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Submission on the 'Review of the Aboriginal Heritage Act 1972 – Proposals for new legislation to recognise, protect and celebrate Western Australia's Aboriginal Heritage'

Thank you for the opportunity to comment on the Review of the Aboriginal Heritage Act 1972. The process of engagement has been extremely positive and we thank the Department for providing such a consultative and inclusive process.

Modernising Aboriginal Heritage management in Western Australia.

Proposal 1: Repeal the Aboriginal Heritage Act 1972 and deliver new Aboriginal heritage legislation

The History Council of WA agrees that the 47-year old legislation needs changing. The Act does not reflect today's expectations of Aboriginal peoples as per the *United Nations Declaration on the Rights of Indigenous Peoples*. Aboriginal representatives from across the state must be central to the decisions in developing best practice for all Australians.

Proposal 2: Update definitions and scope of new Aboriginal heritage legislation.

Extending the scope of the new Act to include ancestral remains, places that are cultural landscapes and place-based intangible heritage is commendable. The protection of Intellectual Property Rights, thus Indigenous knowledges, within Western Australia must be included, in support of the Commonwealth legislation. Currently, the exploitation of Australia's unique art, stories, songs and bush medicines is real. Our first people's intellectual property is vulnerable to exploitation both internally and globally. Culturally appropriate procedures to deal with ancestral remains is supported and critical.

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Proposal 3(A): Local Aboriginal Heritage Services

The right for local communities to appoint their own representatives and decide who can speak on their behalf, is a no brainer. Legislation must protect their 60,000-year old right to protect cultural heritage, thus local Indigenous knowledges. It makes sense for Prescribed Body Corporates to be responsible for the establishment of a Local Aboriginal Heritage Service where it is possible. As outlined in our first submission, this will alleviate pressure from Aboriginal peoples from other parts of the state to make decisions under the misconception that Aboriginal people are all the same.

Proposal 3(B): Aboriginal Heritage Council

This proposal is welcomed. However, if it is similar to the way in which the Aboriginal Cultural Materials Committee was expected to perform, it may still be vulnerable to high expectations and quick decisions without proper consultation with a Local Aboriginal Heritage Service. The process of decision-making and the rationale for those decisions must be transparent and available for public scrutiny. The development of uniform regulations to govern effective functioning of the Council, following the passage of the legislation, will be essential.

Proposal 3(C): The Minister's Role

Respect for the role of the Minister is paramount. Therefore, the Minister must be able to have complete confidence in the advice from Local Aboriginal Heritage Services. Moreover, an Aboriginal Heritage Council too, must be able to provide strong evidence why a heritage matter must be protected. Transparency in decision-making will be essential.

Proposal 3(D): The role of the Department of Planning, Lands and Heritage

The register of all heritage matters, places, objects and relevant Indigenous Property Rights should remain with the DPLH. The department however, must be reviewed to ensure it is adequately resourced to manage all Aboriginal heritage matters to high standard and ensure the staff are qualified to protect our First People's heritage.

Proposal 3(E): Heritage Professionals – aiding selection of those with appropriate qualifications and experience and improving standards

Heritage Professionals are necessary. Local Aboriginal Knowledge Holders should also be considered as professionals, while being subject to the provision of evidence of their qualifications and experience, in the same way as those who are qualified under western educational systems. Substantial investment in training should be considered.

Proposal 4: Retain the current form and function of the register of Aboriginal places and objects but rename it the Aboriginal Heritage Register

As recommended above, the form and function of the register should be retained, but should be expanded with a wider remit appropriate to the scope of the new legislation. Evidence-based decision making is crucial, as is adequate resourcing and a stronger and more supportive registration process for clientele.

Proposal 5: Introduce a referral mechanism to facilitate tiered assessments of proposed land uses

Land-use proposals and Local Heritage Services' issues must be settled well before any projects commence in listed heritage places.

Proposal 6: Encourage and recognise agreement making

Under the new legislation unnecessary destruction of heritage areas can be avoided if land use agreements negotiated under the *Native Title Act 1993* are ratified by the Aboriginal Heritage Council.

Proposal 7: Transparency and Appeals

A proposal that gives equal rights to Aboriginal peoples and interested land users, can only be a positive outcome.

Proposal 8: A modernised enforcement regime


As recommended in our first submission and noting the extreme wealth of major companies, penalties should be substantially increased, to the point of including terms of imprisonment for violations of the Act. Customary Law should also be considered by the Aboriginal Heritage Council in some cases.

Proposal 9: Protected Areas

Protected areas must be under the management of Aboriginal Heritage Service to enable adequate access to revered cultural sites.

Conclusion

The History Council supports the development of the new Aboriginal Heritage Act. We note that its relationship to other legislation at both State and Federal levels will a key aspect in ensuring successful outcomes in the registration, agreement-making and protection of Aboriginal cultural heritage sites.



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