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# SUBMISSION BY GOOLARABOOLOO MILLIBINYARI INDIGENOUS CORPORATION ON BEHALF OF THE GOOLARABOOLOO PEOPLE

## REVIEW OF ABORIGINAL HERITAGE ACT 1972

**31 MAY 2019**

## Introduction

1. This submission is made by GMIC on behalf of the descendants of the late Paddy Roe (OAM), (to be known here as Lulu for cultural reasons) who are known today as the Goolaraboolo people.

2. Goolaraboolo is the name of the West Coast Salt Water Sun down law and cultural group. Today known as part of the Northern Tradition of law. Our Song Cycle path of the Northern tradition is collectively known as Ullulong.

3. The Northern Tradition law and culture starts in Swan Point in Bardi country in the North and goes to Wabina south of La Grange in Karrijarri country. Goolaraboolo are culturally responsible for the area of country from Gariyan (southwest corner of the Beagle Bay Reserve boundary) in Jabirr Jabirr country to Nyellanyellagun (Dampier Creek) in Minyirr Djugan country. Today the Goolaraboolo's section of the Song Cycle is known as Lurujarri. We still practise our law, look after and protect our country, walk our country and educate our young people and the wider community on the local cultural traditions.

4. Over the last 90 years we are the known local law bosses, local traditional knowledge holders and local custodians who have been handed the local law over the Jabirr Jabirr (Nimindarji Buru – saltwater country , and Yungangbar buru – freshwater country) Ngoombal, and Minyirr Djugan Buru's and traditional knowledge holders for areas including the above but also parts of the eastern Yawuru and Ngykina countries.

5. Goolaraboolloo people of today have blood ties to the Bardi, Nyul Nyul, Warwa, Yawuru, Karrijarri and Nykina language groups. And rai (spirit) connection to the buru's (countries) of Jabbir Jabirr, Ngoombal, Minyirr Djugan and Yawuru.

6. Goolaraboolloo people have participated with hope and respect in Government-held meetings and workshops in Broome as part of the latest review of the *Aboriginal Heritage Act 1972* (the AHA). Proposals to remove a broken site assessment process, to include best practice heritage management efforts, to involve intangible heritage and cultural landscapes in heritage protection and to modernise the enforcement regime are excellent proposals.

7. It is hoped that through this new direction and through many of the proposed changes, Western Australians will have effective, respectable and culturally appropriate Aboriginal heritage protection legislation in Western Australia.

8. However the discussion and feedback provided in the first two rounds of this consultation process also indicate that many people and 'stakeholders' are largely naïve or uninformed of traditional Aboriginal law and cultural practice and of what would actually be required to meet some of the desired outcomes, particularly upholding the rights of Aboriginal people under national and international law, cultural sensitivity, active involvement, traditional and cultural appropriateness. It would seem that this may largely stem from a lack of involvement and/or awareness of Aboriginal heritage management in local communities, particularly over past decades.

9. Therefore before addressing aspects of the nine key proposals put forward in the second round of consultation, Goolaraboolloo would like to draw your attention to some things that we hope should make clear why some of the proposals are alarming, would require careful implementation or substantial change for desired outcomes to be realised and have the potential to embed localised systems of cultural appropriation, disempowerment and abuse.

10. Goolaraboolloo are strongly concerned about:

(a) the probability that some of the proposals, if implemented, will erode any genuine opportunity for them to participate in heritage processes, notwithstanding their cultural knowledge and cultural responsibilities for country.

(b) the robustness of the internal governance procedures in most PBCs, their representativeness of their own membership (as opposed to particular families or interests), the financial incentives for PBCs to 'approve' destruction of heritage and the lack of any obvious accountability or oversight mechanisms for PBCs as compared to the WA public service or Ministers (to Parliament and the electorate).

(c) the extent to which Aboriginal heritage issues are being collapsed into "native title", as if one is always the same as the other across the whole of WA. This is not what is required by the Burra Charter approach.

(d) the incompatibility of some of the proposals, if implemented, with the full range of rights and interests of Goolaraboolloo people under Aboriginal law and culture and under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

**The idea of "community" and the "right people"**

11. The first Key Point in Proposal 3(A) of the Department of Planning, Lands and Heritage (DPLH) Phase Two Consultation Paper (the Consultation Paper) relates to Local Aboriginal Heritage Services (LAHS) and acknowledges that the local Aboriginal community determines who the right people to speak for the relevant cultural heritage are and what is important to them. Proposal 3(A) indicates that LAHS will be appointed to ‘ensure the right people to speak for particular areas of country and related cultural heritage are identified’. Therefore it is taken from the proposal that each LAHS will appropriately represent local Aboriginal community.

So this use of the idea of a ‘local Aboriginal community’, what is appropriate representation of a local Aboriginal community and who are the right people to speak for relevant cultural heritage demands careful understanding.

12. When an anthropologist arrives on the community scene to find out about the ‘importance and significance’ of a particular heritage site, lets say a place of

high significance under local traditional law and culture, the anthropologist first investigates who would be the 'right people' to talk to about the place - that can properly advise on relevant aspects of the place, including significance and potential impacts (to traditional law and culture, individual people and more generally the community) and that have the traditional authority to make agreements regarding Aboriginal heritage management and land use proposals in their geographic area of responsibility.

13. The anthropologist can usually quickly identify the appropriate persons in this group of people by speaking to elders and important people in the Aboriginal community. The people making up this group are the appropriate local law people, local custodians and local traditional knowledge holders of that place and associated tradition. They are identified and acknowledged as the 'right people' to speak for that place. It is culturally inappropriate and potentially dangerous for anyone else to speak up, speak out of turn and say that they should be included in the group or speak above the group. Members of the general community defer to the group and have trust that the group protects the integrity of the underlying law and acts in the interests of the community. Likewise, a role in traditional law carries a responsibility on each member of that group to behave in this way and there are significant repercussions if these responsibilities are not observed or met.

14. In the early 1990s, following a request from Mr Nic Green of the WA Museum, a local Broome consultative committee was set up to discuss development and heritage management issues in the Broome area. This group included a wide representation of the Broome Aboriginal community, including traditional Goolarabooloo law and culture people, other Broome people who had limited involvement in traditional law and culture and others who had not followed that path but respected it. The role of these different groups in the local community was discussed – elders and traditional law people considered and made decisions on heritage issues and impacts from development and those from the general community (including those who were only slightly involved in cultural tradition) could provide more general advice on how development affected the Aboriginal community including social and environmental impacts.

15. For any LAHS to be effective, culturally appropriate and endorsed by an Aboriginal Heritage Council (AHC), it must have at its core the involvement and direction of the people identified above by the anthropologist. **They should be provided with the first and last say**. Involvement of other people at this core who are not acting in a supportive or capacity building role are culturally 'out of line'. The LAHS role is largely about traditional heritage management – Aboriginal people already have a traditional governance structure for considering heritage and decision-making and this traditional

structure must be at the heart of the LAHS. Anything else, is culturally inappropriate.

**Acknowledging Differences in Aboriginal Interests in Land**

16**.** Long before the *Native Title Act 1993,* in September 1983, following an official understanding and realisation of the need for a form of Aboriginal land rights, Western Australian barrister Paul Seamen QC commenced as Commissioner required to inquire into means for protecting Aboriginal relationships with the land in Western Australia, in what became known as the Aboriginal Land Inquiry. Public submissions were requested during this Inquiry and 195 written submissions were received. The Commissioner held hearings in north Western Australia and during that time he came and sat with Lulu to hear and record his thoughts on the matter. Old man P Sebastian the last of the Jabirr Jabirr law men sat with Lulu at the time, in demonstration of Lulu's standing and backing from the traditional Jabirr Jabirr law people and elders from the area that handed him the country.

17. Following this public consultation, the Commissioner issued a Discussion Paper in January 1984. The Commissioner proposed two types of relationships that should be protected by permitting land claims to be founded on them:

(a) existing traditional relationships between living claimants and that land; and/or
(b) the long association by residence on or use of that land by living claimants.

18. Through public consultation the Aboriginal community was realised to be made up of traditionally oriented Aboriginal people as well as Aboriginal people with other associations to local land and it was acknowledged that the place of both groups in the community needed to be protected and dealt with separately.

19. The Commissioner also reviewed the evidence provided in relation to the AHA. It is recommended that those reviewing the AHA in the current process should review the full Discussion Paper and the evidence provided if they have not already done so. We would like to note here that the Commissioner proposed that a tribunal be set up to review land use proposal and consider among other things:

(a) The likely impact on the lives of individual Aborigines and the Aboriginal community on the desecration of the site;

(b) The importance of the site to Aboriginal tradition;

(c) The advantages to the community in general of the development proposed.

20. These considerations evolved from a long public consultative process by a state Commissioner and it is no coincidence that these same three considerations were echoed later during the setting up of the Broome Aboriginal Consultative Committee. The considerations are crucial for proper, culturally appropriate Aboriginal engagement: **a more important form of engagement with traditionally oriented and appropriate people about the importance of the place under traditional law and likely personal and communal impacts should site desecration occur** and **another form of engagement with the general Aboriginal community about advantages from the development to the community in general.**

21 Today, Native Title PBCs have a requirement to maintain the normative tradition on which their native title is based and consult/make decisions over land use and developments with regard to the Native Title holding community and potential advantages for that community. They are set up with business arms and seek economic benefits for the community. Although their actions must maintain traditional continuity, they are filled with people focusing on business aims and not primarily on traditional law and culture aims. In essence they are usually involved primarily in the third category Commissioner Seamen's Discussion Paper.

22 Native Title PBCs are not setup with a decision making structure that is culturally appropriate to directly handle the first and second considerations of the Commissioner's paper nor are they equipped with the central involvement of those in the group identified above by the anthropologist. They usually need to consult with the 'right people' and require that those right people undertake considerations and decision-making in line with traditional processes. The PBC becomes a third party construct that is ill-fitting for this purpose and history has demonstrated numerous localised problems with this model, where for example the right people are left out of consultation, particularly if they will not provide a desired outcome, are not members of the Native Title-holding group or are viewed as threats to power and control.

23 It is acknowledged here that there might be areas in the state where Native Title PBCs do sufficiently involve the majority of the local law community and the followers of a single relevant tradition in the area. However it is important to understand and realise that Native Title organisations are an artificial construct over traditional heritage management, with Westernised governance structures having requirements that many decisions be made that are not traditionally oriented and are not culturally appropriate. There can be **no**

**guarantee** that the native title-holding group would always act in the best interests of the 'right people' or provide culturally appropriate outcomes.

## The Relaxing of the Interpretational Principle

24. The situation raised directly above has been made ever more problematic with an ongoing compromise within the Native Title establishment to increasingly relax on what has come to be termed the 'Interpretational Principle' in Native Title. This principle is based on general acceptance that Aboriginal people have been subject to past injustices and so the bar is lowered on threshold requirements to demonstrate varying aspects of continuity and membership. This appears to be done in the spirit of including more people, particularly people who have been adversely affected by past 'wrong doings', in Native Title holding groups. However it also increases the numbers of people in those groups who have had significant disruption in their traditionally-oriented cultural continuity and who are more slightly involved in traditional practice and observances.

## Traditional Governance Structures are Crucial to Appropriate Heritage Management

25. During the Phase Two consultative process, DPLH staff announced that 'current decisions lack cultural authority' and that this situation had to change. The only way that this can change and for the LAHS setup to effectively provide desired outcomes is for a LAHS to require a basis of traditional decision-making at the heart of its governance and decision making under the new-look AHA. This view is similar to a view put forward by Mr Graham Castledine, who is a leading expert in Native Title and acted as a consultant for DPLH and an independent facilitator at some of the regional AHA Review Workshops held during Consultation Phases One and Two.

26. In a 2017 AIATSIS publication titled 'Traditional Decision Making in Native Title', Mr Castledine examined the role of traditional decision-making in native title decisions under the *Native Title Act 1993* (NTA) current difficulties and implications of proposed reform. Mr Castledine noted that:

    (a) "many groups have been forced to combine (traditional decision making processes) with more contemporary western notions of corporate governance. This in turn has contributed to cultural clashes, internal disputes, confusion and multiple accountability for many native title groups" (Castledine 2017: 1).

Also, that:

> (b) The promotion of traditional decision making combined with accountability to corporate governance requirements such as those under the CATSI Act and (PBC) rule book can give rise to internal tensions and legal challenges particularly for groups who are not adequately resourced (Castledine : 8).

Mr Castledine's own learned view on the subject was that:

> Traditional decision making processes should continue to be enshrined in the NTA but under a more flexible regime. For example the NTA could require all significant decisions to be made by processes, which are consistent with the traditions and customs historically applied by the relevant group when making decisions affecting their traditional lands (Castledine 2017: 5).

27. Mr Castledine's paper should be read by those involved in reviewing and proposing new legislation and the difficulties and issues mentioned above taken into account when considering interaction between the NTA and AHA. With changes being proposed to the NTA every few years, the requirements, rules and accountability on PBCs and their potential for change need to be taken into consideration for any plan to consider the fitness of organisations made under this Federal legislation to act as service providers under Western Australian AHA legislation.

28. It is hoped that the above points make it plain that suggesting the new AHA should be in line with Native Title or protect Native Title rights and interests does not contribute much to the current process and is problematic. Native Title holders have rights and interests that are required to be recognised under common law. However recognition of those rights and interests is not to be done at the detriment of the rights and interests of other Aboriginal people. The simple fact is that all Aboriginal people have rights and interests, some traditional, that are protected under the International human rights instruments that the state is required to uphold and protect. Suggesting that one group of Aboriginal people, particularly a group following a particular normative tradition should have control and management over the heritage and culture of a different normative tradition or over the heritage and culture of people outside of their native title holding group is inviting potential for cultural appropriation, disempowerment and abuse of fundamental human rights.

**Proposal 1**

**Repeal the *Aboriginal Heritage Act 1972* and deliver new Aboriginal heritage legislation.**

The AHA was originally celebrated from 1972 as being a progressive and advanced piece of protective legislation. Under the administration of the AHA, Aboriginal people came to be able to engage directly with the Registrar, Aboriginal Cultural Materials Committee (ACMC) and Government on heritage matters. When make site assessments or considering section 18 applications to impact a site, the ACMC regarded information/views put forward by informants and knowledge holders and other people, later including native title-holders and claimants. This separation and due consideration needs to continue appropriately under the new AHA.

The issues section suggests that Aboriginal culture across the State may be viewed as being one culture. For the intent and desired outcome (in part, that the legislation reflects the rights of Aboriginal people under national and international law) to be properly met there may be a need to realise that there are many, diverse Aboriginal cultures across the state. The proposed legislation will need to provide for protection of that diversity.

Goolarabooloo can understand that others may not be able to perceive aspects of out intangible heritage but they are very real to us. Goolarabooloo see Rai. Our Song Cycle Path has a beginning and an end point, it is alive - a breathing living thing and we keep it that way. Our intangible heritage is considered to be of the utmost importance to the culture. The Song Cycle Path; the Rai; the liyan; the ancestor spirits; the cultural grounds; the burial grounds; the massacre sites; and the basic principles of Bugarregurra. These principles would be different under different traditions across Western Australia and the AHA must reflect that.

**Proposal 2**

**Update definitions and scope of new Aboriginal heritage legislation**

Widening the scope of Aboriginal heritage protection to include: proper management of ancestral remains, heritage places as cultural landscapes, place-based intangible heritage and a definition of place that is consistent with the definition in the Australian ICOMOS Burra Charter.

These things are all necessary to bring Western Australian Aboriginal heritage protection up to date with current best practice heritage management, for it to be culturally appropriate and respectful and in-line with expectations and obligations of the State under the United Nations Declaration on the Rights of Indigenous Peoples and other relevant Instruments.

**Proposal 3a – Local Aboriginal Heritage Services**

There is an expectation that Native Title PBCs will apply to become a LAHS. Unfortunately the Desired Outcomes of this section will be difficult in many areas to achieve with models of PBCs as service providers.

To be appropriate, LAHS will require the active involvement of **local** senior law people and knowledge holders in decision-making and management of heritage matters in particular areas of country that they have connection to and cultural responsibility for. Many law people and knowledge holders with connection and cultural responsibility for particular areas have been excluded from native title groups in the past and/or are not represented under PBCs.

The Native Title process requires demonstration of a continuous unbroken link with traditions and ancestry from sovereignty. Those who cannot provide that connection are not included in the group. Native title holding groups cannot therefore include many people who have developed local associations and/or responsibilities after the sovereignty date of 1829. This further consolidates the violence, trauma and removal that may have been historically experienced. Through this, the Native Title process is exclusionary in nature and endorsement of many PBCs as LAHS simply embeds this exclusion and disempowerment. As parties to Native Title proceedings, the State should be very aware of the history of many knowledge holders and custodians being left out of consultations and heritage management processes by PBCs.

Native Title groups are required to demonstrate ancestral links to 1829 and then demonstrate they are traditional in some form. Many native title groups have become grouped as language groups not traditional law groups. Consultation over heritage should be with law groups and these people should consult Native Title holding groups for views on general benefits/impacts on the whole community. Many Native Title holders have no business making decisions about some heritage places but they are able to and at times seek to consolidate this management power – to embed this in some areas would serve to break down traditional structures and be completely unacceptably in nature.

Native Title provides for common law recognition of traditional rights and interests of a group of people. Native Title **does not** take away or restrict traditional rights and interests of other Aboriginal people in an area. The traditional and cultural rights of non-Native Title holders are also protected under International Covenant and need to be included in the AHA protection regime.

The new AHA seeks to ensure that consultation and agreement making processes with Aboriginal people are culturally appropriate, transparent and provide more certainty for land users. Culturally appropriate consultation on heritage places associated with law business requires consultation with the local law people and no one else. Most consultation within PBC's is not set up in this way and often people who are not law people are involved in consultation process at senior levels. Consultation with an entire PBC group is often viewed as culturally inappropriate. Democratic decision-making or agreement making is usually not culturally appropriate for law places.

**Key Point 1** suggests that the local Aboriginal community determines who the right people to speak for the relevant cultural heritage are and what is important to them. Many Native Title groups and PBCs do not represent the whole of a particular community. Many community groups have been involved in conflicting Native Title claims over one area. Many PBCs exclude knowledge holders and custodians deliberately. Native Title could be considered as becoming weaponised in some areas by some groups. If a PBC assumes the role of a LAHS, their view and understanding of significance of particular sites will likely be different to others in that community. This sets a scene for potential situations of cultural appropriation or suppression.

**Key Point 2** indicates that the LAHS would provide a first point of contact. The culturally appropriate first point of contact on heritage issues and management are local elders and local law people. These people often sidelined in PBC/Native Title process and/or by other people usurping power and authority.

**Key Point 3** indicates that the LAHS will undertake or coordinate surveys and management of Aboriginal heritage. Culturally appropriate management of Aboriginal heritage can only be done through direct, sustained engagement with local appropriate law people, local custodians and local knowledge holders. There is no guarantee that a PBC/LAHS will include local knowledge holders and local law people on surveys. In fact some areas have a long history where family membership has been the determining factor in placing people on surveys, not their level of heritage knowledge or understanding/involvement in traditional law.

**Key Point 8** indicates that time frames and standards will apply to the advice and services provided. These time frames should be culturally appropriate and sensitive and may vary group to group.

**Key Point 11e** indicates that requirement of LAHS is to have rules that are consistent with the requirements imposed on a PBC, especially in terms of obligations to consult on certain decisions. This is concerning, please see above issues with PBC traditional decision making involvement and issues in Castledine 2017 AIATSIS paper and similar critiques. Does this set PBCs up to potentially be referred to the Federal court for making decisions against Traditional values and obligations through acting as a LAHS?

**Key Point 13** indicates that DPLH will assume role of Local Service Provider in areas where no Provider exists. This would require a large increase in capacity and expertise and appropriate levels of funding to be undertaken effectively.

**Rationale Point 3** advises that fully devolved decision-making to local Aboriginal people, as in the Victorian model, is unlikely to be supported by a significant proportion of land users, who consider the absence of Ministerial decision-making in contentious land use proposals would create a risk to future investment. This appears to indicate that a risk of future investment is valued more than possibly establishing proper heritage management of their own heritage by Aboriginal people as directed under International Covenant.

**Proposal 3B**

**Aboriginal Heritage Council**

The proposed Aboriginal Heritage Council (AHC) should include as many Aboriginal people as practicable, however it is desirable that those people should be Western Australian people, not Aboriginal people from other states.

The AHC should have in built dispute resolution processes – one for occasions when issues and allegations arise from within a LAHS and also between a LAHS and others in the community.

The AHC should be able to investigate LAHS when they are said to be providing sub-standard services, non-inclusion of appropriate local law people, custodians and knowledge holders in heritage matters and agreement making and poor advice.

The AHC should also have access to advice from the Australian Human Rights Commission when considering issues involving potential impacts on cultural rights and human rights.

**Proposal (3D)**

**The Role of the Department of Planning, Lands and Heritage**

The Department has inadequate resources in terms of funding, numbers, qualifications and experience of staff. Most senior heritage staff are not from Western Australia. This should be changed and experienced Western Australian people, preferably Western Australian Aboriginal people, engaged.

There appears to have been an inadequate level of accountability within the DPLH heritage administration. This should be reviewed with changes to the position of Registrar of Aboriginal Sites and new accountability levels consolidated.

IF DPLH are to perform the role of LAHS for areas where no suitable body exists or has been nominated to take in the functions of a LAHS it will need to be sufficiently resourced.

**Proposal 4**

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

The site assessment process in the AHA lacks accountability, is broken, paternalistic and often insulting to Aboriginal people and provides inconsistent outcomes and reduced confidence in heritage management practice. The removal of a site assessment process by Government and its replacement through a system where Aboriginal heritage places are included on a Heritage Register if a place is identified as culturally important to Aboriginal people is a big step in the right direction.

However the management of information on a centrally held Register is of great concern for the Goolarabooloo. Information provided on highly sensitive places has been mishandled by DAA, initiated men's only information has been given to females (placing them in harm's way), restricted site boundaries have been published and distributed widely, site information has been provided by DAA inappropriately to others including people of other law traditions, sites have been renamed inappropriately, knowledge holder listings have not been updated sufficiently. What guarantee is there that things will change and accountability will be provided this time?

The process for nominating a place as an Aboriginal site is unclear and assumed to have to go through a LAHS. It is unclear if Aboriginal people in an area that aren't represented through a PBC/Local Provider can also nominate heritage places without the knowledge or support of the LAHS. There have been past occasions where PBCs have directly objected to nomination by traditional custodians of highly significant Aboriginal heritage places on the Register. If a LAHS/PBC are successfully able to object to future nominations in their area it will provide a new barrier to effective Aboriginal heritage protection, a valid criticism of some RNTBCs in past. These are unacceptable situations for many Aboriginal people who require confidence in the new system.

Consideration should be given to holding local Heritage Registers, potentially managed by a LAHS. This would empower local Aboriginal people to control the management and provision of information and relieve the problems experienced under the current system mentioned above. However this requires that a LAHS be endorsed carefully. Local management and control of information by a PBC as a LAHS will likely lead to potential for misuse of the system and power consolidation, and appropriation of heritage knowledge. If a local law person, custodian or knowledge holder is asked to provide information on a place, they are careful with how they manage and record that information. It would be culturally inappropriate for one of these people to provide that information to a LAHS and the LAHS then hold that information if the LAHS does not have the involvement of those people at its core. Appropriation of that information by a PBC acting as a LAHS will not be viewed well by many traditional people and will destroy confidence in the proposed system. The new look AHA will need to be careful that its administrative practice is not able to be used as a weapon to impact fundamental human rights.

Consideration should be given to potentially having more than one Register – a centrally controlled one at DPLH for minimal information and another locally controlled one by **appropriate people.**

**Proposal 5**

**Introduce a referral mechanism to facilitate tiered assessments of proposed land uses**

The tiered system does not involve local Aboriginal input into defining levels of impact for proposed developments/land impacts. Definitions for what constitutes a

low impact may vary in different areas/regions and should be constructed with local guidance. It appears in this proposal that a land user will be left to self determine a level of disturbance, then engage in consultation at a required level similar to a risk management process. A lack of direct, early engagement and input on defining levels of disturbance by appropriate local Aboriginal people will likely result with increases in heritage places being unintentionally and adversely impacted. This will significantly reduce confidence in the system.

To be successful it is essential that LAHS have local law people, local knowledge holders and local custodian involvement at its core.

**Proposal 6**

**Encourage and recognise agreement making**

Agreements involving Native Title parties as only Aboriginal stakeholders of a community could result in impact and damage to heritage places where the Native Title holders do not understand the level of significance of the place or are even unaware of their presence depending on the internal PBC processes. This might result in follow on issues at a state and international level. As the local knowledge holders/custodians who have the inherent cultural responsibilities to protect an area can become sick or even die, they must be bought into the agreement process.

Part of the solution could be a need to mandate a traditional system of decision making in LAHS agreement making processes, not democratic decision making. This will create an in-built system of accountability where the LAHS is required to protect traditional rights and interests. This traditional system of decision making must be kept local and with the right people.

**Proposal 7**

**Transparency and Appeals**

Greater transparency in decision-making is needed. Balanced and equal rights of review and appeal are also required and long overdue. However it is unclear whether the Proposal for landowners and Aboriginal people to have the same rights of review and appeal will lead to the desired outcome that all stakeholders in Aboriginal heritage will have confidence in the administrative decisions that affect Aboriginal heritage. Will all Aboriginal stakeholders, including local traditional custodians, who are not part of a Native Title holding group, be afforded this equal footing, particularly where a PBC has been granted status of being a LAHS?

## Proposal 8

## A modernised enforcement regime

Compensation for wrongful impact to a heritage place should be, at least in part, directed to the part of the community or group of individuals who suffer as a result of the impact, most significantly those with the inherent cultural responsibilities, most involvement or closest association with the place.

It is widely recognised that a longer of statutory limitation period is desperately needed in the AHA. A five year period should be sufficient, however the threshold for proving guilt and intent still remains substantial and is likely to maintain the low number of successful prosecutions under the AHA.

Although increased fines would be a good disincentive for people and small companies to make sure that heritage is not impacted through their activities, larger companies might still consider whether it worth the risk in the financial scheme of things. Consideration should be given to a policy similar to a 'three strikes' policy, where reoffenders suffer consequences other than financial ones. Company Directors and executive officers are sometimes banned from taking similar positions for a set period when found guilty of certain things. Perhaps reoffending organisations/entities could face similar bans in Western Australia, such as an inability to undertake certain activities, should they be found guilty a second or third time of impacting Aboriginal heritage.

The new legislation should also include requirements to provide public, transparent and more accountable reasons for decisions and decision-making processes when not following through with prosecutions (similar to Proposal 7), along with a process to allow third party comment on the decision/natural justice before final decision.

Enforcement officers should receive localised cultural awareness training.

## Proposal 9

## Protected Areas

Protected Areas are viewed as the highest level of protection but it is unclear what would occur if a group other than a Native Title group requested that an area be made a Protected Area. It is also unclear what would occur if the Native Title holding group then objected to that request, or if a Native Title holding group request that an area be made a Protected Area and a local traditionally oriented Aboriginal group object.

This proposal seems to be included because a mechanism is required to recognise and protect outstanding areas of significance such as areas of state, national and international significance, particularly to reduce appeals to Federal legislation. However the current proposal appears to be basic and likely to limit inclusions of newly proposed areas of outstanding significance. More thought is required here,

particularly in relation to recognition of cultural landscapes as sites. The idea that cultural landscapes be protected is strongly supported.

**In Summary**

Goolarabooloo Millibinyari Indigenous Corporation take this opportunity to thank the Minister for Aboriginal Affairs and DPLH staff for providing this opportunity to be involved in the review of the AHA and provide this submission. We look forward to further engagement and inclusion in the current review and hope the new legislation will not result in any further degradation of Goolarabooloo's standing as local traditional law bosses, custodians and knowledge holders for their areas or fundamental human and indigenous rights.