



United Nations Permanent Forum on Indigenous Issues  
Eleventh Session

New York, 7- 18 May 2012.

**Agenda item 4b) Human Rights: *Dialogue with the Special Rapporteur and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples***  
**'Indigenous Culture & Heritage'**

INTERVENTION by the New South Wales Indigenous Land Council, delivered by Councillor for the Wiradjuri Region, and member of the Ngiyampaa Peoples, Cr Craig Cromelin.

Thank you Mister Chairperson

To ensure Indigenous culture and heritage is given its rightful protection by States as the oldest surviving cultures in the world, NSWALC recommends the Permanent Forum encourage Governments to:

**RECOMMENDATION 1:** Take urgent action to ensure that all laws that manage Indigenous culture and heritage protection in Australia, implement the principles espoused in the Declaration,

**RECOMMENDATION 2:** Legislate to recognise Indigenous people as the rightful owners of Indigenous culture and heritage, including legal recognition of the principle of 'free, prior and informed consent',

**RECOMMENDATION 3:** Sign the Nagoya Protocol in relation to the *Convention on Biological Diversity*, to bring key Australian legislation, particularly the *Environment Protection and Biodiversity Conservation Act 1999*, in line with international standards that require the 'prior informed consent' of Indigenous people,

**RECOMMENDATION 4:** Implement regular public reporting on the state of Indigenous culture and heritage by States, including:

- A) The past and continued cumulative impacts of the destruction of Indigenous heritage, and
- B) Consultation, negotiation and engagement with Indigenous peoples in the management and protection of Indigenous culture and heritage.

The New South Wales Aboriginal Land Council contributes to this discussion in recognition of the Declaration as accepted and evolving human rights standards protecting Indigenous peoples.

Australia's Indigenous cultures are some of the oldest surviving Indigenous cultures in the world.

The Australian State of New South Wales is home to some of the most important Indigenous heritage sites in the world, many of which have survived for more than 40,000 years, despite colonisation. Australia's Indigenous culture and heritage sites are not just an important part of Australia's heritage and history, but are an essential part of the culture and identity of Indigenous communities today.

The protection and exercise of Indigenous culture is integral to our relationship with our land. In Australia, Indigenous communities keep their culture alive by passing our knowledge, rituals and customs from one generation to another.

This important connection to land was recently highlighted by the Special Rapporteur, James Anaya, during his visit to Australia, where he highlighted that, "Aboriginal and Torres Strait Islander Peoples maintain a profound connection to their land that forms an essential part of their cultural and spiritual life and material wellbeing."

In Australia, we do not have comprehensive legislation for Indigenous culture and heritage. Instead, various state and territory governments have the main responsibility for the protection and management of Indigenous peoples cultural heritage. The various regimes across Australia have been criticised for the lack of control and ownership they provide Indigenous peoples in regards to their culture and heritage.

For Indigenous peoples in New South Wales, Indigenous culture and heritage is managed by a law that was created for the protection of animals and plants – the 'National Parks and Wildlife Act'. This regime is not only outdated, but is offensive to Indigenous peoples that in today's society Indigenous culture and heritage is considered in the context of flora and fauna.

This law provides no recognised rights for Indigenous Australians to own and control their culture and heritage and under the current regime, over the past 30 years there has been wide-spread destruction of Indigenous culture and heritage.

Alarmingly, under this law, Indigenous culture and heritage is considered to be the property of the Queen of England.

For more than two decades there have been calls for the reform of Indigenous Cultural Heritage laws for New South Wales, and the creation of stand-alone legislation for Indigenous culture and heritage.<sup>1</sup>

The time is now overdue and the Government must act.

Indigenous people of Australia are tired of being lumped in with the environment. Our culture is dynamic and the practice, management and protection of our culture is more than simply a component of natural resource management.

Indigenous people of Australia are tired of being relegated to the role of only one stakeholder among many others – such as industry and development – when it comes to our culture and heritage.

Indigenous people of Australia must be recognised as the rightful owners of their Indigenous culture and heritage. We wish to remind the Australian Government that we are the only determinants of their culture and heritage.

While we acknowledge the Australian Government's belated support for the Declaration in 2009, it must be highlighted that unfortunately in Australia, the Government has yet to put the Declaration into practical effect through implementing this in law and policy.

The Declaration recognises a range of Indigenous rights including: the right of Indigenous peoples to practice, protect and revitalise their cultures, the right to participate in decision-making, rights over lands, waters and natural resources, the requirement that States consult and cooperate in good faith with Indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, and the right to maintain control and protect traditional knowledge.

By supporting the Declaration, the Australian Government has articulated its dedication to ensure that Indigenous peoples rights and concerns are integrated into its policies and programs, and identifies the Declaration as a reference to guide engagement with Aboriginal and Torres Strait Islander peoples.

Thank you

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<sup>1</sup> NSWALC research papers on the broad reform process are available on the NSWALC website <http://www.alc.org.au/culture-and-heritage/more-than-flora--fauna.aspx> 'Our Sites, our Rights – Returning Control of Aboriginal sites to Aboriginal communities', 'Caring for Culture: Perspectives on the effectiveness of Aboriginal cultural heritage legislation in Victoria, Queensland and South Australia', 'Commonwealth, State and Territory Heritage Regimes: summary of provisions for Aboriginal consultation'