



30 May 2019

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Department of Planning, Lands and Heritage WA
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Via email: AHAreview@dplh.wa.gov.au

Dear Sir/Madam

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

Australian Pork Limited (APL) welcomes the Department of Planning, Lands, and Heritage (the Department) initiative to review of the *Aboriginal Land Heritage Act 1972* ("the Act") and the opportunity to make a submission on the *Proposals for new legislation to recognise, protect and celebrate Western Australia's Aboriginal Heritage Discussion Paper* (the Discussion paper). APL agrees that a legislative framework to support this goal must do so in a transparent, practical and cost-effective way, that fosters respectful relationships and workable agreements between aboriginal people and other land users.

APL is the peak national representative body for Australian pork producers. It is a producer-owned company combining marketing, export development, research and innovation and strategic policy development to assist in securing a profitable and sustainable future for the Australian pork industry.

1. Economic contribution of pork production

Pork production is located throughout Western Australia's grain growing regions. In 2015-16, pork production contributed around \$239 million (value-added) to the state's economy and supported 1340 full-time jobs. This generated approximately \$114 million in household incomes for Western Australia's families. At a local level, a family farm with 250 sows injects around \$850,000 into the local economy each year.¹

2. Impacts of the Act on the pork industry

Unlike many other agricultural pursuits, the intensive nature of pork production requires producers wanting to expand or establish a new piggery to embark on a lengthy development application process. This process often triggers a costly cultural heritage assessment on associated farmland that would not normally have been required, if not for its integration with a pork production site. This can lead to delays and impact the outcome of a development application.

APL can point to examples in other states, where development and expansion applications for piggeries have been significantly delayed and or subject to restrictive, impractical permit conditions such as requirements to fence small areas of land that had previously been farmed for decades. Protection measures such as fencing can devalue farmland, impact on amenity, restrict movement of wildlife, and reduce viability of businesses.

¹ ACILAllen Consulting, 'Economic Contribution Report: Pork Industry in Australia - 2015-16, November 2017, http://australianpork.com.au/wp-content/uploads/2018/01/ACILAllen_PorkIndustryEconomicImpactReport_Final_17Nov2017_corrected.pdf

APL is currently undertaking a national study into the regulatory impacts and costs associated with planning and development processes on pork producers. The outcomes of this may provide useful analysis on the impacts of cultural heritage legislation on the pork industry.

3. Comments on the proposed reforms

APL agrees many of the proposed reforms are an improvement on existing legislation. A move towards a standardised, evidence and risk-based approach to management of aboriginal heritage is positive, as is the intention to foster and promote respectful relationships, agreement and coexistence between aboriginal people and other land users.

However, to achieve this, it must be considered that agricultural producers, including pork producers occupy a significant proportion of the productive land in Western Australia. The role and service that producers provide the community as custodians of that land, and the connection they have with it, must be acknowledged alongside the rights and needs of aboriginal people. This is important to enable mutually respectful relationships and agreements to be formed.

Proposal 1: Repeal the Act and deliver new aboriginal heritage legislation

APL agrees that a new Act is required, however express concerns with objective (b) that the new legislation should provide for the documentation of Aboriginal heritage places, and objects including their tangible and intangible aspects.

Protection of movable objects and intangible aspects of cultural heritage is often impractical, and difficult for agricultural land users to manage. APL is aware that suggestions under consideration in other states include relocation of movable objects that have already been moved over years of land use to suitable locations for protection. APL agrees this is worth considering as a better alternative than fencing off this area in the middle of productive farmland. The management plan developed for Barren Box Storage and Wetland in New South Wales in 2005 incorporates measures like this and provides one example of how agriculture and indigenous communities can work together to achieve good outcomes for both parties.²

Proposal 2: Update definitions and scope of definitions

To foster positive relationships between aboriginal people and other land users it is essential that the definitions and scope of definitions in *the Act* are clear. APL's view is that the definitions suggested in the Discussion paper are unclear. APL is concerned that inclusion of "intangible dimensions" in the definition of "place" will lead to confusion and disputes. APL considers the suggested use of the definition in the ICOMOS "Burra Charter" unsuitable given it was designed to protect a broad range of cultural heritage and is not specific to the unique nature of aboriginal heritage, nor the fact that it is often located on productive land.

Proposal 3: Local Aboriginal Heritage Services

APL agrees with the need for a process of nomination and selection of Local Aboriginal Heritage Services and a framework for their operation. APL supports the need for oversight by an Aboriginal Heritage Council to set standards for services provided by heritage professionals. The risk-based approach to heritage protection and efforts described to increase efficiency and eliminate the need for unnecessary assessments is also positive.

Proposal 4: The Aboriginal Heritage Register

It is important that accurate information is available to development proponents and landholders to enable their awareness of the location of aboriginal heritage sites and the implications of this. APL supports the intent to improve accuracy and usefulness of the Aboriginal Heritage Register, especially the proposed regulated reporting standards that heritage professionals would need to meet. APL disagrees with the proposal that non-

² Information on Barron Box Storage and Wetland is available at <https://www.mirrigration.com.au/Environment/Barren-Box-Storage>

heritage professionals would be able to report to the register provided they meet the reporting criteria. This may lead to inaccurate reporting which could impact on landholders and may lead to use of vexatious claims as barriers to production or development.

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

APL supports the proposal for a referral process, particularly the intent to ensure that potential heritage values are identified early in land use planning, ensuring that investment is not delayed further by late identification. APL supports that the referral process will also facilitate risk-based tiered assessment for land use proposals to reduce regulatory burdens.

Proposal 6: Encourage and recognise agreement making

APL notes that it is important that existing agreements are recognised under new legislation and that administration or costs associated with having them ratified under the new Act should be kept to a minimum or absorbed by government.

Proposal 7: Transparency of decision making

APL supports the need for transparency in decision making and the requirement to publish reasons for decisions. APL understands the need for an equitable, appeals process however timeframes must be in place to reduce unnecessary delays.

Proposal 8: A modernised enforcement system

APL does not support the tough enforcement penalties proposed which are based on the *Heritage Act 2018* and include fines of up to \$1 million on a person found guilty of an offence. Further, APL does not support that a place need not be on the Aboriginal Heritage Register for offences to apply. This leaves land users information poor and at risk of breaching the law unknowingly. The proposed heavy-handed approach is disappointing considering these reforms were intended to foster positive relationships between aboriginal people and other land users. A more appropriate system would include incentives for compliance, education and agreement-making to rectify unintended breaches over time.

4. Interaction with other land use planning policy

It has been encouraging to see many local and state government projects beginning to recognise the need to identify and protect important agricultural land. APL encourages the Department to consider the interaction of Aboriginal land heritage policy with planning instruments such as local environmental plans and important agricultural land mapping projects to ensure their policy objectives can be achieved concurrently.



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5. *In Summary*

APL supports the intent of the Department in these reforms and on the extensive stakeholder consultation process undertaken to develop the proposals for consideration of stakeholders. APL notes that the standardised, risk-based approach proposed is positive however clearer definitions must still be developed to reduce unnecessary confusion, disputes and costs. APL strongly encourages the department to rethink the proposed approach to enforcement. The proposed approach is likely to create fear and stifle the attempt of these reforms to foster respectful, positive relationships between land users and aboriginal people.

APL would be happy to discuss the comments provided in this submission. If you require further information or have any questions, please contact Grantley Butterfield, Policy Manager – Planning & Environment on 02 6270 8820 or grantley.butterfield@australianpork.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Deb Kerr".

Deb Kerr
General Manager, Policy