



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC/PWvk:1385574

25 July 2017

Attention: Mr Anthony Seiver
Aboriginal Affairs
Level 3, 35 Bridge Street
SYDNEY NSW 2000

By email: Conversation@aboriginalaffairs.nsw.gov.au

Dear Mr Seiver,

Exposure draft Aboriginal Languages Bill 2017

Thank you for the opportunity to comment on the exposure draft Aboriginal Languages Bill 2017 ("draft Bill"), which has been considered by the Indigenous Issues Committee of the Law Society of NSW.

The Law Society supports the initiative to recognise Aboriginal languages in NSW, and commends the Government's commitment to legislatively safeguard and sustain Aboriginal languages. As set out on the first page of the *Issues and Opportunities Paper on the legislative recognition and protection of Aboriginal languages* ("Issues Paper"), we agree that Aboriginal languages are an essential part of the State's culture and identity. We further agree that the recognition of Aboriginal languages is an important act for reconciliation.

The Issues Paper also notes on page 3 that the survival of Aboriginal languages depends on both Aboriginal families and communities as well as the Government, and that government has a significant role to play in the revitalisation of Aboriginal languages. We agree with this position, but are of the view that it is important to clarify that the appropriate role for government in these efforts is a facilitative one.

We are concerned that the draft Bill currently does not provide for Aboriginal ownership and determination in how Aboriginal languages should be revitalised, used, developed and maintained and by whom (that is, who speaks, and has cultural authority, for language within the Aboriginal community and from the various language groups throughout NSW) and how the intellectual property and cultural rights in materials associated with languages identified will be protected. The Law Society submits that the Bill should be amended to make these points explicit.

Provided below are the Law Society's specific comments in relation to aspects of the draft Bill.

1. Statement of recognition

The Law Society suggests that the statement of recognition in clause 3 of the draft Bill should reflect the relevant articles of the UN Declaration on the Rights of Indigenous Peoples. We extract articles 13, 14 and 16(1) for your convenience:

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. Cultural Heritage legislation and the *Aboriginal Land Rights Act 1983* (NSW)

The Law Society notes that the draft Bill appears to be intended for introduction in isolation to the development, consultation and introduction of stand-alone Aboriginal cultural heritage legislation in NSW. It is not clear how the proposed *Aboriginal Languages Act* is contemplated to operate in this context.

Further, the draft Bill does not clearly outline or contemplate how the Act will interact and operate within the pre-existing 'promote and protect Aboriginal culture and heritage' functions outlined in the *Aboriginal Land Rights Act 1983* (NSW), namely the functions of the Local Aboriginal Land Councils and the NSW Aboriginal Land Council pursuant to section 52(4)(a) and (b) and section 106(7)(a) and (b) respectively.

3. Strategic plan

The Law Society notes that Part 2 of the draft Bill provides that the Minister is to cause a strategic plan to be prepared, and that the strategic plan is to make provisions for certain things, such as structures, programs and mechanisms to promote and encourage the use of Aboriginal languages.

The Issues Paper acknowledges at page 6 that “[a]n effective Aboriginal Languages Strategic Plan requires programs that meets the specific needs of Aboriginal communities, where they control the resources, decision-making processes, and institutional domains where language socialisation occurs (such as family, community, schools).”

We agree with this position and submit that Aboriginal authority and ownership should be embedded in the strategic plans.

In the Law Society’s view, the draft Bill should be amended to provide clear prescription on how the Minister is to prepare strategic plans. Such prescription should include a requirement at least that the strategic plans be informed by those within Aboriginal communities with the cultural authority to do so.

The draft Bill should also be amended to include more detail on how the strategic plan, once prepared, should be publicly promoted, particularly to Aboriginal communities, service providers and educators (beyond merely being available on the website) and incorporated into the work of other relevant government agencies.

4. Centre for Aboriginal Languages of NSW

Similarly, the draft Bill does not provide any detail on how the Centre will be established; what its functions will be; how it will operate; and how Aboriginal input will be sought.

For example, will the Centre function as a coordinating body or also as a repository for language materials? Will it address issues such as legal and cultural oversight of intellectual property in language materials (including oversight of sensitive issues and words that relate to gender)? Who will have the Aboriginal community and/or cultural authority to permit the languages being used or reproduced? Are or will the languages be publicly available and in what circumstances?

The Law Society submits that these are matters that should be contemplated by the draft Bill.

5. Dispute resolution

We note that there is a significant potential for disputes to arise in relation to this issue (between Government and Aboriginal communities, as well as within communities), given the nature of language, and the history of the relationship between state institutions and Aboriginal people.

In our view, a dispute resolution process should be embedded in the draft Bill, where the process is arbitrated by an independent person or body.

We submit that Aboriginal Affairs should consult with Aboriginal communities further on this particular issue.

6. Interface with federal institutions

The Law Society is advised by members of its Indigenous Issues Committee that Aboriginal people have encountered difficulty accessing historical language material held by federal language institutions such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). Such material might include recordings of their kin speaking language. We

understand that in addition to the AIATSIS collection, other federally administered institutions such as the National Film and Sounds Archives hold relevant language materials. The Law Society submits that Aboriginal Affairs should consult with the relevant federal language repositories to facilitate access to language materials by Aboriginal communities and families. The proposed legislation should incorporate provisions that make such language materials freely and expeditiously available to Aboriginal communities, respective family members and other stakeholders.

7. Consultation process

We commend the efforts of Aboriginal Affairs to date to engage with Aboriginal communities on this initiative. However, we are concerned about the consultation process timeline, and the opportunity that stakeholders will have to review and comment on later versions of the draft Bill.

Given that this process is an iterative one, we submit that communities and other stakeholders should have the opportunity to review and comment on revised versions of the draft Bill that incorporates consultation feedback.

Once again thank you for the opportunity to comment. Please contact Vicky Kuek, Principal Policy Lawyer, on victoria.kuek@lawsociety.com.au or on 9926 0354 if your office has any questions.

Yours sincerely,



Pauline Wright
President