Review of the
Aboriginal Heritage
Act 1972
Consultation Phase 2
Summary of Responses
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Phase 2
– Summary of Submissions Introduction

A number of submitters volunteered feedback on this consultation process. While the overwhelming majority of these comments were complimentary of the approach, there were suggestions for improvements that could be made to the process. The Department has noted the feedback and will seek to improve future consultation activities.

The Aboriginal Heritage Act 1972 (AHA) Review Phase 2 consultation process concluded on 31 May 2019. The Department of Planning, Lands and Heritage received a total of 72 submissions by the closing date (59 written and 13 web survey). Analysis of these submissions indicates that there is broad community and industry support for the proposals for new legislation. While not all of the proposals were universally supported, most were, at least, offered cautious support pending the release of further detail in a draft bill.

The proposals put forward were shaped by the feedback received during Phase 1 of the review of the AHA. The level of detail was reduced in order to seek an overall response to the proposals prior to committing to draft legislation. As a consequence, many submitters raised questions of detail about how the new system will be implemented and operate. For Aboriginal people, the questions were broadly around how the Local Aboriginal Heritage Services will function in practice and how they will be funded. There was also strong feedback that the new legislation should mandate more Aboriginal members of the proposed Aboriginal Heritage Council – not just the Chairperson.

Heritage professionals echoed many of the comments regarding system resourcing. Specific concerns were also expressed that any standards set by the proposed Aboriginal Heritage Council and Department should represent best practice (and have the flexibility to embrace improvements in that practice).

The primary concern for industry is to ensure that the substantial investment made in agreements under the current Aboriginal heritage system will not be undermined. In respect to this, it should be noted that nothing in the new system is designed to lead to the involuntary renegotiation of terms that have been agreed in good faith under the Native Title Act 1993 (Cth) (NTA). There will, however, be a pathway for the heritage-related terms of those agreements to be recognised to ensure they ‘fit’ with the new system if the parties to those agreements choose to make use of it.

The Department remains acutely aware that proposed new legislation will not solve the issues being faced by those engaged in working with the current Aboriginal heritage system. While the focus is on delivering a new Aboriginal Heritage Act with better outcomes for all stakeholders, ways to improve the current system are being considered that satisfy two important criteria:

1) They do not require any amendment to the existing legislation and can be achieved through administrative changes.
2) They are not just an investment in the current system, but will support the implementation of the new Aboriginal heritage legislation and system.

The consultation process

To collect and facilitate feedback on the proposals, the Department ran 15 information sessions and 35 workshops (including two open to interested members of the public) throughout the State. Events were held in the following areas:

• Kimberley
• Pilbara
• Goldfields
• Gascoyne-Midwest
• Southwest
• Metropolitan

A number of submitters volunteered feedback on this consultation process. While the majority of these comments were complimentary of the approach, there was a suggestion that the process had focussed exclusively on Aboriginal people in the South West region. This indicates that the publicity for the various sessions run in other parts of the State may not have been effective. The Department has noted this and will seek to improve the reach of information about future consultation activities.

Throughout the consultation period, the Department also engaged with non-Aboriginal stakeholders and peak bodies through a series of discussions and events. Peak bodies consulted include the Amalgamated Prospectors and Leaseholders Association (APLA), the Association of Mining and Exploration Companies (AMEC), the Chamber of Minerals and Energy (CME), the Pastoralists and Graziers Association of Western Australian (PGA) and the Western Australian Local Government Association (WALGA). The Department similarly engaged with other State Government agencies that have significant exposure to, or a strong interest in, Aboriginal heritage matters.
Proposal 1 – Repeal the Aboriginal Heritage Act 1972 and deliver new Aboriginal heritage legislation

Key elements

*Repeal the Aboriginal Heritage Act 1972 (AHA) and replace it with modern legislation, regulations and policies.*

As highlighted in the Discussion Paper, there was almost unanimous agreement from the Phase 1 consultation on the need for the AHA to be replaced with new legislation. Although this view was repeated strongly in the majority of submissions received, there were submitters who questioned the need for a new Act, suggesting that the current Act could be made to work with some amendment, greater system resources and commitment to enforcement. This option was considered early in the current review process but was rejected as it would be almost impossible to achieve one of the project’s overriding aims: delivering a modern Aboriginal heritage system.

There was also some criticism that the proposals, as a whole, did not go far enough towards giving Aboriginal people complete control over decisions regarding their heritage. Other submitters expressed the view that the proposals had delivered an effective veto on land use planning to Aboriginal people. The final form of any new legislation will, of course, seek to draw a balance between such opposing viewpoints.
Proposal 2
– Update definitions and scope of the new Aboriginal heritage legislation

Key elements

a) Include coverage for ancestral remains, places that are cultural landscapes and place-based intangible heritage.

b) Exclude coverage for purely intellectual property rights.

The mismatch between Aboriginal people’s views of what constitutes their heritage and the more limited definition contained in the AHA was strongly communicated by Aboriginal people and heritage professionals in the Phase 1 consultation. This was repeated in the Phase 2 submissions, although with some commentary that the exclusion of non-place based intangible heritage (such as intellectual property rights in paintings made for sale) meant that the proposal did not go far enough.

Some submitters expressed an equally strong view that the definition should not be broadened in the manner proposed and, instead, be narrowed to limit the types of places. In addition, there was a view that higher thresholds of ‘importance and significance’ should be imposed before Aboriginal heritage places attract any protection. There was also a suggestion that the blanket protection afforded to Aboriginal heritage under the current Act not be carried forward into new legislation and instead be replaced by a system that only affords protection of heritage through registration. Prospecting and agricultural industry peak bodies expressed the opinion that an expanded definition would result in “confusion and dispute” and that it “will open a Pandora’s Box that may be so difficult to overcome that many small mining proponents will simply give up.”

Many submitters indicated that they would need additional guidance on the definition and management of intangible heritage and cultural landscapes. It is envisaged that guidelines to assist all parties affected by the new Act will be prepared as a part of the implementation of the new Aboriginal heritage system. This work will be undertaken by the Department under the oversight of the new Aboriginal Heritage Council (AHC).

The creation of specific provisions to explicitly deal with ancestral remains was broadly supported. Some submitters suggested that the State’s Criminal Code, Coroners and Police Acts and the Commonwealth’s Aboriginal and Torres Strait Islander Heritage Protection legislation already adequately covered this issue. This is not the case, however, as none of these Acts contain, or allow for, a culturally-appropriate framework for dealing with ancestral remains from their discovery through to possible reinternment, or remains that were collected historically and are now housed in public and private collections, or with those that are going through the various stages and processes of repatriation for reinternment. The Department recognises that the eventual form these provisions take should not conflict with, or duplicate, the provisions of other State and Commonwealth legislation, but maintains that their inclusion in the new Act is needed.

The exclusion of intellectual property rights from the proposed new system was criticised by a number of submitters. The Department acknowledges this, but does not intend to amend the proposal to encompass a mechanism to manage purely intellectual property (particularly given the magnitude of the other changes proposed and ongoing Commonwealth review of Australia’s intellectual property protections).

As a whole, the submissions contained cautious support for this proposal, while noting that there were still matters of detail to be worked through.
Proposal 3(A)
– Provide for the nomination of Local Aboriginal Heritage Services

Key elements

Enable appropriately constituted local bodies to:

a) Identify the right people to speak for particular areas of country and related cultural heritage through processes that have cultural authority behind them.

b) Make agreements regarding Aboriginal heritage management and land use proposals in their geographic area of responsibility.

The concept of providing for some form of local Aboriginal involvement in heritage management and land use proposal assessment was broadly supported. However, there were significant differences of opinion among submitters regarding the specifics of the proposal. One of the greatest points of divergence was on whether Prescribed Bodies Corporate (PBCs) should carry out this function, with opinions fairly evenly divided between those who advocated only PBCs should be considered for the role and those who held PBCs should never be appointed as a Local Aboriginal Heritage Service (LAHS). Those favouring PBCs (including members of the heritage profession) held the view that considering alternative bodies would undermine Aboriginal community decision-making autonomy. Those taking the opposite view (primarily Aboriginal people) articulated feeling excluded from those decision-making processes for various reasons.

The Department acknowledges that navigating the overlap between native title rights regarding heritage places and State heritage management processes is difficult but, with Government support, Aboriginal communities should manage this themselves at the local level. Given the fact that many PBCs are already performing the functions envisaged for LAHSs, they are logical bodies to more formally take on this role. However, this will be for the members of each corporation to decide in accordance with the decision-making processes they have adopted.

A number of submitters also expressed concern that the Government (through the AHC) will impose greater control on heritage decision-making by ‘picking’ the LAHSs (perhaps against the wishes of the relevant local Aboriginal people). This is not the intention of the proposal. Instead it is intended that nomination of a potential LAHS for an area will be managed by the relevant Aboriginal people (again) at a local level through their own processes.

It also appears that some submitters did not appreciate that LAHSs could be nominated by the relevant Aboriginal communities for areas where native title has been extinguished, surrendered, found not to exist or not yet been asserted. Because Aboriginal heritage places exist independently of a group’s ability to prove that they hold native title over an area, a new Act must apply equally across the State. This is one of the reasons why the proposal refers to LAHS rather than focusing on PBCs. It also serves to distinguish the separate, but not incompatible, heritage function the LAHSs must perform in the State system from their obligations to manage native title rights including the right to protect heritage places.

Virtually all submitters highlighted the need for LAHSs to be adequately resourced to carry out their functions. In the absence of this resourcing, many were concerned that the system would be inefficient (leading to higher costs for land users) and result in LAHSs being ‘set up to fail’. The Department acknowledges that resourcing is a critical system element that
will be addressed in parallel with the preparation of the draft legislation. It is also acknowledged that the capacity building that must be part of the resourcing will need to be tailored to the particular characteristics of the region and relevant local communities. For example, capacity building for groups in areas where there are no existing corporate structures will likely focus (initially at least) on the processes for establishing corporations and basic governance. PBCs may require assistance to develop procedures to effectively balance their obligations to their native title holding constituents and non-native title holding members of the local Aboriginal community who may be knowledge holders for particularly heritage places and must be engaged in heritage management in their area.

Proposal 3(B)
– Establish an Aboriginal Heritage Council

Key elements

*Abolish the Aboriginal Cultural Material Committee (ACMC) and establish a new central body (the Aboriginal Heritage Council) to provide advice and strategic oversight of the Aboriginal heritage system.*

General support for the proposal to establish an AHC was expressed across all stakeholder groups. However, respondents considered that the Council’s membership should “ensure that the broader interests of the Aboriginal community are represented” and that the AHC “should be given the power to establish sub-committees and co-opt independent professional advisers to assist with its functions”.

Notwithstanding this, there were submissions critical of the AHC having any role greater than that of the current ACMC – that is, all decisions on land use proposals should remain the prerogative of the Minister after having received advice from the Council. One particular criticism was that the identified skill base from which the members are proposed to be drawn is insufficient to ensure members have the capability to make decisions on complex land use proposals.

Those that did support the AHC having some decision-making function were strongly of the view that a land use proponent should have an automatic right of appeal to the Minister if the AHC does not approve a land use proposal or approves the proposal but imposes conditions that the proponent disagrees with.
Proposal 3(C)
– Retain the Minister for Aboriginal Affairs as the final decision-maker for certain land use proposals

Key elements

The Minister retains overall accountability and decision-making powers for the Aboriginal heritage system in Western Australia, but may delegate certain decision and functions to the Aboriginal Heritage Council (AHC).

Concerns expressed included the requirement for a greater degree of clarity around the process by which the Minister would decide if the AHC should deal with specific land use proposals (whether it would be by delegation broadly, or in each instance). Some submitters also queried whether there will be an avenue by which the Minister may reconsider a decision of the AHC to refuse or set conditions on a land use proposal. Clarity was also sought on the process and factors the Minister might take into consideration when assessing land use proposals accorded State Significant Project status (as defined by the Department of Jobs, Tourism, Science and Innovation).

A number of Aboriginal community submitters queried whether the Minister (or the AHC) should have any power to make decisions regarding their heritage. Most submitters, though, acknowledged that there was a role for an ultimate administrative decision-maker to balance potentially conflicting interests when considering land use proposals.
Proposal 3(D)
– Realign the activities of the Department of Planning, Lands and Heritage to support the new Aboriginal heritage legislation

Key elements
The Department of Planning, Lands and Heritage remains responsible for the day-to-day operation of the Act.

There was general acknowledgement that the system will need day-to-day administration and that the Department is the logical body to undertake this role. However, one submitter queried whether Aboriginal heritage would obtain sufficient attention in a large department reporting to multiple Ministers, each with their own priorities.

Even though most submitters were in agreement on the proposed nature of the Department’s role, many highlighted that its success will depend upon:

- appropriate funding
- structuring the Department to ensure it is able to function efficiently and effectively
- recruitment and retention of appropriately qualified and experienced staff
- adherence to agreed procedures and timeframes in the processing of land use proposals.

The issue of departmental expertise and resourcing was also raised in responses to the proposal regarding an updated enforcement regime.

There was, however, some discomfort expressed with the suggestion that the Department should perform some of the functions of a LAHS in areas where one does not exist. A number of submitters commented that there are other organisations, such as native title representative bodies, in existence that might perform this role. However, as there were equally strong views expressed at a number of workshops that representative bodies in particular should not have a role in purely heritage matters, this may not be an acceptable alternative to all stakeholders.

Other submitters pointed out the potential conflicts that could arise with a single entity undertaking activities supporting approvals processes that it also manages. The Department is very aware of this and, as with other organisations that have similar dispute resolution/facilitation and decision-making functions (such as the National Native Title Tribunal), a clear distinction will be maintained between the teams involved in these activities to ensure that perceived or actual conflicts of interest do not arise.

On balance, though, there was more support than not among the submissions for the proposed new role for the Department (including in relation to it performing aspects of the LAHS role where there is none).
Proposal 3(E)
– Create a Directory of Heritage Professionals

Key elements

a) Create a public Directory to list Heritage Professionals and thereby assist in the engagement of those with appropriate qualifications and experience.

b) Promote higher standards (by publishing on the Department's website) the standards required for heritage investigations, community consultation and reporting of heritage information.

There was very broad support for this proposal, including from submitters who are themselves heritage practitioners and from the peak bodies representing various heritage-related disciplines.

A number of submitters expressed the hope that the Directory would function to reduce the number of people holding themselves out as qualified to conduct heritage surveys and, thereby, increase the standards of those who remained in the industry. However, it was also suggested that “this type of accreditation must be carefully considered to ensure that it does not result in material increased costs to industry or a significant reduction in the individuals qualified to undertake the necessary work, to the detriment of both land use proponents and Traditional Owners”.

Since both inclusion in the Directory and the engagement of those listed in it will be voluntary, it is not anticipated that there will be any nett decrease in the number of heritage professionals available to undertake heritage investigations. The pool may, in fact, appear larger as proponents may no longer have to rely on word of mouth to identify appropriately qualified people. If a reduction does occur, it will be as a consequence of people without the ability to demonstrate appropriate skills and/or experience choosing to leave the industry. This is one of the intended outcomes of the proposal.
Proposal 4
– Retain the current form and function of The Register of Aboriginal Places and Objects but rename it the Aboriginal Heritage Register

Key elements

a) Rename the Register of Aboriginal Places and Objects to the Aboriginal Heritage Register to reflect the proposed shift of emphasis from ‘sites’ to the revised scope of the legislation.

b) The AHC will set and regulate reporting standards and improve the accuracy and utility of the register as a mechanism for Aboriginal people to record their heritage and as a land use planning tool.

The need for some system of cataloguing Aboriginal heritage places was acknowledged by virtually all submitters, one of whom noted that “the Register is vitally important in building trust and confidence in the current and future administration of the Act”. Similarly, the proposal to impose minimum standards that information must meet before being included on the Register was supported, to increase its reliability and usefulness as a planning tool. Access to information on the Register was also an issue that attracted comment, with views ranging between demands for completely open access to all information through to access only being available via log-in tied to access restrictions designed to protect culturally-sensitive information.

Some respondents did not support information being submitted to the Register by non-heritage professionals on the grounds that inaccurate reporting could affect land users and impede development. They called for clear statutory criteria, standards of evidence and active quality assurance by the Department before entries were made on the Register. Others, however, felt that “creating a more simple and efficient way to register Aboriginal heritage may encourage registration and increase the utility of the Register and trust in its completeness”.

Aboriginal organisation  Government  Heritage professional  Industry  NTRB/NTSP/PBC  Peak/professional body  Private business/individual  Regional workshop

Support/in-principle support  Opposition/qualified opposition  Neutral/not addressed
Proposal 5
– Introduce a referral mechanism to facilitate tiered assessment and approval of proposed land uses

Key elements

a) Provide for early advice to land users by the Department on standards of consultation and/or research that may be necessary to support the approvals process for a development.

b) Introduce a referral mechanism to facilitate the imposition of research, consultation and documentation standards and for the tiered assessments of proposed land uses (in accordance with their impact on heritage values).

c) Provide that non-compliance with the binding standards will result in the application not being accepted and/or the clock will stop on any agreed timeline until correct documents are submitted.

d) Establish a ‘call-in power’ to ensure proposals that should have been referred but have not been can be assessed.

While there was overall broad support for this proposal, there were some respondents from each of the industry, Government trading enterprise and local government sectors that expressed concerns regarding how and when the call-in power might be used, the criteria for risk assessment by land use proponents, and any definition of low-impact activities. Furthermore, concern was expressed that the referral process might increase the timeframes for the processing of applications for approval and increase the regulatory burden on industry and local government.

Aboriginal community responders expressed concerns that encouraging risk-based decision-making would become a means for land users to avoid dealing with Aboriginal heritage matters. The potential for land users to mistakenly assume that any lack of information on the Aboriginal heritage values of a place equated to an absence of Aboriginal heritage was highlighted by a number of submitters.

Some resource industry submitters argued that “it is important that the approval process for low-impact use is not overly burdensome and does not discourage proponents from conducting exploration” and that “in the adoption of ‘tiers of significance’, it is important for clear regulatory criteria to be made available for proponents to self-assess, and develop their applications accordingly”. Some suggested that binding standards of conduct could be established for low-impact activities that would remove the need for heritage assessments or approval processes. Aligned with this was the suggestion that actual decision-making responsibility be devolved to LAHS.
Proposal 6  
– Encourage and recognise agreement making

Key elements

a)  Encourage and recognise agreement making between a Local Aboriginal Heritage Service (LAHS) or other relevant Aboriginal body and land use proponents.

b) The Aboriginal Heritage Council (AHC) will consider, and if appropriate, recognise agreements where land users wish to rely on an agreement to expedite approvals under the new Aboriginal Heritage Act (and avoid or reduce paperwork).

The majority of workshop participants, Aboriginal community members, native title peak bodies and representative bodies cautiously supported a new Act having an emphasis on agreement-making, provided that the resulting agreements empowered Aboriginal people in heritage processes and did not serve to reduce their autonomy. Consequently, there was more unequivocal support expressed for there to be some oversight of the agreement-making process by the AHC.

There were reservations expressed by some industry submitters regarding the proposal to recognise existing agreements. For some it appeared that the proposal was seeking to undermine the legal validity of existing agreements reached as a consequence of the NTA future act process and for others that this recognition would be a fetter on their agreement-making autonomy. Neither of these outcomes is intended by the proposal.

Firstly, and most importantly, the process will be entirely voluntary. If parties do not wish to put forward their agreement for consideration, there will be nothing in the proposed new Act to compel them to do so. The fact of the agreement and outcomes could still be presented to the AHC as part of a referral, they simply would not carry the same weight (and may require more detailed explanation) than outcomes reached under a recognised agreement.

Secondly, the assessment is proposed to focus on the heritage processes that lead to outcomes that are likely to underpin requests for approvals under the new Act. It will not consider any commercial (or non-heritage related) terms that may also have been negotiated as components of an overall agreement.

Where an agreement regarding Aboriginal heritage matters has been negotiated as part of a process covered by provisions of the NTA, the process assurance that this affords would be a highly-relevant consideration for the AHC.

However, the system must also encompass agreements made regarding heritage matters that are not triggered by the native title process (for example where native title has been extinguished, surrendered, found not to exist or not yet been asserted) and so do not have these safeguards. The AHC oversight is likely to be focused on providing similar assurances to the parties to these agreements as are embodied in the native title system.

An alternative proposal was put forward by some submitters to allow agreements to be recognised that provide an alternative Aboriginal heritage approvals regime, seemingly in much the same way that Indigenous Land Use Agreements can be used by parties to avoid the NTA future act regime.
Proposal 7
– Transparency and appeals

Key elements

a) Reasons for decisions are to be published.
b) Land users and Aboriginal people whose legal rights and interests are adversely affected by the decision will have the same rights of review and appeal.
c) Retain the State Administrative Tribunal as the primary review body.

There was overall support for this proposal although the mining and exploration industry provided qualified support, suggesting that clear timeframes for decision-making and the appeal process should be set out in the new legislation.

Some submitters, though, queried whether affording anyone but applicants for land use consents the right to appeal decisions would be introducing a de-facto third party appeals process. This seems to stem from a planning-centred view of land use decision-making. The intent of the proposal is not to open up a process whereby third parties can appeal, but rather to redress the historical inequity (which would be racially discriminatory to carry forward) and acknowledge that Aboriginal people have a direct interest in decisions regarding their heritage.

Other respondents suggested that rights of appeal for Aboriginal people should rest only with the LAHS rather than individuals. However, this may have the effect of preventing the right of appeal of an Aboriginal person affected by a land use decision in an area where there is no effective LAHS in place.

A very small number of submitters suggested that a separate specialist appeals body should be established to deal with reviews under the new Act. This proposal is unlikely to gain Government support as it runs against the purposes for which the State Administrative Tribunal was established:

- reducing confusion by identifying one tribunal as the place to seek redress
- improving public accountability of official decision-making
- avoiding the ad hoc creation of new tribunals in areas of emerging Government decision-making.
Proposal 8
– A modernised enforcement regime

Key elements

a) Create a modern enforcement regime by ensuring offences and penalties are brought into line with the Heritage Act 2018 and other modern statutes.

b) The statutory limitation period is extended to five (5) years.

c) Conducting compliance inspections and proceedings will be the responsibility of the Department.

The low level of penalties and the lack of active enforcement for breaches of the AHA were highlighted by many Phase 1 submitters (in particular Aboriginal people and heritage practitioners) as being significant issues requiring change. Accordingly, these stakeholders provided strong support for proposals to lengthen the limitations period, increase penalties, and create new enforcement mechanisms. A number of submitters in this category did critique whether there should be any limitation on the time within which a prosecution can commence.

However, support for the various elements of the proposed new enforcement regime was not universal. Various industry submitters queried the need for aspects of this proposal, including:

- the need for a limitation period greater than that provided for in the Heritage Act 2018
- whether additional enforcement options, such as the proposed ‘suspension of land use’ orders were required, or appropriate
- whether incentivising compliance would be preferable to sanctioning non-compliance or, conversely, whether even the increased penalties were a sufficient deterrent.

Submitters also queried whether it was appropriate for offences and penalties to apply to places not on the future Register, perhaps as a consequence of misunderstanding that this is already the case under the AHA.

On balance, though, there was more support than not for this proposal.
Proposal 9
– Maintain Protected Area provisions

Key elements

a) Existing Protected Areas and the ability to declare new ones will carry forward into new legislation.

b) A new regulation will be created to authorise specific management activities by the relevant Aboriginal people.

This proposal was broadly supported, although a number of respondents suggested that before areas are conferred with the status of Protected Area, there should be a broad consultation process on the proposed management plan and that the consent of those who have an interest in, or use, the land should be gained.

It was suggested that adequate resourcing needs to be provided for the protection and management of Protected Areas and that if approval is granted for the active management of these areas, formal notification should be given to holders of any other interests in the land that might be affected.
Additional matters

A number of submitters made suggestions about matters that weren’t directly addressed in the proposals.

Transitional provisions

Although there were no specific proposals, a number of submitters expressed concerns regarding how the implementation of the new Act would be managed. Large-scale land users in particular, queried the implications for existing land use approvals from a broadened definition of Aboriginal heritage.

The Department is very aware of the need to carefully manage implementation of any new Aboriginal heritage legislation to preserve the value of the investment all parties have made in reliance on the current system. This includes projects with long lead times that may have undertaken extensive heritage investigations on the basis of the current law that have not yet flowed through to ‘approvals’ under the AHA.

The transition process will be set out in specific provisions in the legislation, supported by policy, guidelines and procedures that will be developed by the Department and the AHC. Further, should the current proposals be implemented, a number rely on the establishment or selection of bodies to perform critical system functions, which will take time to establish and become fully operational. As a consequence, any new Act will need to be gradually phased in, probably over a number of years, and likely with ‘old’ processes running in parallel as the new are bedded down. This will give the opportunity for many long-lead projects to obtain approvals in accordance with the existing processes and standards, while planning for the implementation of the new.

Guidance materials

A number of submitters highlighted the need for aspects of any new Act to have clear supporting materials developed with input from relevant stakeholders. The Department understands that parties will need various kinds of materials and other support to effectively engage with any new Aboriginal heritage system. Preparation of policy, procedure and other guidance is part of the remit of the proposed AHC and the Department (refer to the functions outlined in the Review of the Aboriginal Heritage Act 1972 Discussion Paper). The final form (and content) of any guidance materials will depend upon the final content of the legislation, and so cannot be finalised in advance of that legislation being enacted. It is anticipated, though, that any process endorsed by the AHC to develop guidance materials will involve consultation with stakeholders.

System resourcing

A majority of submitters highlighted the need for any new Aboriginal heritage system to be appropriately resourced, in terms of both funding and expertise, for it to succeed. The Department agrees and is currently undertaking work to determine what resource allocation will be required to ensure that any new system will function efficiently, effectively and deliver outcomes that are better suited to the current needs and aspirations of all stakeholders.