast (I can’t remember his name). It was such a powerful message of cultural Lore, but not excluding new people to the land. Often TOs appear to want to exclude new people which is not a good way to go considering the displacement is not the fault of the people.

Exclusion can result in valuable skills and knowledge being left out of decision making, but if we want to retain culture, it is the TOs that should have the final recommendations taking into account and utilising all the skills, knowledge and commitment of the people and resources available to them.
Cliff Foley – Submission on Cultural Heritage Reform

Mr. Norman Laing  
Office of Environment and Conservation  
PO Box 1967  
Hurstville BC NSW 1481

ach.reform@environment.nsw.gov.au

1st December 2011

Dear Mr. Norman Laing,

NSW Aboriginal Heritage Legislation Issues for Reform

I’m Aboriginal and I thought I would like to offer a Submission in response to the public consultations on Issues for Reform Aboriginal Heritage Legislation in NSW

A SUBMISSION

As a beginning:

“…Aboriginal people maintain a traditional and custodial link through their association with land, the environment and its natural resources.

There is evidence throughout the area of this relationship between Aboriginal people and their land.

This evidence is laid bare on the creek beds that contain hundreds of axe grinding grooves; and across the rock platforms with engraved motifs, animals, figurines and their tracks.

There are sites where Aboriginal people made tools at open campsites, in rock shelters, down low in the gullies and up high on the ridge tops. These sites expose an indigenous industry of artefacts from the coast and up to the mountains.

Images of stenciled hands, feet, fish, animals, birds and boomerangs festoon rock shelters and large rock galleries.

The Artists walk with you. And expose their work at their contentment; and conceal in their fright.

This Land is ancient and pristine; captured as a cultural landscape of stories of places and events from the Dreamtime. It is a time capsule managed by native Peoples and protected by undetonated explosives …”

And so it was said of the cultural heritage significance of the Aboriginal sites throughout the Holsworthy Military area when it was nominated onto the Australian Heritage Commission for registration onto the Register of National Estate.
There are 15,000 Aboriginal sites recorded within the Sydney basin alone and it is the evidence of a native People's relationship with their land and its environment. The evidence is everywhere of a traditional culture that has been scientifically examined and subsequently proved to be the oldest, and surviving culture in the world.

1. Aboriginal Culture and Heritage

All aspects of Aboriginal cultural heritage, tangible and intangible should be protected by law. The current legislation NSW NPW Act protects all Aboriginal sites on and off the Service’s estates. This should be the standard in any new proposals or considerations.

Early bushwalkers, land surveyors and prehistory groups recorded and collected the evidence of Aboriginal sites throughout the bush and landscape. The artefacts and records were deposited into the museums and into the institution’s libraries. With the enactment of the NPW Act the early attempts at cultural resource management was to collect and record the location of an archaeological defined relics, artwork, engravings and grinding grooves. Essentially the NPWS recorded these scientific relics just as dots on a map.

The 1973 Sites of Significant survey was an element of recognition of the intangible aspects of Aboriginal cultural heritage. It was an attempt to involve Aboriginal people in other aspects of CRM.

In the following years, the expectations of Aboriginal people to be involved and have a say is evident by the recognition of Aboriginal cultural practices in CRM and NRM practices. The issue of recognising the importance of environment was a revelation as it was our cultural supermarket of Aboriginal people, and was to be promoted in as biodiversity management. The Reform milestones 1969 – 2011 publication clearly demonstrates the commitment by Aboriginal people to have their cultural resource recognised, protected, managed in all its forms and manifestations.

2. Management of Aboriginal Culture and Heritage

The integral element of cultural integrity is accepting your responsibility with regard to cultural heritage issues. Aboriginal people have demonstrated an inherent responsibility to the care, protection and management of their Cultural heritage. It is entirely reasonable that Aboriginal people should be responsible for making decisions on protection of their (and Australia’s) cultural heritage. In recognition of the NSW NPWS’s role in Aboriginal cultural heritage protection and their functions with regard to natural resource management, the NSW NPWS should be restructured and re-badged as the NSW Aboriginal Heritage Commission.

3. Ownership of Aboriginal Culture and Heritage

The preamble to the NSW Aboriginal Land Rights Act recognises the significance of land and its spiritual importance to Aboriginal people. The concept of place and country embraces the cultural, physical, spiritual well-being to Aboriginal people.

Aboriginal people have an inherent responsibility to maintain a custodial role with regard to all Aboriginal cultural heritage matters. We do not have the right to assume the responsibility, and not all Aboriginal people have to accept that role. . A definition of Aboriginal cultural heritage needs to be explored and enshrined into the legislation.
Where Aboriginal people must be offered and accept the responsibility as the custodians of all manifestations of their cultural resource. It is that custodial responsibility we have.

4. Speaking for Country

It should never be the case that governments or their agents are placed in the position where they have to make a determination of who speaks for, or on behalf of Aboriginal people (with regard to cultural heritage matters). Governments should ensure that Aboriginal people are empowered to be responsible to resolve this problem of who speaks onto behalf of an area or issue.

In NSW, the government has access to a non-statuary NGO network to do this. It is the Local Aboriginal Land Council (LALC) network.

The New South Wales Aboriginal Land Rights Act established a network of 120 Local Aboriginal Land Councils (LALC) throughout NSW. These LALC are an Aboriginal controlled; non-statutory, community-based networked organisation that constitutes as its membership to be Aboriginal people.

With its broad-based constituency, the LALC network can access all towns, every family and their communities in one capacity or another. Aboriginal communities have gained extensive training and experience in good governance practices in recent years. This includes training in meeting procedures, policy development, planning and decision-making practices. There has been additional training undertaken with their involvement with ATSIC regional planning and LALC community and business plans. The networks have become quite sophisticated in their skills in business dealings and good governance practises.

NSW ALC should be able to attest and advocate for its LALC network’s capabilities. Through community profiling and analysis each LALC should be able to identify the relevant spokesperson, family, native title group or otherwise to speak or represent a particular area with regard to cultural heritage matters. Aboriginal people have to take on the responsibility to ensure that the appropriate people have been identified and address the protocols with regard to “Speaking for Country”.

Governments and their agents are then released from the burden to make the determination of who to talk to. The responsibility to make a decision is placed directly with Aboriginal people to identify the appropriate speaker(s).

5. Land Use Planning and Development Processes

The NSW National Parks Wildlife Act protects Aboriginal sites throughout NSW. The Environmental Planning and Assessment Act is used to undertake archaeological and scientific assessment on lands to be developed within NSW. The Commonwealth’s legislations can be used for interim protections orders and purchases of items of cultural significance. The Local Government network impacts on Aboriginal People with their planning power in land dealings.

Administratively, the Department of Environment and Conservation (DEO) grows its tentacles with its different Divisions, Trusts and Catchment Authorities. Inevitably the Aboriginal cultural heritage issues end up in conflict with the other policy and science units of the department.
Confusion reigns in the communities between Aboriginal people, developers, archaeologist and local government bodies resulting in delays in planning approvals or incorrect advice. It is usually the Aboriginal community that gets the blame for the delays because their issues are the last to be considered.

It would seem that for negotiating approvals for land development, developers consult early on the NRM views and concerns. These matters are addressed with deals being done as ‘tradeoffs’ with developers to get lands to protect threatened or endangered species and ultimately extend the NPWS estate (and then a car park is built on the Aboriginal midden).

There should not be competing interests between natural and cultural professionals as the resource should be defined as Aboriginal cultural heritage. A cultural heritage plan could be developed by the Local Aboriginal Council with the entire stakeholder’s identified and their roles and partnerships defined to manage, protect and care for our unique cultural resource.

There is only one Aboriginal Community but there are three levels of executive governments: Federal, State and Local governments. The Aboriginal Community has dealings with all of them at one stage or another with regard to cultural heritage matters. It is time a new multilateral agreement was negotiated for Aboriginal people to be a partner in cultural land dealings with all levels of government. ATSIC had signed bilateral agreements with the Federal and State governments to negotiate new partnerships to get progress on issues of conflict with Aboriginal communities.

All matters relating to these policies need to be transparent, and in plain English so everyone knows how it works and understands each other's role and function. A meaningful role should be negotiated for the Aboriginal community to be a partner in a new paradigm in cultural heritage, resource management and land dealings.


The current natural resources management processes fail to help protect Aboriginal heritage. There seems to be a disconnection or reluctance to acknowledge and accept that Aboriginal culture is a holistic concept that naturally encompasses natural resource management in a cultural resource framework.

This disconnect seemed to have been fostered through the developing disciplines of professional academics in archaeology and the environment. This thinking is reinforced through the divisional structure of the Department of Environment and Conservation (DEO).

The broader community appreciates the value of Aboriginal culture, even if only in terms of being a tourist curiosity. The value of the environment is visible, tangible and easier to understand and embrace the conservation message. The value of water is getting through in the media with the Murray Darling Basin planning and the advent of Coal Seam Gas mining.

The NSW Aborigine has long been associated with flora and fauna; and we are under threat of extinction but we are not protected by the Threatened and Endangered Species legislation. John Warmsley, of Earth Sanctuaries fame had great difficulty in raising funds to protect Australia's wildlife because the emus, kangaroos, bilbys and the like had no economic value. The introduced species like the cows, sheep and crop growers were
economic capital and therefore had access to development funds, scientific and research technology, and political support.

Aboriginal cultural heritage is Australia’s cultural heritage and needs to be valued as an economic tool of national significance. It incorporates our people, this ancient land, the natural resources, a sustainable environment, a unique wildlife that is marketed internationally as a tourist experience.

7. Other Comments

We have been dispossessed of our cultural identity through the Copyright laws of this country. Our stories have been recorded, and are now owned by the recorder: our photographs have been taken, and are now owned by the photographer. The Minister of the Crown has the responsibility for all sites. We are beggars in our own country.

WIPO (the UN’s World Intellectual Property Organisation in Geneva) continues its work on traditional knowledge, folklore and other expressions of intellectual property rights. This work needs to be continued in Australia to acknowledge and protect traditional intellectual property. ATSIC provided funding to develop a “Label of Authenticity” to advocate for and protect Aboriginal communal copyright.

ATSIC, like libraries and institutions, made purchases of some manuscripts of early anthropologist and researchers to protect the historical records. NSWALC should develop a resource library to gather, access, create linkages with libraries and museums to monitor and track all known resource materials relating to NSW Aboriginal families.

Mechanisms need to be in place to monitor and track the persons who are using and accessing this information and for what purpose. We need to maintain the integrity of the cultural resource and protect Aboriginal family’s histories because some people are stealing their stories; their family histories and their identities.

NSWALC should have a key role in the administration, advocacy and research in matters of cultural integrity of NSW Aborigines. We are not indigenous (Pauline Hanson claimed to be indigenous); we are Aboriginal, the original Australian native.

Many other issues need to be considered and addressed and would have been canvassed by others. Thank you for opportunity to make a contribution.

In The Aboriginal Struggle

Cliff Foley
0488396767
Attachment A: Completed Participant Workshop Evaluation Forms

Evaluation Form

NSW Aboriginal Heritage Reform - Aboriginal Workshop

[Location] __________________ [Date] ____________

How would you rate the following (please tick the appropriate box)

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<th>Fair</th>
<th>Average</th>
<th>Good</th>
<th>Excellent</th>
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</table>

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?

And how to be improved so that it does not fail.

What do you think could have been better?

Other comments (also use back):

That any changes to legislation should not threaten the protection of our culture. The development of new legislation should be recognised as the best legislation in Australia.
**Evaluation Form**

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

(Location) [ ] [Location] [ ] [Date] [ ] [Date] [ ] [ ]

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

<table>
<thead>
<tr>
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</table>

1. Value of workshop in meeting your needs

2. Suitability of introductory session (OEH)

3. Suitability of the facilitator

4. Presentation technique/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 group feedback

What do you think could have been better?

More participants

Other comments (also use back):

Hopefully the group will look at this feedback
Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

**Location**: Dubbo  
**Date**: 17/7/2011

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

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<tr>
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</table>

1. Value of workshop in meeting your needs
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

2. Suitability of introductory session (OEH)
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

3. Suitability of the facilitator
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

4. Presentation techniques/style of the facilitator
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

5. Usefulness of handouts
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

6. Clarity of objectives
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

7. Workshop suitable to maximise participants active involvement
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

8. Timeliness of the sessions
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

9. Suitability of venue
   - Poor
   - Fair
   - Average
   - Good
   - Excellent

10. Workshop organisation
    - Poor
    - Fair
    - Average
    - Good
    - Excellent

11. Culturally Appropriate
    - Poor
    - Fair
    - Average
    - Good
    - Excellent

What did you like most about the workshop?

Like previous workshops - we still don't have broad peoples voice (want to have representations as always)

What do you think could have been better?

More representations from people who respect to country

Other comments (also use back):

This is and always be Aboriginal Country.
## Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

*Location:* [Dubbo]  
*Date:* [Enter Date]

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

<table>
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1. Value of workshop in meeting your needs: [ ] 1 [ ] 2 [ ] 3 [X] 4 [ ] 5
2. Suitability of introductory session (DEH): [X]
3. Suitability of the facilitator: [ ] 1 [ ] 2 [X] [X] 4 [X] 5
4. Presentation technique/style of the facilitator: [X] [X] [ ]
5. Usefulness of handouts: [ ] [X] [X] [X] [X]
6. Clarity of objectives: [X]
7. Workshop structured to maximise participants active involvement: [ ] [X] [ ] [X] [X]
8. Timeliness of the sessions: [ ] [X] [X] [ ] [ ]
9. Suitability of venue: [ ] [X] [X] [X] [X]
10. Workshop organisation: [X] [X] [X]
11. Culturally appropriate: [X] [X] [X] [X] [X]

What did you like most about the workshop?
- Aboriginal point of view.
- Local Aboriginal staff.
- Local content was well captured.
- No gaps.
- Facilitator had excellent background.

What do you think could have been better?
- More detail could have been included.
- More photos and images of the area.
- More local content.

Other comments (also use back): [If the box is not used.]
## Evaluation Form

**NSW Aboriginal Heritage Reform – Aboriginal Workshop**

[Location] [Date] 17-11-11

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

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1. Value of workshop in meeting your needs
2. Suitability of introductory session (OEH)
3. Suitability of the facilitator
4. Presentation technique/style of the facilitator
5. Usability of handouts
6. Clarity of objectives
7. Workshop structure 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 information supplied was fantastic.

What do you think could have been better?


Other comments (also use back):


**Evaluation Form**

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

(Location) Dubbo  
(Date) 17[11]11

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

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1. Value of workshop in meeting your needs [X]
2. Suitability of introductory session (OLEH)
3. Suitability of the facilitator
4. Presentation technique/style of the facilitator
5. Usefulness of handouts [X]
6. Clarity of objectives [X]
7. Workshop structured to maximize participants' active involvement [X]
8. Timeliness of the sessions [X]
9. Suitability of venue [X]
10. Workshop organisation [X]
11. Culturally appropriate [X]

What did you like most about the workshop?

Everyone was included & given the opportunity

What do you think could have been better?

More workshops in regional areas so that everyone has the opportunity to participate

Other comments (also use box):

1. Call working party - "experts" to be (please) Aboriginal reps - not "white" experts
2. Process must be clear & transparent
# Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

**Location:** Dubbo  
**Date:** 17/11/14

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

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

What did you like most about the workshop?

---

What do you think could have been better?

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Other comments (also use back):

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[Signature]
**Evaluation Form**

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

**Location:** Dubbo  
**Date:** 17/4/11

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

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<td><strong>11. Culturally appropriate</strong></td>
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What did you like most about the workshop?

[Write your answer here]

**Other comments (also use back):**

[Write your comments here]
## Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

(Location) _Dubbo_  
(Date) _[ ]_  

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

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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 information that was given._____

What do you think could have been better?

> __________  

> __________  

> __________  

> __________  

Other comments (also use back):

> __________  

> __________  

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> __________
### Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

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

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6. Clarity of objectives
7. Workshop structured to maximize 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?

*People interaction and views were valued and appreciated.*

What do you think could have been better?

Other comments (also use back):

*Very informative, will be useful.*

Thanks.
### Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

**[Location] [Date]**

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

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<td>9. Suitability of venue</td>
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<td>11. Culturally Appropriate</td>
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</table>

**What did you like most about the workshop?**

[Handwritten note: The instructor prepared well for the workshop.]

**What do you think could have been better?**

[Handwritten note: A microphone and speaker.]

**Other comments (also use back):**

[Handwritten notes: I would have liked more time to discuss the topics in depth.]

---

Dubbo Workshop Report – NSW Heritage Legislative Reform Community Consultations (Markwell Consulting) Page 31
# Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

**[Location]** [ ]

**[Date]** [ ]

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

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1. Value of workshop in meeting your needs
2. Suitability of introductory session (OLHI)
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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?

________________________________________________________________________

________________________________________________________________________

What do you think could have been better?

________________________________________________________________________

________________________________________________________________________

Other comments (also use back):

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
## Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

(Location) [Dubbo]  
(Data) [17 - 18 - 1 ...]

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

<table>
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1. Value of workshop in meeting your needs [ ]
2. Suitability of introductory session (OLH) [ ]
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?

[ ]

What do you think could have been better?

[ ]

Other comments (also use back):

[ ]

[ ]
Evaluation Form

NSW Aboriginal Heritage Reform - Aboriginal Workshop

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

<table>
<thead>
<tr>
<th></th>
<th>Poor</th>
<th>Fair</th>
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1. Value of workshop in meeting your needs  
   [ ] 1  [ ] 2  [ ] 3  [ ] 4  [ ] 5
2. Suitability of introductory session (OEH)  
   [ ]
3. Suitability of the facilitator  
   [ ]
4. Presentation technique/styic of the facilitator  
   [ ]
5. Usefulness of handouts  
   [ ]
6. Clarity of objectives  
   [ ]
7. Workshop structured to maximize 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 workshop was very informative and allowed for a lot of conversation.

What do you think could have been better?

[ ]

Other comments (also use back):

[ ]
# Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

How would you rate the following (please tick in the appropriate box):

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7. Workshop structured to maximise participants active involvement  
8. Timeliness of the session  
9. Suitability of venue  
10. Workshop organisation  
11. Culturally Appropriate

What did you like best about the workshop?

Information presented

What do you think could have been better?

According to all parties of people - whether Aboriginal or not  
Some opportunity for community voices to be heard as opposed to department people?

Other comments (also use back):

There needs to be more consultation time. 1 meeting a month is too short a period.

Presenters need to have a better understanding of on ground issues - permit processes etc. so they can explain it better to people who aren't familiar within it.
## Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

(Location) Dubbo

(Date) 17/11/16

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

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6. Clarity of objectives
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10. Workshop organization
11. Culturally Appropriate

What did you like most about the workshop?

Opportunity to provide cultural perspective from Aboriginal people and to establish linkages with examples of points discussed.

What do you think could have been better?

The presence of ACNAT members & working paper amendments to these workshops would have been beneficial and were expected to support the facilitator especially regarding the proposed membership of the working party. The criteria they have to meet for membership.

---

Dubbo Workshop Report – NSW Heritage Legislative Reform Community Consultations (Markwell Consulting)  Page 36
# Evaluation Form

**NSW Aboriginal Heritage Reform - Aboriginal Workshop**

(Location) ______________  [Date] ____________

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

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10. Workshop organisation
11. Culturally Appropriate

What did you like most about the workshop?

__________________________________________________________

What do you think could have been better?

__________________________________________________________

Other comments (also use back):

__________________________________________________________

__________________________________________________________

__________________________________________________________
Evaluation Form

NSW Aboriginal Heritage Reform – Aboriginal Workshop

[Location] Dubbo [Date] 17-11-11

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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?

What do you think could have been better?

Other comments (also use back):


## Evaluation Form

**NSW Aboriginal Heritage Reform – Aboriginal Workshop**

**Location**: Dubbo  
**Date**: __________

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What did you like most about the workshop?

______________________________

What do you think could have been better?

______________________________

______________________________

______________________________

Other comments (also use back):

______________________________

______________________________

______________________________

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## Evaluation Form

**NSW Aboriginal Heritage Reform – Aboriginal Workshop**

- **Location:** Dubbo
- **Date:** 17-11-11

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5. Usefulness of handout

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?

I found the workshop very informative.

---

What do you think could have been better?

---

Other comments (also use back):

---