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UWA ARCHAEOLOGY SUBMISSION PHASE ONE CONSULTATION, *ABORIGINAL HERITAGE ACT* REVIEW

"We can say, without doubt, the Bill has a worthy purpose because I am sure we all agree that the culture of Aboriginal people which goes back a good many years is something which ought to be preserved for all time so far as Western Australia and, I should say, Australia is concerned."

Hon. L.A. Logan (Upper West), Aboriginal Heritage Bill, Debate, 2nd Reading Speech, 2:58 pm 05/05/1972

Dear Graeme,

Thank you for inviting comment on the *Aboriginal Heritage Act's* proposed amendments. We welcome the opportunity to work together to better manage the State's heritage. The selling of sacred Weebo stones in 1969 provided the impetus for the original WA *Aboriginal Heritage Act of 1972* – and marked an enormously hopeful moment that united most residents of the State in recognising the need to protect and manage Aboriginal heritage. Sadly, the Act has not managed to stay as relevant with the passing of modern times. It has neither kept up with the changing needs of Aboriginal people or of contemporary heritage management. Amendments passed in 1980 and 1995 have had the effect of rendering the Act ever less effective and susceptible to abuse. We should seek to recapture the inclusive original spirit of the Act together with the recognition of Aboriginal sovereignty and the dynamic nature of heritage. We suggest that the proposed amendments are insufficient given developments in the fields of Native Title and heritage. We feel the Act should be repealed and replaced with a single unified Act for all Western Australian heritage. We outline our thoughts on this and five other key aspects, as per the sub-headings below.

One Unified Act

Western Australia currently has a confusing regulatory landscape with three heritage acts – *The Aboriginal Heritage Act, 1972*, *The Historic Shipwrecks Act, 1976* and *The Heritage of Western Australia Act, 1990*. This makes for an inefficient and often inconsistent regulation of the State's heritage. Detailed regulations are required for managing different types of heritage but all heritage should have equivalent status. We are mindful that replacing these three Acts with a single, unified Act is a long-term goal with far-reaching policy and practice implications. We also recognise that many Aboriginal people may have concerns about their heritage being usurped by non-Aboriginal interests. But it is also the only viable long-term solution both at a practical level and for the purposes of reconciliation and nation-building. Legislation from Canada, New Zealand and South Africa provide excellent models of multi-cultural heritage recognition and management. We do recognise the enormity of this ask in the short-term. We thus suggest a two-step approach where the second step is crafting a single State-wide heritage act. The first step would be to harmonise the *Aboriginal Heritage Act* with the *Heritage of Western Australia Act*, which has recently undergone revision and more accurately reflects the dynamic nature of heritage management. This would still require a new *Aboriginal Heritage Act* as the existing one is, we feel, simply too outdated and inefficient.

Aboriginal Sovereignty and Equity

Within any new *Aboriginal Heritage Act* acknowledgement of Aboriginal Australians' prior and long custodianship of the continent should be central. There should be a statement that recognises that Aboriginal people have primary rights over their heritage and that's this status shall guide how the Act is applied and maintained. This acknowledgement should extend to ensuring that relevant Aboriginal parties are consulted properly through all parts of the Act, including proper rights of veto and appeal. Representative bodies for all regions of the State are required to provide expert advice on heritage cases. Such expertise requires remuneration.

A Dynamic Heritage Landscape

The current Act's narrow and focus on artefacts and sites is badly out of step with the last 30 years' development in our understanding and management of heritage. Globally, heritage is moving to a more dynamic and values-based understanding and management of **both** 'tangible' heritage (e.g. artefacts and sites) and 'intangible' heritage (e.g. cultural landscapes, intellectual property etc). The advantage of acknowledging and managing such a relationship is that we can focus on heritage dating back to the First Australians more than 50,000 years ago (e.g. deep stratified habitation sites, submerged cultural landscapes, rock art, and ceremonial artefacts and sites), though to sites of colonial contact/invasion (e.g. missions, early labour sites, significant burial grounds, massacre sites, maritime depots) and continue into the present by acknowledging heritage as always in production. The new Act should seek to encompass both the tangible and the intangible in accordance with the Burra Charter, the United Nations Declaration on the Rights of Indigenous Peoples and other post-colonial heritage legislations where artefacts, sites, stories, values, affective memories, traditional practices and intellectual property are all covered by legislation and its regulations.

A Transparent Process

The current permit and regulatory processes are slow, cumbersome and non-transparent. A new Act needs to streamline the process, dividing it into key phases with clearly defined functions such that final decisions are also supported by the reasons informing those final decisions. If the ACMC is to continue, it needs to be both representative and remunerated. Final decisions need to have reasonable rights of appeal, especially to Aboriginal individuals and parties.

Invest in Expertise

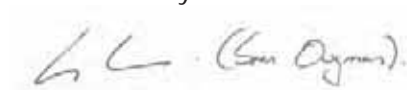
Heritage is a complex field and it is vital that the Regulator invest in its people, ensuring adequate levels of expertise and experience among staff across the State's heritage. This expertise can be called on by the representative Aboriginal bodies and therefore needs to be up to date and efficient with a core of senior, experienced staffers, who can mentor both incoming staff and advise Aboriginal and other heritage bodies.

Educating the Public

A new Act needs to enable public knowledge and appreciation of Aboriginal heritage and increase knowledge and enjoyment of this unique heritage that is simultaneously of significance to individuals, all Australians and the world. Public appreciation, which extends to commercial interests, will help make the Act seem less of an impediment to development, than the managing of a long-term heritage future that has enduring social and economic benefits.

This brief submission identifies what we consider key guiding principles to inform the building of a new Act and a unified best-practice approach to heritage. Individuals from UWA Archaeology have made more detailed submissions via the website. We look forward to working together on this.

Yours sincerely



Sven Ouzman, on behalf of UWA Archaeology

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cc: UWA Archaeology Staff