

2 November 2009

Indigenous Heritage Law Reform
Heritage Division
Department of the Environment, Water, Heritage and the Arts
GPO Box 787
CANBERRA ACT 2601

The Department of Environment Water Heritage and the Arts (DEWHA) Discussion Paper on Indigenous Heritage Law Reform

The discussion paper is designed to address Indigenous Australians' right to be fully involved in the processes for making decisions about land use and development that could affect traditional areas, and about the use of traditional objects.

The Minister is seeking advice on:

1. ways to make the *Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSHP Act) more effective as a way to protect traditional areas and object significant to Indigenous Australians; and
2. how the Act could promote a more cooperative approach to Indigenous heritage protection nationally.

The National Film and Sound Archive (NFSA) position

A number of the legislative reforms proposed in the discussion paper may be applied to the protection of Indigenous tangible and intangible heritage. The collections of national cultural institutions, including that of the NFSA, hold materials containing Indigenous people's tangible and intangible heritage such as documentation, still images, moving image, and recorded sound. Some of these materials have been used as evidence for land claims as recognised under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Commonwealth)* and the *Native Title Act (1993)*.

The standards identified in the discussion paper may also support effective protection of Indigenous tangible and intangible heritage, including the protection of sensitive information and respect for traditions of secrecy. This would assist the process of properly protecting the "Secret and Sacred" materials held within these cultural institutions.

This legislative reform if applied within the collecting environment would legally underpin the NFSA's Indigenous collections policy and Indigenous culturally restricted materials management strategy. It would establish a benchmark for the protection of Indigenous heritage across the portfolio and potentially across the nation.

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A widening of the parameters of this reform process would highlight the interconnectivity between Indigenous natural and cultural heritage and support a cross-portfolio approach to Indigenous heritage law reform. The inclusion of national cultural institutions within the reform process would support the Minister's endeavour to achieve a cooperative approach to the protection of Indigenous heritage nationally.

In recognising Indigenous people's rights to their heritage these reforms may also recognise Indigenous people's rights to their tangible and intangible heritage contained within materials in national collections. This could empower Indigenous peoples to own and control access to and use of their traditional knowledge.

The proposed legislative reforms outlined in the discussion paper supports the NFSA and other cultural institutions in protecting Indigenous culturally restricted materials within their collections. This includes the implementation of measures and the development of processes to:

1. protect sensitive information including traditional knowledge from broad public disclosure
2. prevent secret traditions being aired publicly and the need to address Indigenous concerns about traditional objects
3. prevent the public disclosure of sensitive information and new requirements to prevent the unauthorised public display of special objects and human remains (DEWHA discussion paper, Indigenous Heritage Law Reform, in August 2009).

It is also critical that cultural knowledge and information is passed down from one generation to the next through various mechanisms, including educational programs, broadcasting (television and radio), provision of digital learning resources and publications. It is also important that the languages of Indigenous communities be preserved through educational programs, broadcasting, and the recording of oral histories in their own language (and a visual recording where possible and with their permission). The moral and intellectual property rights would be retained by the person being interviewed. While the NFSA would hold the original copy of the interview, with the interviewee's permission, for preservation purposes, access would only be given by the interviewee, and a digital copy of the recording (including the film recording) would be given to the interviewee.

With respect to cultural knowledge, the NFSA and its Indigenous reference group believe that it is imperative that Indigenous people have access to and provide input to the control of the materials in these institutions (for example with the establishment of Indigenous reference groups) as the material contains information of an Indigenous cultural nature or sensitive information relating to Indigenous individuals and/or families. This is important because without that community interaction within the structure of these institutions, how will Indigenous people know what cultural materials are contained there and how can the communities benefit from or utilise the knowledge that was passed down from their ancestors. The NFSA has an Indigenous reference group from which we seek advice and comment on policy documents. The NFSA also has a set of cultural protocols relating to access to Indigenous collections and in particular to Sacred and Secret materials.

The interviews would allow for a strong cultural connection between the cultural heritage of the community and the land, water and sky, as well as natural resources that belong to the community.

The discussion paper also proposes the adoption of the Evatt review recommendation: that the government change the freedom of information and archive laws to limit a person's ability to access restricted information. This legal instrument would ensure on-going protection of Indigenous culturally restricted materials within NFSA and other national cultural institutions.

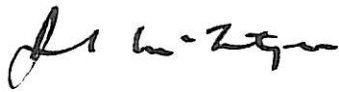
Recommendations

1. advocate for the need to include Indigenous intangible heritage within the proposed Indigenous heritage law and a cross-portfolio approach to the application of the legislative reforms, including the application of transferable standards for effective Indigenous heritage protection. Such as the following outlined in the paper:
 - *The early identification of Indigenous heritage issues;*
 - *Appropriate consultation and opportunity to reach agreements;*
 - *Independent assessment based on the advice of Indigenous people;*
 - *Protection of sensitive information;*
 - *Transparent decision-making; and*
 - *Respect for traditions of secrecy.*
2. ensure the NFSA Indigenous collections policy retains measures to prevent secret and sacred traditions being aired publicly and strategies to address Indigenous concerns about traditional objects (audio-visual recordings) that depict secret and sacred issues;
3. ensure the NFSA Indigenous collections policy maintains the power to prevent the public disclosure of sensitive information and to prevent the unauthorised public display of special objects and human remains;
4. partner with other cultural institutions and Indigenous custodians of collections material to advocate for the definition of secret and sacred objects to apply to Indigenous audio-visual recordings;
5. partner with other national cultural institutions to support the implementation of the DEWHA reforms within collecting institutions in the states and territories and to encourage national consistency in the respectful treatment of Indigenous secret sacred objects and remains (including moving image and recorded sound materials);
6. support proposed measures to make it an offence to display a secret sacred object or Indigenous personal remains in a public place, such as a museum, gallery or shop;
7. support reforms aimed to protect sensitive information including traditional knowledge from broad public disclosure; and
8. support the adoption of the Evatt review recommendation that the government change the freedom of information and archive laws to limit a person's ability to access restricted information.
9. in relation to cultural knowledge, it is imperative that Indigenous people have access to and control of the materials (in particular Sacred and Secret materials) held in cultural institutions as this material contains information of an Indigenous cultural nature or sensitive information relating to Indigenous people and/or families. This would be achieved through the establishment of Indigenous reference groups.

The contact officers should you require further information from the NFSA are Ms Liz McNiven, Acting Senior Curator, Indigenous Collections Branch and Dr Darryl McIntyre, CEO of the NFSA. The contact details are;

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Darryl McIntyre', written in a cursive style.

(Dr) Darryl McIntyre
Chief Executive Officer