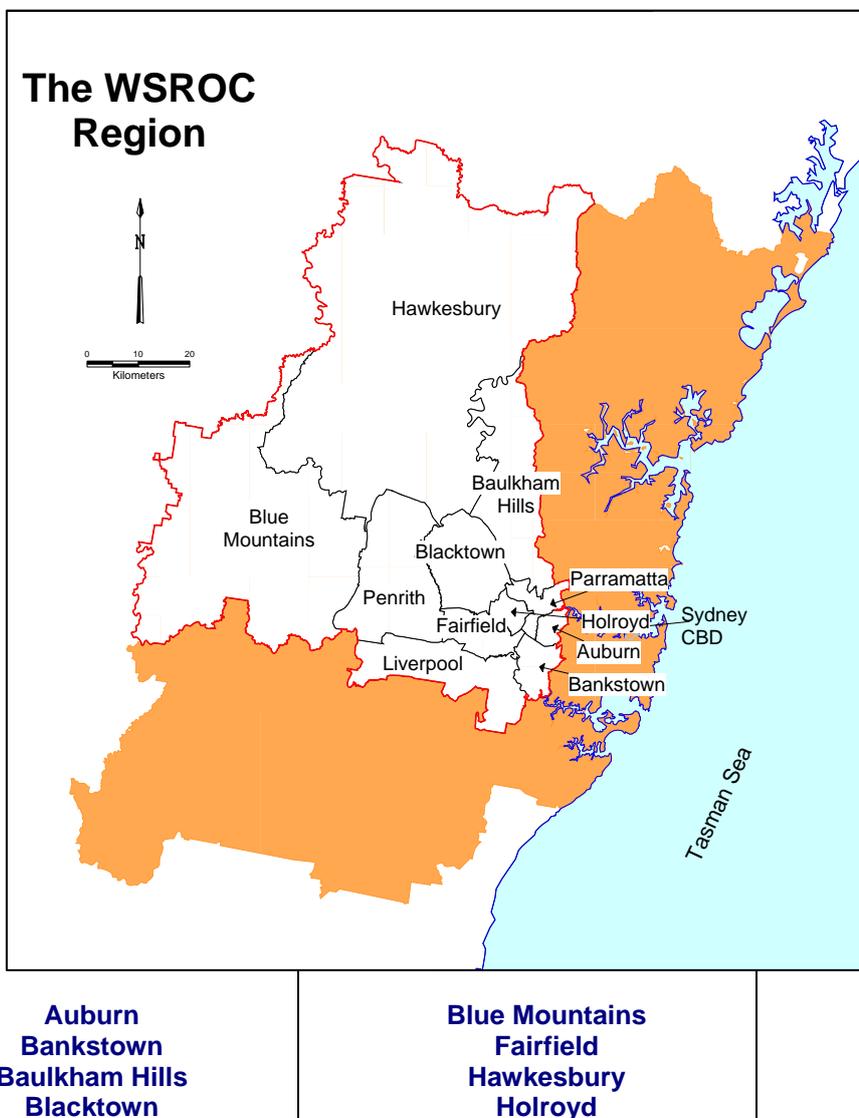




**SUBMISSION TO DEPARTMENT OF THE ENVIRONMENT, WATER, HERITAGE
AND THE ARTS :**

**REVIEW OF THE PROTECTION OF MOVABLE CULTURAL HERITAGE ACT
1986 AND REGULATIONS**

MARCH 2009



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CONTENTS

INTRODUCTION	1
RESPONSE TO THE TERMS OF REFERENCE	2
WHAT IS WSROC?.....	7
WSROC - A REGIONAL SNAPSHOT	8

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INTRODUCTION

WSROC welcomes the opportunity to provide comment on the development of this important legislation.

The relevance of the arts and cultural life has recently emerged as critical in considerations of social and cultural capital, participatory citizenship, quality of life, sustainable development and environmental sustainability. The arts can contribute to economic development, creative industries, participation, democracy and citizenship and to well-being. Cultural and community development practices can deliver healthier cities, through what the World Health Organisation has referred to as 'an enlarged vision of health'. Furthermore, culture and the arts are closely linked to economic development, with creative industries emerging as critical for economic development, employment opportunity, innovation and capacity for effective engagement within the 'new economy'.

This response to the review has been prepared by WSROC in consultation with member Councils, however it should be noted that it does not necessarily represent all their views. Some of these Councils may have made their own submissions to the review, which should be considered separately and in addition to this response.

RESPONSE TO THE TERMS OF REFERENCE

Review of the Protection of Movable Cultural Heritage Act 1986

1. National Cultural Heritage Control List

- *Are the Class A objects listed in the Control List still our 'most significant'?*

It is important to consider issues relating to items on the list in terms of restrictions on owners who are denied the right to trade. For example, a family may need to sell a Victoria Cross because of financial circumstances. Also, if this list is expanded to incorporate Indigenous contemporary art then an artist may be denied what he or she perceives as an opportunity for work to be sold and exhibited internationally. The Australian Government needs to back this legislation with a financial commitment by offering to purchase items deemed most significant so they are kept in Australia and made available for Australia's cultural institutions. Drawing from the New Zealand model, other options could include local cultural institutions, local collectors and licensed dealers being provided with opportunities to purchase items. Stipulating public availability for important exhibitions is much easier to negotiate within Australia and impossible to legislate for overseas.

- *Is the list of Class B objects too broad or too narrow?*

Part 4 Objects of Applied Science or Technology should include space and satellite, nuclear energy and alternative energy such as solar, wind, geothermal, wave, bioenergy etc, computing, and medical innovations. Nuclear energy should not be categorised as alternative energy. It would be beneficial for all of this information to be widely publicised to increase awareness of the requirements of the legislation.

- *Does the Control List allow an appropriate assessment to be made of Indigenous artworks regarded as having exceptional spiritual, cultural and historical significance?*

Items of spiritual significance should be added to the list and although it is difficult to determine "national importance" given different clan views these decisions could be made with the advice from an Indigenous Reference Committee working to the Expert Examiner Panel. Other intangible values include the need that certain Indigenous objects and artworks be unavailable for viewing by the public because of their significance.

- *Should the definition of 'adequate representation' be extended to include private collections; particularly for some categories of objects that are not extensively represented in public collections such as philatelic objects?*

Yes, and the Expert Examiner Panel should be consulted in these matters.

2. Thresholds and the PMCH Regulations

- *Are the age thresholds still appropriate? Given the pace of technological change do the age thresholds specified make it likely that significant objects will be lost to Australia?*

No the age thresholds need to be changed, for example, the solar powered air conditioner prototypes currently being developed in Western Sydney may soon be deemed as being some of our most significant objects without being protected in any way for the next thirty years.

Also, the inconsistency in ages relating to Indigenous objects needs to be rectified as well as the actual length of period. In one sense, 20 or 30 years are very short periods of time in Indigenous history, however, works made within the last 20 years could be just as significant as early Papunyan artwork or work made over 5000 years or so ago.

- *Should a new category be introduced to allow the Minister to determine objects of national significance that are under age or monetary thresholds?*

Yes, a new category should be introduced providing the Minister with discretionary powers to make this type of determination. This process coupled with a National Register would provide the general public as well as exporters with access to listings to guide their decisions on whether or not they need to apply. This process would also assist with building a broader framework for understanding the range of issues that need to be considered in this area.

3. Monetary thresholds

- *Is 'current Australian market value' an appropriate benchmark?*

Given inflation and other developments, including the significant appreciation in the value of objects of Aboriginal and Torres Strait Islander fine and decorative art, monetary thresholds need to be tightened. Also, global economic matters need to be taken into consideration.

4. Significance and the PMCH Regulations to Australia

- *Should the definition of 'significance' in the PMCH Regulations be amended? The criteria developed by the former Heritage Collections Council (now being reviewed by the Collections Council of Australia) are well understood throughout the collections sector – should they be adopted to assess which Australian protected objects should be denied export permits?*

Yes.

5. Indigenous objects

- *Should there be special protection for objects relating to Aboriginal and Torres Strait Islander heritage? Should this also include artwork that is identified as having secret and sacred significance for Aboriginal and Torres Strait Islander community members?*

Internet trading

International internet trading is an issue relating to this legislation and government staff are in contact with Internet Service Providers (ISPs) and websites regarding these matters. The PMCH Act or regulations should be more specific or directive on what Australian ISPs and websites should do to discourage and control inappropriate internet trading possibly using the Australian Government's constitutional 'telecommunications' powers coupled with their 'export' powers through the Australian Communications Media Authority. If the Australian Government were willing to amend their legislation in this way, States and Territories should 'piggy-back' on any such amendments to the PMCH Act by enacting NSW policy and legislation specifically referring NSW traders and collectors.

The NSW Department of Environment and Climate Change has dealt with an increasing number of concerns raised by Indigenous individuals and groups about such trading. The Department is working on a *Sale of Aboriginal Objects on Internet Auction Sites Policy* in dealing with Australian Aboriginal cultural material listed on eBay. Complaints made to the Department are referred to the Legal Services Branch, who in turn advise David Napper of eBay directly that Aboriginal persons find a particular advertisement for Aboriginal objects to be offensive and the advertisement is taken off eBay as soon as possible, usually within 24 hours.

Working in partnership with the States and Territories within an effective federal arrangement

Of concern to councils in New South Wales is the lack of capacity for the Department of Planning and Department of Environment and Climate Change to provide councils with guidance on levels and types of Indigenous cultural heritage value assessment and consultation. Local Aboriginal communities have expressed distrust in the National Parks and Wildlife Service and its capacity and commitment to adequately protect

Indigenous cultural heritage sites and landscapes. For example, communities have cited that the fines for destroying a significant site were a poor disincentive to developers and that inappropriate development has therefore gone on regardless (despite the site being on the heritage register).

Therefore, it is considered important that the legislation take into consideration the vulnerability of currently known Indigenous sites or “unfound” sites that may contain objects of national cultural significance. The development of formal processes for engagement with Indigenous people with cultural heritage rights with regard to these objects through their organisations (such as Local Area Land Councils) where possible. Also, question 12 explores further ideas to assist with this area.

6. A National Register?

Should a National List of Heritage Objects of outstanding national significance be established?

Yes, see answer to question one relating to Ministerial discretionary powers.

Should all Class A objects be on a National Register?

Yes, see answer to question one relating to Ministerial discretionary powers.

Should a register be kept of the owner and location of those Australian protected objects which have been denied export permits? Should funding be provided to assist private individuals or public institutions with the conservation of these objects?

Yes, it is important to know where these protected objects are located so that cultural institutions can contact owners for possible exhibition opportunities and private individuals and public institutions need access to funds to ensure conservation is undertaken appropriately. Some local councils assist owners maintaining items of European heritage and if funds could be provided this could assist in other areas.

7. Export Permit Applications

Should applicants for export permits under the PMCH Act be required to provide more rigorous documentation, including undertaking some of the research currently undertaken by the expert examiners? Would this assist in streamlining the assessment process?

Yes, the onus should be on the applicant to undertake research, however, cross-checking by expert examiners is essential.

Should export permits be denied when there is no interest from a public collecting institution in acquiring an object, and no immediate prospect of its proper conservation and preservation in Australia?

See question 1 regarding the need for the Australian government to provide funds in these situations.

8. Temporary Export Permit Applications

Should Australia adopt a similar approach to Canada and automatically grant temporary export permits for up to five years?

No, once an object leaves the country it is extremely difficult for the Australian government to liaise with local courts in other countries on these matters.

Should the exemption from the Temporary Export Permit process be extended to include other institutions and organisations that have responsibility and ownership for Australian Protected Objects?

Cultural institutions and organisations should be able to apply for temporary permits to the Minister ensuring appropriate documentation is provided including a stewardship agreement between cultural institutions, endorsement by the panel of expert examiners and in the case of Indigenous objects endorsement by the Indigenous Reference Committee (see question one).

9. Expert Examiners

Should the register of expert examiners be reviewed every five years?

Yes, the register should be reviewed and renewed to bring new ideas and fresh approaches to the tasks of the panel.

Should onsite and online training be provided for expert examiners to support their work under the PMCH Act?

No, they should be appointed on their expertise, however, training for skills development should be provided.

Should expert examiners, or the institutions to which they belong, be paid for their assessments?

Yes.

Should any payments be restricted to expert examiners working in the private sector?

Yes, they should be paid the median fee of all other panel members.

Are there measures that could be implemented to assist expert examiners in undertaking their role?

Yes, an Indigenous Reference Committee is needed to deal with sex-specific material so that a wide range of ideas can be collected for consideration.

Also, it is important that the panel of expert examiners is consulted on nationally significant matters involving movable cultural objects regardless of whether the PMCH Act applies. For example, in dealing with the boomerang in the United Kingdom alleged to have been collected from Kurnell/Botany Bay by Captain Cook, the Australian Government sought advice from Australian National Museum experts.

10. National Cultural Heritage Account

Should Australian Government funding to the Account be increased to enhance its capacity to fulfil its purpose and if so what amount would be appropriate?

Yes, a large amount could be considered in this current climate of extensive funding programs and funds could be used to bolster the sector through job creation and cultural heritage development. Programs could be extended to include the repatriation of Indigenous objects apart from skeletal material.

Should the option of providing tax deductibility status for donations to the Account be explored with the Australian Taxation Office?

Yes.

Should Australia consider a greater linkage between the Protection of Movable Cultural Heritage and the Cultural Gifts Program?

http://www.arts.gov.au/tax_incentives/cultural_gifts_program

Yes.

11. Enforcement provisions

Should s.48 of the PMCH Act be similar to that of the EPBC Act? This would mean that a judicial review, but not merits review, of a Ministerial decision, would still be available under the Administrative Decisions (Judicial Review) Act 1977, section 39B of the Judiciary Act 1903 and section 75 of the Constitution.

No, the aim of this legislation is to ensure that people with the appropriate expertise are making decisions on matters of national cultural significance.

12. Broader arts and culture policy framework

Is the PMCH legislation having an unintended impact on any of Australia's other arts and culture policy objectives?

Yes, in terms of Indigenous objects this overriding legislation is creating a situation where there is no regard for processes involving consultation at the local level. For example, regionally based appropriately qualified Indigenous coordinators (comprising four in New South Wales) could perform regulatory roles whilst being members of the Indigenous Reference Committee mentioned earlier. These coordinators could be supported by the Department of Aboriginal Affairs, Department of Environment Heritage and the Arts, and COAG initiatives.

It is recommended that New Zealand's movable cultural heritage legislation, the *Protected Objects Act 1975*, be adopted for reporting and making claims for Indigenous objects, and registration of collectors. The regional coordinators could undertake tasks relating to this as well as issues relating at Question 5, to develop local best practice guidelines for councils and others involved with development of the built environment.

13. International Conventions

Should Australia consider ratifying the UNIDROIT Convention on the Return of Stolen or Illegally Exported Cultural Objects?

Yes and they should also ratify the UN Convention on the Rights of Indigenous People.

Are there other measures which could be introduced to enhance Australia's ability to counter illicit trade, including international collaboration?

The primary focus of the PMCH Act is the Australian Government's export control role (that is, the movement of Australian material overseas), rather than the movement of material within Australia. Questions raised in the discussion paper relate mainly to the Australian Government's process and (significance) threshold issues. It is important that matters relating to movement of objects within Australia also be considered as part of this review.

WHAT IS WSROC?

WSROC represents the 11 councils of Western Sydney. The organisation was formed in November 1973 and became a company limited by guarantee in 1991. All member councils make an equal annual contribution to the operating costs of WSROC and have equal voting rights.

The decision-making body of WSROC is the Board, consisting of two voting Directors from each member council. The Board's role in managing the organisation is supported by the Executive Management Committee (EMC) which meets between Board meetings. The organisation is resourced by a regional secretariat, with professional and support staff. A number of professional committees and groups of staff from member Councils also meet regularly to assist in implementing the work program and to discuss major regional issues. These professional committees, member councils, the secretariat, the EMC and the Directors themselves all provide advice and recommendations to the Board.

The Board determines WSROC's work program through a strategic planning forum and workshops held every four years. This process is complemented by annual forums, which review and modify the work program as required. The work program centres on WSROC's primary role - to lobby for the councils and communities of Western Sydney. The organisation conducts research and prepares regional reports and submissions to support this advocacy role and also works to develop resource sharing and other co-operative projects between member Councils. WSROC also manages a number of projects, which are either funded jointly by its members or from external sources.

WSROC has a reputation for considered policy analysis and advocacy on a wide range of issues affecting the residents of Western Sydney. These include public transport, roads, economic development, urban planning and management, environment, employment, community services and a range of local government issues. WSROC is responsible for improvements in many of these areas and has helped to create many of the region's institutions and agencies.

WSROC's Mission

Our mission is: to secure - through research, lobbying and the fostering of co-operation between councils - a sustainable lifestyle for the people of Western Sydney and the provision of infrastructure such that no one should have to leave the region to have access to the sorts of amenities, services and opportunities others in urban Australia take for granted.

WSROC - A REGIONAL SNAPSHOT

Councils:	Eleven: Auburn, Bankstown, Baulkham, Hills, Blacktown, Blue, Mountains, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta and Penrith
Area:	5,773 sq km. The largest council is Hawkesbury (2,793 sq km), the smallest Auburn (32 sq km). The majority of land in GWS* (over 60% by area) is in National Parks, reserves, special protection areas, regional or local parks, with the majority of this land being in the Blue Mountains and Hawkesbury.
Population:	<p>The region** had a population of 1.5 million (1,484,000) at the 2001 Census, ranging from Blacktown (over 255,000) to Auburn (just under 56,000). Western Sydney** has a younger population profile than that for Sydney as a whole, reflecting high growth rates. Average annual growth from 1996 to 2001 was 1.7%. Highest was Liverpool (5.6%), lowest Fairfield (no growth). This represents 37.6% of Sydney's population.</p> <p>By 2019 it is estimated Western Sydney will have a population of over 1.9 million or 38.7% of Sydney's population. Blacktown will have over 337,000 residents and Liverpool will have increased by almost 70% to over 260,000. In total, five of the region's LGAs (Bankstown, Blacktown, Fairfield, Liverpool and Penrith) will have populations over 200,000, Baulkham Hills and Parramatta will be over 150,000, Holroyd will have nearly 100,000 residents and the three smallest LGAs (Auburn, Blue Mountains and Hawkesbury) will all be over 80,000</p>
Ethnicity:	In 2001 33.9% of the population were born overseas , compared to 31.2% in Sydney. The proportion of those born overseas is increasing faster in Western Sydney than it is in Sydney as a whole, up from 25% per cent in 1981 to 34% in 2001. In Fairfield and Auburn over half (53%) of the population were born overseas at 2001.
Households:	<p>There were 490,337 households at the 2001 Census, ranging from over 82,000 in Blacktown to just over 17,000 in Auburn, or 34% of the Sydney total. Between 1981 and 2001 household numbers in GWS* increased by 192,701, or 54%, substantially higher than the growth in households in Sydney over this period (35%). In 2001 there were 2.8 persons per household in Western Sydney, down from 3.4 in 2001.</p> <p>It is estimated that by 2019 there will be 223,485 additional households in the region, an increase of 46%. In Greater Western Sydney the figure is estimated to be over 258,000. DIPNR has estimated that by 2031 an additional 150,000 dwellings will be required in new release areas (90,000 at Bringelly and 60,000 at Marsden Park). WSROC estimates about 105,000 will be needed.</p>
Families:	In 2001 55% of all households were couple families with children , compared to 51% in Sydney. Twenty-seven percent were families without children (32% in Sydney) and 16% single parent families, compared to 15% in Sydney. However single parent family numbers have risen by 40% from 1991 , compared to a 30% increase for the whole of Sydney.
Tertiary Education:	<p>94,290 Western Sydney residents attended either a TAFE or university in 2001, with just over half (47,925) at TAFE and 46,365 at university. 6.3% of the region's population were attending a tertiary institution compared to a Sydney average of 7.3%.</p> <p>Auburn had the highest total percentage in tertiary education (8.2%) and also at TAFE (4%), whilst Baulkham Hills had the highest level of university attendance (5.1%). Penrith had the lowest total tertiary attendance (uni and TAFE combined) of 5.4%.</p> <p>In 2003 the University of Western Sydney had about 33,000 places or 18.5 per 1000 people in Greater Western Sydney. This compares to ratios such as 42.8 per 1000 in WA and 73.1 in the ACT. Over 70% of students attending UWS live in Greater Western Sydney. A similar proportion of students at UWS are also the first members of their families ever to attend a university course.</p>
Economy:	Greater Western Sydney*** produces more than \$54 billion in economic output annually , making the region Australia's third-largest economy (after Sydney CBD and Melbourne). This is expected to grow to \$61 billion by 2005. 150 of Australia's top 500 companies are located in the Greater West.
Employment:	<p>722,167 people GWS* residents were in the workforce in 2001, an increase of 21% from 1991. Nearly 70% of the workforce was employed in the region, which had 80 jobs for every 100 resident workers (the difference is due to the number of people resident outside GWS* who have jobs in the region).</p> <p>The industries that were the most self-sufficient in employment were Education (102 jobs per 100 resident workers), Manufacturing (94) and Agriculture (94); the least were Finance & Insurance (45) and Communication Services (52).</p> <p>Unemployment rates have recently fallen across the region and are now much closer to each other and the Sydney average than at any other time over the past 20 years. Fairfield/Liverpool, for example, has now fallen to 6.3% in the March 2004 quarter (unadjusted). North Western Sydney had 7%</p>

unemployment and Central Western Sydney just 3.6% for the same period, compared to a Sydney average of 5.4%. However there are still areas of high unemployment and participation rates have also declined.

Housing: **Average housing prices have risen by 69%** since 2000, whilst incomes of those aged 25-34 (the key first home buyer age group) have increased by only 22% in the same period. This means that the average number of "salary years" required to buy a house has increased 39%, from 8 to 11.1 years

Transport: **Just 17% of all journeys to work are made by public transport in GWS***, compared with 22% in the rest of Sydney. Of these trips 15% are by train and only 2% by bus (compared with 16% and 6% respectively in the rest of Sydney). Car trips account for 76% of the region's commute to work compared to 69% in the rest of Sydney. The figures for public transport use on all workday trips and for all weekend trips are even lower, just 7% and 2% respectively.

Since the 1970s over 100km of motorways have been constructed to serve Western Sydney; the M7 Orbital, currently under construction will add another 40km and complete the region's motorway network.

In the period since the 1930s, however, the rail network in Western Sydney has lost three branch lines and had less than 20km of rail track added: the extension of the East Hills Line to Glenfield, the "Y" link at Harris Park and the Olympic Line. The process of sectorising the rail network currently underway will bring operational benefits but further delay expansion of the network.

Environment: The heavily-urbanised **Cumberland Plain** supports less than 26% of the original cover and is subject to intense pressure for development. 54 plants and 59 animals are listed as rare or threatened in GWS* and biodiversity is under threat from continuing fragmentation and degradation of habitat, the impact of pollutants, weed invasion and introduced species.

Western Sydney's size and location result in **poor air quality**, as the Blacktown Ridge gives the region a separate low-level air shed from the rest of Sydney. Other factors include high motor vehicle use, clusters of manufacturing industry and the regional circulation pattern of air from the Sydney-Wollongong area. This problem is exacerbated by historically poor public transport and heavy reliance on motor vehicles.

The region falls across three major catchments: the Hawkesbury-Nepean, Georges River and Sydney Harbour/Parramatta River. Waterways in these catchments are subject to pressures from demands for drinking water, agriculture, sewage treatment and other industry uses; pollutants from stormwater, agriculture run-off and sewage disposal; and demand for recreational use of the rivers. Water for domestic use in the greater Sydney metropolitan region comes mainly from the Hawkesbury-Nepean and managing this demand is a significant issue given the current drought and a rapidly growing population.

There is potential for salinity outbreaks in all Council areas in the region, with Blacktown, Fairfield, Holroyd, Liverpool, and Penrith Councils most likely to be affected

Electricity generation capacity located in the region is approximately 345 Megawatts, less than 3% of total state generating capacity, yet the region is home to more than a third of the State's economy and 25 % of its manufacturing activity. The majority of stationary (non-transport) energy demand in Western Sydney is met by electricity (72%) and gas (20%). Most of the electricity consumed in Western Sydney comes from coal-fired generators.

Road transport is also a major contributor to greenhouse gas emissions with **total transport related energy use estimated to account for approximately 14% of total emissions** and a quarter of energy related emissions.

GWS*: Greater Western Sydney including Camden and Campbelltown as well as WSROC but excluding Wollondilly.

The Region**/Western Sydney**: the WSROC Region only

Greater Western Sydney***: All 14 WSROC and MACROC Councils including Wollondilly.