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Dear Mr Davies

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 provide comment on the Review of the Aboriginal Heritage Act 1972 (AHA). The Department is to be congratulated on its efforts to oversee what has been a positive, inclusive, transparent and consultative process.

The National Trust shares many of the views contained in the extensive feedback associated with Phase 1 of the reform process. The National Trust agrees that the current Act is no longer fit for purpose and new modernised legislation is required which effectively recognises, conserves and celebrates Aboriginal cultural heritage in an efficient, effective and transparent way.

The National Trust welcomes the intent of the new legislation to embrace key elements of the *United Nations Declaration on the Rights of Indigenous Peoples* and adopting international best practice approaches in achieving positive heritage outcomes through agreements founded on respectful engagement with Aboriginal People.

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

The National Trust agrees that the current Act is unable to effectively reflect the dramatic changes in the social and legal landscape which have impacted on the management of Aboriginal cultural heritage over the last 40 years. Clearly a new Act would be required to ensure that the central role of Aboriginal communities is properly embraced, and greater clarity and certainty given in the processes and procedures regarding land use and development decisions impacting on Aboriginal cultural heritage. It is also important for the

Act to work effectively with existing legislation to ensure interconnectedness both at State and Federal level.

In addition, the new Act should also provide greater understanding and appreciation of Aboriginal cultural heritage to ensure all Australians have the opportunity to value its conservation.

Proposal 2: Update definition and scope of new Aboriginal heritage Legislation

Updating the definitions and scope of the new Aboriginal heritage legislation in line with the Australia ICOMOS Burra Charter is strongly supported. If this is done effectively, it would ensure the broadest understanding of cultural heritage values and give greater recognition of cultural landscapes and their importance to Aboriginal People, along with the fundamental interrelation between the tangible and intangible heritage.

By ensuring the new Act does not dilute the existing protection of Aboriginal sites, whether registered or not, allows the retention of one of the most progressive elements of the original Act and is applauded by the National Trust.

Similarly, provision of a statutory process to deal with ancestral remains is also welcomed.

Section 3 – Key roles in Aboriginal Heritage – proposed local and Central Bodies – functions and selection.

The National Trust endorses the principle of subsidiarity, and advocates for a greater direct role of Aboriginal communities in the management of ‘their’ cultural heritage. The National Trust also recognises the need and importance for key functions to be centralised, as outlined in the discussion document such as coordination, strategy and oversight.

Proposal 3 (a): Local Aboriginal Heritage Services

It is a very welcomed addition to the new Act to ensure Aboriginal People are directly incorporated into the decision making processes which impact on ‘their’ heritage. There are two principle issues that need to be carefully considered:

- i) The mechanism to ensure that ‘the right people to speak for country’ are engaged; and
- ii) That there are sufficient resources available to facilitate this.

As stated in the discussion document, where a Prescribe Body Corporate (PBC) exists, it would most readily meet the requirements to be appointed as a Local Aboriginal Heritage Service (LAHS). As one of the key roles of the LAHS is to ‘make agreements regarding heritage management and land-use proposal’, which is what PBCs currently do, this is a reasonable assertion. The concern, however, is the potential division and confusion which may arise where a PBC has sought to take on the role of LAHS but has failed to be accredited. There needs to be a carefully crafted set of processes and procedures for the appointment of LAHS that is fully transparent and open to appeal and review.

In addition, it should be noted that for the process of 'decentralisation' to be effective will require considerable support and resources to assist LAHS. Where the issue is a lack of capacity, a great deal of responsibility should be placed on the DPLH through the new Act to directly assist in the development of that capacity.

Proposal 3(b): The Aboriginal Heritage Council

The establishment of the Aboriginal Heritage Council (AHC), made up of suitably experienced and qualified people relevant to the functioning of the new Act, is endorsed. This includes the provisions to prioritise Aboriginal appointments, gender balance and the requirement that the Chair of the AHC be an Aboriginal person.

The key role of the AHC can be further strengthened and assisted by ensuring that the setting of uniform standards and guidelines are tailored to particular types of works and land use. This will greatly assist with the development of agreements and their assessment by the AHC and the LAHS.

Proposal 3(c): The Minister's Role

The role of the Minister in the oversight of the operation of the Act and dealing with matters of state significance is clearly critical and is supported. Similarly, the capacity to delegate decisions to the AHC for 'minor' impacts is also supported.

The transparency in decision making afforded by the requirement for decisions to be published is also strongly endorsed.

Proposal 3(d): The Role of the Department of Planning, Lands and Heritage

The principle issue is not so much legislative, but its impact on the level of resourcing required to enable the Department to properly perform its functions as proposed. Ensuring the Department, along with LAHS, are appropriately resourced will be critical to the success of the implementation of proposed operation of the new Act.

The role of the Department of Planning, Lands and Heritage, remaining responsible for the day to day operation of the Act, is endorsed.

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

Establishing a register of professional service providers is a positive step.

As referred to earlier in this submission, there is a critical role to be played in the development of common standards and guidelines. This would not only assist in improving professional standards, but would also assist in the assessment of proposals. As with other suggested parts of the new Act, this would require a substantial investment of resources in the short term.

Proposal 4: Retain the current form and function of the register of 'Aboriginal Places and Objects' but rename it the 'Aboriginal Heritage Register'.

The existing register of Aboriginal Places and Objects has been and continues to be a subject of some criticism, particularly over its usability and accuracy. Though its role and function is supported, considerable effort is required to make the system more accurate and accessible and relevant to Aboriginal People. In particular it also needs to be able to effectively support and reinforce the role of the LAHS.

Proposal 5: Introduce a referral mechanism to facilitate tiered assessments and approval of proposal land use

This proposal reflects the National Trust's views expressed in its original submission and its endorsement of the principle of subsidiarity. To ensure that this effort to streamline approvals and to remove layers of approval where they are not required, an early referral system, along with robust and comprehensive standards and guidelines relating to the types of activities envisaged, is essential.

Proposal 6: Encourage and recognise agreement making

Where this proposal deals with existing agreements which have arisen through the operation of the Native Title Act, many stakeholders in the first round of consultation asserted that they had achieved better cultural heritage management outcomes than those afforded by the AHA. A better pathway, when dealing with agreements that pre-date the new Act, would be to approach it on the basis of managing compliance with the requirements of the new Act. This would overcome what seems to be an overly bureaucratic process of achieving ratification which potentially replicates the agreement and negotiation processes that had already been undertaken.

The move towards an agreement making process is a positive development. Nevertheless, great care needs to be taken to ensure that it effectively recognises and integrates with all other statutory processes, particularly the Native Title Act and the Environmental Protection and Biodiversity Conservation Act.

Proposal 7: Transparency and appeals

This section is extremely positive, providing rights of appeal, transparency of decision making, mechanisms for appeals and time frames for statutory reviews. It should be noted that many Aboriginal organisations are under-resourced and appropriate levels of support would be required to ensure that these processes can function fairly and equitably.

Proposal 8: A modernised enforcement regime

This section maintains the current range of offences, but importantly, brings the penalties in line with the Heritage Act 2018. This approach is endorsed by the National Trust. However, further consideration needs to be given in relation to possible breaches by government departments and corporations, as the discussion document solely focuses on offences by individuals.

Though the role of 'honorary wardens' was underutilised in the AHA, the development of Aboriginal Ranger Programs over the last decade provides an opportunity for a similar function to be performed in cooperation with DPLH, under the authority of the relevant LAHS.

Proposal 9: Protected Areas

This section recognises the problems that presently exist to enable Aboriginal People to manage protected areas and includes provisions to allow 'active' management of protected areas by Aboriginal People. It should also include the mandatory requirement for a cultural Heritage Management Plan to ensure the highest levels of management and protection. This is a welcome reform.

Conclusion

The National Trust is supportive of the principle thrust of the proposed new Act. However, it reaffirms the critical need to ensure effectiveness and interconnectedness with related legislation at both a State and Federal level. The National Trust looks forward to seeing the outcome of this stage of the process and will be pleased to continue to be involved in future stages of the review.

Yours sincerely



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A/Chief Executive Officer