



30 May 2019

Attn: Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
Locked Bag 2506
PERTH WA 6001

By email: ahareview@dplh.wa.gov.au

Dear Sir/ Madam,

RE: Interim Submission –AHA Review Consultation Phase Two

Thank you for the opportunity to provide comment on the Discussion Paper, Consultation Paper and Overview of proposals for new legislation released in March 2019 relating to the review of Western Australia's Aboriginal heritage legislation.

The Western Australian Local Government Association (WALGA) is an independent, membership based organisation representing and supporting the work and interests of 138 Local Governments in Western Australia. WALGA provides an essential voice for over 1,200 Local Government Elected Members, approximately 14,500 employees and over 2.5 million constituents of Local Government in Western Australia.

WALGA and its members supports the conservation and protection of Aboriginal cultural heritage in Western Australia and the modernization of our Aboriginal cultural heritage legislation to reflect international and national best practice. We acknowledge the importance to Aboriginal people of their cultural heritage and the central role that cultural heritage and access to country plays in their health and wellbeing. As land managers and land use planning decision-makers, Local Government plays an important role in many activities that have the potential to protect and impact Aboriginal cultural heritage. Local Government also acknowledges the place of Aboriginal people as community members, residents and ratepayers.

Our Submission is in the document attached to this letter. Our Submission is based on input provided by a Local Government Reference Group convened by WALGA comprising representatives from a number of Local Governments, as well as a Survey conducted by WALGA and feedback obtained during an Information Session conducted for our members by WALGA and the Department of Planning, Lands and Heritage on 9 May 2019.

Thank you again for the opportunity to provide comment. For additional information please contact Susie Moir, Policy Officer - Community on 92132058 or smoir@walga.asn.au.

Yours Sincerely,

Joanne Burges
Executive Manager, People and Place

WALGA Submission on Stage 2 of Review of Aboriginal Heritage Act: 30 May 2019

Proposal Number	Proposal	Support/ Not Support	WALGA Response
Proposal 1: Repeal the Aboriginal Heritage Act 1972 and deliver new Aboriginal heritage legislation	The proposal is to repeal the <i>Aboriginal Heritage Act 1972</i> and replace it with modern legislation, regulations and policies. The desired outcome is that the legislation to protect Aboriginal cultural heritage reflects developments in best practice in heritage management and the rights of Aboriginal people under national and international law.	Support	<p>Local Government plays a role in Aboriginal cultural heritage as:</p> <ul style="list-style-type: none"> • A landowner, when considering the potential impact of proposed development on Aboriginal heritage; and • As a planning body, when contacted by landowners and developers for advice about the location of Aboriginal and non-Aboriginal heritage. <p>Local Government supports the conservation and protection of Aboriginal cultural heritage. WALGA supports the development of new Aboriginal heritage legislation that recognizes the rights of Aboriginal people under national and international law to protect their cultural heritage and reflects current best practice heritage management, and improves the clarity, compliance, effectiveness and certainty of the Aboriginal heritage legislation regime.</p>
Proposal 2: Update definitions and scope of new Aboriginal heritage legislation	The proposal is to extend the scope of what is covered by new legislation to include ancestral remains, places that are cultural landscapes and place-based intangible heritage. It is not proposed to extend the definitions in the new legislation to include intellectual property rights. The desired outcome is that the legislation to protect Aboriginal cultural heritage is sensitive to the culture it is designed to protect and therefore, more effective and trusted by Aboriginal people.	Support	<p>WALGA's understanding is that the new legislation will:</p> <ul style="list-style-type: none"> • Adopt a new definition of 'place' that aligns with the <i>Australia ICOMOS Burra Charter</i> definition of place that includes tangible and intangible dimensions; • Continue to protect all Aboriginal cultural heritage places and objects, including cultural landscapes, whether they are registered or not (as under the current AHA); • Continue to protect Aboriginal objects consistent with the current AHA; and • Include culturally appropriate procedures to deal with ancestral remains. <p>WALGA supports these proposals which are intended to ensure that Aboriginal heritage legislation in Western Australia aligns with international best practice, adequately protects cultural landscapes and intangible heritage, and makes provision for the appropriate care of ancestral remains. Some Local Governments have undertaken cultural</p>

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			mapping exercises with local Aboriginal people in order to document and protect places of Aboriginal cultural heritage significance. However, the undertaking of extensive cultural mapping exercises by Local Government is not practicable in all areas of our vast State; for example, extensive cultural mapping in the Kimberley region would be difficult given the extensive land areas and historical occupation patterns of the land by Aboriginal peoples. Many Local Governments do not have the resources or capacity that are necessary in order to undertake extensive cultural mapping exercises. This may be an area that the newly formed Local Aboriginal Heritage Services and Aboriginal Heritage Council could assist the Local Government sector with in the future.
Proposal 3(A): Local Aboriginal Heritage Services	<p>The proposal is to provide for the appointment of Local Aboriginal Heritage Services to ensure the right people speak for particular areas of country and related cultural heritage are identified, and to make agreements regarding Aboriginal heritage management and land use proposals in their geographic area of responsibility.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> the active involvement of traditional owners and knowledge holders in decision making and management of heritage matters in particular areas of country that they have connection to and 	Support	<p>WALGA understands that the proposal to establish Local Aboriginal Heritage Services (LAHS) is designed to provide a mechanism for Aboriginal people to have a direct role in decision-making about cultural heritage, and for the right people to ‘speak for Country’.</p> <p>WALGA understands that LAHS:</p> <ul style="list-style-type: none"> will provide a first point of contact for proponents seeking advice on heritage matters in a particular area; will undertake or coordinate surveys and management of Aboriginal heritage; may make agreements relating to heritage management and land use proposals with land users; may give advice to the Aboriginal Heritage Council on the acceptability of land use proposals in their area of responsibility; will be appointed and performance monitored by the Aboriginal Heritage Council; will often be an existing Prescribed Body Corporate; and will be subject to timeframes and standards when providing advice and services. <p>Additionally WALGA understands that LAHS will be required to:</p> <ul style="list-style-type: none"> be 100% Aboriginal owned;

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	<p>cultural responsibility for; and</p> <ul style="list-style-type: none"> consultation and agreement making processes with Aboriginal people are culturally appropriate, transparent and provide more certainty for land users. 		<ul style="list-style-type: none"> have genuine connection with the area it proposes to represent; have demonstrable support from a broad constituency of the Aboriginal people within, and 'cultural authority' over, the area it proposes to represent; be incorporated under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> or Corporations Law; have rules that are consistent with the requirements imposed on Prescribed Bodies Corporate; and demonstrable capacity to undertake the functions required of it and to maintain appropriate standards of corporate good governance. <p>WALGA understands in relation to any area of land, there will only be one LAHS. In areas where there is no LAHS, the DPLH will perform the functions of a LAHS.</p> <p>WALGA supports the establishment of local Aboriginal decision making bodies which are better able to represent local Aboriginal communities which hold local knowledge and responsibility for Aboriginal heritage. The existence of a body which is the first point of contact for development proponents will simplify processes and provide reassurance to parties that they have contacted the right people about Aboriginal heritage matters. LAHS are intended to perform a key role in the proposed new system and as such, their governance, feasibility and resourcing must be carefully considered. The new legislation must provide a clear, robust mechanism for ensuring that LAHS have a genuine connection to the land, demonstrable support from local Aboriginal people and cultural authority. Adequately resourced mechanisms will also be required for resolving disputes in relation to these matters. The financial and resourcing requirements, and the feasibility (given the vast and often isolated geographical expanse of Western Australia) of the new LAHS system will need to be thoroughly investigated before this model is committed to. It is anticipated that the Government will need to provide financial and</p>

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			<p>capacity building support to LAHS, especially at the beginning of the new system, but in any event on an ongoing basis. The setting of reasonable and appropriate timeframes for LAHS to provide services will be essential to the efficient functioning of the system.</p> <p>Local Government would welcome the provision of a Standard Aboriginal Heritage Agreement for formalizing the relationship between Local Government and LAHS with recommended fees, charges and timeframes to ensure consistency across LAHS, transparency and certainty for parties. A clear dispute resolution process involving an appropriate third party must be established for when LAHS and proponents have disagreements that they are not able to resolve themselves.</p>
Proposal 3(B): Aboriginal Heritage Council	<p>The proposal is to (a) establish an Aboriginal Heritage Council as the central body providing advice and strategic oversight of the Aboriginal heritage system, and (b) abolish the Aboriginal Cultural Materials Committee.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • The system for the protection, conservation and management of Aboriginal heritage benefits from the strategic oversight and advice of people who are highly skilled and experienced in Aboriginal heritage management. • Aboriginal heritage is respected and valued by 	Support	<p>WALGA understands that in order to provide centralized oversight of the new system, an Aboriginal Heritage Council (AHC) will be established. With a role somewhat similar to the State Heritage Council, the AHC will:</p> <ul style="list-style-type: none"> • Comprise an Aboriginal chair and eight further members appointed by the Minister on the basis of skills and experience relevant to Aboriginal heritage; • Have a strategic focus; • Set standards for services provided by LAHS and Heritage professionals; • Oversee the Aboriginal Heritage Register; • Make decisions on some land use proposals that could affect Aboriginal heritage (neutral or positive impact on heritage, low impact on heritage, accepted by relevant Aboriginal people, or don't relate to a project of State Significance); • Ensure consultation and any related agreement-making processes have been conducted in good faith; • Provide advice to the Minister; • <i>Provide a central point of advice to other decision-making authorities whose decisions could impact Aboriginal heritage;</i>

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	<p>the non-Aboriginal community.</p> <ul style="list-style-type: none"> Aboriginal people have a greater say in the operational and strategic decisions that affect their heritage. Equitable agreements between land users and Aboriginal people at a local level are encouraged and best practice recognized. System reliance on the Minister as the sole decision maker on all land use proposals is reduced. 		<ul style="list-style-type: none"> Promote Aboriginal heritage and assist in ensuring that Aboriginal heritage in Western Australia is respected, maintained and managed in accordance with best practice; Assist with resolving disputed between LAHS, their members and/or proponents where external intervention appears warranted and the parties agree or do not have other formal dispute resolution procedures in place; Promote and assist in the proper management and maintenance of Western Australia's Aboriginal heritage, and provide financial and other assistance to promote the conservation of Aboriginal heritage, promote education and training, arrange or conduct research and investigations and develop and implement policies to give effect to its functions. <p>WALGA supports the establishment of the AHC which as a statutory body will have responsibility for oversight of LAHS and the Aboriginal heritage system generally, and will be able to provide education and training and undertake research and investigations in relation to Aboriginal cultural heritage. The role of the AHC in promoting Aboriginal heritage is an important one. WALGA also welcomes the role of the AHC (along with DPLH) in providing a central point of advice to other decision making bodes, including Local Government, whose decisions could impact Aboriginal heritage.</p>
Proposal 3(c): The Minister's Role	<p>The proposal is that the Minister retains overall accountability and decision-making powers for the Aboriginal heritage system in Western Australia, but may delegate certain decisions and functions to the Aboriginal Heritage Council.</p> <p>The desired outcomes are:</p>	Support	<p>WALGA understands that the functions of the Minister will be:</p> <ul style="list-style-type: none"> The Minister may delegate decision-making to the AHC where such proposals have a neutral or positive impact or low impact on heritage, are accepted by relevant Aboriginal people, or don't relate to a project of State Significance; To receive advice from the AHC on land use proposals that may have significant impact on Aboriginal heritage values or involve projects deemed to be of State Significance;

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	<ul style="list-style-type: none"> The Minister, who is accountable for an effective Aboriginal heritage management system, can focus on the effective and efficient running of the system. The system is not clogged with matters on which the parties agree and where heritage is not impacted. Ministerial intervention is available but reserved for contentious matters and those where the project is of State Significance or is likely to have a significant impact on Aboriginal heritage. All stakeholders are confident in an Aboriginal heritage system that is fair, effective, efficient and respects Aboriginal people, their culture and their heritage. 		<ul style="list-style-type: none"> To make decisions on land use proposals that may have significant impact on Aboriginal heritage values or involve projects deemed to be of State Significance; To have due regard to the social and cultural effects of the land use proposal and the views of the Aboriginal people and the public interest as part of the decision-making process; To publish reasons for decisions; To support the AHC's activities promoting Aboriginal heritage; and To issue a stop work order in cases where Aboriginal cultural heritage is threatened by unauthorized land use activities. <p>WALGA supports this proposal which seeks to ensure transparency of decision –making by the Minister, as well as reducing the number of decisions the Minister is required to consider by limiting Ministerial decision-making to land use proposals that may have a significant impact on Aboriginal cultural heritage or are of State Significance. Stop work orders should have immediate effect.</p>
Proposal 3(D): The role of the Department of Planning,	The proposal is that the DPLH remains responsible for the day to day operation of the Act.	Support	<p>WALGA understands that the day to day operations of the new legislation will continue to be the function of DPLH. DPLH will:</p> <ul style="list-style-type: none"> Provide secretariat and other support to the AHC; Provide operational advice to the Minister;

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Lands and Heritage	<p>The desired outcomes are that DPLH supports the Minister and the Aboriginal Heritage Council in:</p> <ul style="list-style-type: none"> • The strategic oversight of the Aboriginal heritage system; • Undertaking strategic and operational policy development and capacity building in the system; • Ensuring timely and efficient performance of the functions of LAHS where no such service exists; and • Maintaining the register as a reliable source of data on Aboriginal heritage and actively enforcing the provisions of the Act. 		<ul style="list-style-type: none"> • Provide advice to land use proponents on processes and minimum standards that must be met when land use proposals have the potential to cause negative impacts on Aboriginal heritage places; • Receive reports of Aboriginal heritage places and objects for inclusion on the Aboriginal Heritage Register; • Maintain the Aboriginal Heritage Register; • Provide, or facilitate the provision of, financial and technical assistance or other Aboriginal heritage management and conservation initiatives; • Manage the Directory of heritage professionals; • Provide capacity building to LAHS; • Develop and deliver education, training and promotion programs; • Perform the role of LAHS where no suitable body exists or has been nominated to take on these functions; • Facilitate research and investigations relating to Aboriginal heritage; • Investigate alleged breaches of the Aboriginal heritage legislation; and • Assist in the prosecution of breaches where sufficient evidence has been collected. <p>WALGA supports the DPLH undertaking the supporting and advisory functions necessary to enable the Minister and AHC to undertake their roles, as well as providing advice and guidance to proponents and other decision-makers, including Local Government. Additionally, WALGA supports the use of government services to undertake the functions of LAHS when necessary, given the key role of LAHS under the proposed new system. It is essential that the DPLH is adequately resourced to undertake these important functions and ensure the continued operation of the Aboriginal heritage system in places where LAHS do not exist.</p>
Proposal 3(E):	The proposal is to aid people needing to engage a Heritage	Support	WALGA understands that a Directory of Heritage Professionals will be established. The main elements of the Directory are:

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Heritage Professionals – aiding selection of those with appropriate qualifications and experience and improving standards	<p>Professional with appropriate qualifications and experience, and promote higher standards by publishing on the Department's website a public Directory of Heritage Professionals and the standards required for heritage investigations, community consultation and reporting of heritage information.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • Improved outcomes for Aboriginal heritage. • Elimination by market selection of substandard consultants. • No regulatory burden. 		<ul style="list-style-type: none"> • To be entered on the Directory, Heritage Professionals will be required to evidence their relevant experience and qualifications, which will also be published on the Directory; • Aboriginal people and proponents will be encouraged to select from the Directory; • In response to a land use proposal, the DPLH will advise what studies and standards are required; • Materials that do not meet the standards set by the AHC will not be accepted and the clock will be stopped on approvals until the appropriate standard has been met by the Heritage Professional; • The DPLH will work with the peak bodies for heritage professionals to develop guidelines and standards of service for endorsement by the AHC; • Inclusion in the Directory does not constitute an endorsement or warranty in respect of any services delivered by a Heritage Professional; • DPLH will not engage in disputes between Heritage Professionals and their clients; • Fees will not be regulated and will remain open to market fluctuations, consistent with other professional service providers. <p>WALGA supports initiatives directed at improving the standard, reliability and quality of research and consultation conducted by Heritage Professionals to support the assessment of land use proposals. The development of guidelines and standards detailing the requirements for particular types of heritage investigation, community consultation, reporting heritage places and the provision of spatial data, and endorsed by the AHC, will support improvements to the quality and standard of work undertaken by Heritage Professionals in Aboriginal heritage.</p>
Proposal 4: Retain the current form	<p>The proposal is to:</p> <p>(a) Rename the 'Register of Aboriginal Places and</p>	Support	<p>The current Register of Aboriginal Places and Objects is inaccurate with a significant backlog of sites lodged on the 'interim register' awaiting assessment by the Aboriginal Cultural Materials Committee (ACMC).</p>

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and function of the register of Aboriginal places and objects but rename it the Aboriginal Heritage Register.	<p>Objects' to the 'Aboriginal Heritage Register' to reflect the proposed shift of emphasis from 'sites' to the revised scope of the legislation.</p> <p>(b) The Aboriginal Heritage Council 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.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • Improved accuracy of records and information on Aboriginal heritage. • The State's database of Aboriginal heritage is a trusted source of information that is captured and managed in a culturally appropriate way. • Increased utility of the register as a record of heritage and planning tool. 		<p>Aboriginal people do not trust the Register, often preferring to not have places of Aboriginal heritage significance registered, which causes uncertainty for land users and inadvertent destruction of heritage.</p> <p>WALGA understands the proposal to be:</p> <ul style="list-style-type: none"> • The Register will be renamed the Aboriginal Heritage Register; • Aboriginal heritage will continue to be protected whether it is registered or not, so the role of the Register will primarily be as an information repository; • Heritage professionals will be required to provide reports that meet standards set by the AHC; • Reports from non-heritage professionals may be entered onto the register, providing minimum information standards are met to identify and locate the heritage place or object and their associated stories; • The register will show the level of confidence in accuracy of information; • DPLH will support the AHC in the maintenance of the register; • LAHS will be encouraged to update and improve information for their areas of responsibility; • There will be standardized language and methods of spatial reporting; • Use of predictive modelling to highlight areas of likely Aboriginal heritage sensitivity will aid risk assessments. <p>WALGA supports the shift to this new model whereby places will be listed on the Aboriginal Heritage Register if they are identified as being culturally important to Aboriginal people (or having scientific value) and sufficient evidence is provided as to the location and why the place is important, rather than the ACMC assessing whether a place should be registered against the criteria stipulated in the current Act. Improvements to the registration process that improve the utility of the database as a planning tool and aid risk-based decision making benefit Aboriginal</p>

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			people, land use proponents and planning decision makers such as Local Government, as the available information will be reliable. Further, the Aboriginal Heritage Register will be able to function as a useful repository of heritage information for Aboriginal people, akin to the State Register of Heritage Places role as a useful repository of non-Aboriginal heritage information. Providing different levels of access to information on the Register for different stakeholders (for example, restricting access to sensitive information) may ease some Aboriginal people's concerns around providing information for inclusion on the Register while improving the reliability of the information recorded on it. If the DPLH was to advise land holders when a site was registered on their land, this may assist in the preservation of Aboriginal cultural heritage, as land holders would know that there were cultural heritage values on that land and could undertake risk minimization strategies.
Proposal 5: Introduce a referral mechanism to facilitate tiered assessments of proposed land uses.	<p>The proposal is to:</p> <p>(a) Introduce a referral mechanism to facilitate tiered assessments of proposed land uses, with early advice (non-binding) provided by the DPLH or AHC on standards of consultation and/or research necessary to support the approvals process for a development.</p> <p>(b) Non-compliance with standards of consultation or documentation will result in the application</p>	Support	<p>WALGA understands that a referral process analogous to that provided in the <i>Environmental Protection Act 1986</i> is proposed to facilitate early notice of proposed land use activities. This referral process is also intended to support risk-based tiered assessment of land use proponents and LAHS. The new land use proposals system is intended to:</p> <ul style="list-style-type: none"> • Provide for a formal referral mechanism for land use proposals to both government and a LAHS for advice on the Aboriginal heritage implications of the proposal and appropriate level of assessment; • Provide for a tiered assessment of land use proposals dependent upon the known or predicted Aboriginal heritage values of the land and the nature of the proposed land use; • Consent to undertake an activity or range of activities will run with the land provided that 'new' land users propose the same activity or range of activities; • Provide a 'call in' power to DPLH/ AHC for proposals that ought to have been referred but were not;

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	<p>not being accepted and the clock will stop on any agreed timeline until correct documents are submitted.</p> <p>(c) A 'call in power' will ensure that proposals that should have been referred, but have not been, can be assessed.</p> <p>Desired outcomes:</p> <ul style="list-style-type: none"> • Land use proposals are designed to co-exist with Aboriginal heritage places wherever possible. • Approvals for low impact activities can be streamlined. • Reduced risk and cost for land use proponents through early referral and advice. 		<ul style="list-style-type: none"> • Provide that a land user may voluntarily adopt the highest tier of assessment; • Set and enforce the standards for research, consultation and reporting to be undertaken for each level of assessment; • Provide that reasons for decisions on the acceptability of land use proposals are given by decision makers; • Provide that all parties to a decision regarding the acceptability of land use proposals that impact Aboriginal heritage values have the right to appeal. <p>The tiered assessment system will reflect the following factors:</p> <ul style="list-style-type: none"> • Any known Aboriginal heritage; • Any predicted Aboriginal heritage; • The extent to which prior land uses have already impacted upon known or predicted Aboriginal heritage. <p>Proponents will be required to take steps to identify whether their land use proposals will negatively impact on Aboriginal heritage. The risk assessment could be based on information contained in the Aboriginal Heritage Register, additional information the proponent has collected through previous studies they have undertaken or through processes embodied in an Aboriginal Heritage agreement, which may set out a range of agreed activities. If the risk assessment indicates that Aboriginal heritage is, or may be, present that is likely to be affected, at that stage the proponent may (1) modify their proposed land use to avoid those impacts, or (2) undertake further investigations with the LAHS to determine the nature and extent of any Aboriginal heritage places. If there is insufficient information available or the proponent is not confident in making a risk assessment, the proponent may seek early advice or formally refer the land use proposal to the DPLH for assessment. The DPLH will assess any formal referral and determine what, if any, studies must be completed prior to the land use proposal being assessed and approved should Aboriginal heritage impacts prove unavoidable.</p>

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			<p>WALGA's policy position is that all legislation and policy which deals with land use planning and development must:</p> <ul style="list-style-type: none"> • Ensure role clarity and consistency across legislation controlling development, to avoid confusion of responsibilities; • Be easily interpreted by, understood by and accessible to all sections of the community; and • Be amended only with WALGA involvement and/or consultation/ involvement with local government. <p>WALGA supports the impact avoidance and minimisation focus of the new proposed legislation. In drafting the new legislation consideration needs to be given to the interrelationships between the <i>Planning and Development Act 2005</i>, the <i>Local Government Act 1995</i>, the <i>Land Administration Act 1997</i>, the <i>Mining Act 1978</i> and the Aboriginal heritage legislation so that decision-making staff in Local Government considering the provisions of these pieces of legislation are able to identify <i>when</i> proponents need to consider Aboriginal heritage, and the <i>process</i> for considering Aboriginal heritage when considering land use proposals and applications for development approval. The circumstances in which certain activities do not require Aboriginal heritage approvals needs to be defined more clearly, particularly in relation to applications for development approval under the <i>Planning and Development Act 2005</i> and Works and Services activities undertaken pursuant to Schedule 3.2 of the <i>Local Government Act 1995</i>. DPLH's <i>Aboriginal Heritage Due Diligence Guidelines</i> and the Aboriginal Heritage Inquiry System and Aboriginal Heritage Risk Matrix contained within it are useful tools for Local Government when assessing whether development proposals may affect Aboriginal heritage. The <i>Aboriginal Heritage Due Diligence Guidelines</i> will require updating so they reflect the new Aboriginal heritage legislation, and consideration should be given to the preparation of additional materials (for example, additional guidelines, policies or checklists) to</p>

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			<p>support Local Government decision-makers ensure that Aboriginal cultural heritage is considered and protected.</p> <p>As part of this Consultation a number of flow charts have been provided (<i>'Process for assessing land use impact on Aboriginal heritage flow chart'</i>, <i>'Land use decisions in the proposed new Aboriginal heritage system flow chart'</i>) however these flow charts do not address the relationship between the new Aboriginal heritage system and the processes and timeframes provided by the <i>Planning and Development Act 2005</i>. A flow chart illustrating this would be useful.</p> <p>WALGA could assist in the preparation of additional materials designed to assist Local Government through engaging with our members to gather further design input and seeking feedback on any proposals.</p>
Proposal 6: Encourage and recognize agreement making	<p>The proposal is to:</p> <p>(a) Encourage and recognize agreement making between LAHS or other relevant Aboriginal bodies and land use proponents.</p> <p>(b) The AHC will consider and, if appropriate, ratify agreements where land users wish to rely on an agreement to expedite approvals under the new Act.</p> <p>Desired outcomes:</p> <ul style="list-style-type: none"> Aboriginal people have more opportunity to determine better outcomes for their heritage through 	Support	<p>WALGA understands that when assessing the acceptability of land use proposals and issuing any required permits, it is proposed that both the AHC and the Minister will have regard to heritage outcomes agreed between land users and LAHS or other relevant Aboriginal bodies. Where land use proponents wish to rely on an existing agreement to expedite approvals under the new legislation, they will be required to submit the agreement for formal ratification by the AHC. In order to be ratified, an existing agreement must not authorize the destruction of Aboriginal heritage without the need for formal approvals under the legislation or seek to circumvent any other parts of its operation ie parties will not be able to contract out of the new Aboriginal heritage legislation. Proponents will also be able to make agreements with LAHS under the new legislation that are consistent with the new legislation. When presenting an agreed heritage outcome to the AHC for authorization or recommendation to the Minister, proponents will need to provide sufficient information regarding the outcome and how it will be implemented, the agreement it was agreed under, the processes followed and disclose any disputes regarding it. The AHC will be empowered to set the standard of information required and the form it must be supplied in. Once an agreement is ratified and the</p>

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	<p>agreements that focus on avoiding or minimizing impacts on heritage.</p> <ul style="list-style-type: none"> • Better heritage outcomes are achieved through agreements that are based on respectful and positive relationships. • New and existing agreements concerning heritage outcomes between relevant Aboriginal people and land users can be used to expedite land use assessments and permitting decisions if they meet certain requirements. 		<p>relevant information tendered, the AHC and Minister will be required to have regard to agreed heritage management outcomes when making decisions on land use proposals.</p> <p>WALGA supports the use of strategies in the new Aboriginal heritage legislation to encourage and recognize agreement making between Aboriginal people and land use proponents in order to provide improved social, economic and best practice heritage outcomes for Aboriginal people and increased certainty for proponents regarding development risks and approvals processes. Better Aboriginal heritage outcomes are able to be achieved when the parties have positive relationships and work together through collaboration and agreement based approaches rather than adversarial approaches. Many Local Governments have agreements and relationships with local Aboriginal people and work collaboratively to develop community infrastructure that is sensitive to Aboriginal cultural heritage values. Many Local Governments are seeking to use Reconciliation Action Planning to develop positive relationships with local Aboriginal people and implement strategies for protecting and recognizing Aboriginal cultural heritage. Some Local Governments also have entered into cultural heritage management plans, as well as engaging with Aboriginal Advisory Committees that provide advice and guidance on cultural heritage issues.</p> <p>Local Government would welcome the provision of a Standard Aboriginal Heritage Agreement for formalizing the relationship between Local Government and LAHS with recommended fees, charges and timeframes to ensure consistency across LAHS, transparency and certainty for parties.</p>
Proposal 7 Transparency and Appeals	<p>The proposal is that:</p> <p>(a) Reasons for decision are to be published.</p> <p>(b) Land users and Aboriginal people whose legal rights and interests are</p>	Support	<p>WALGA understands that reasons for decisions will be published by the relevant decision-maker at key decision making stages (referral/ standards setting and land use proposal assessment) enabling affected parties to seek review of decisions. Aboriginal people and land users whose legal rights are affected by the decision will have the same rights of review and appeal if they are aggrieved by a decision. Review mechanisms will be subject to</p>

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	<p>adversely affected by a decision will have the same rights of review and appeal.</p> <p>(c) Retain the State Administrative Tribunal as the primary review body.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • All stakeholders in Aboriginal heritage have confidence in the administrative decisions that affect Aboriginal heritage. • Rights of review and appeal are equitable. 		<p>statutory timeframes. Participants in the consultation process on a land use proposal will be notified of the recommendations to be considered by the AHC and may lodge a written objection to the recommendation within 21 days of receiving notice of the recommendation. AHC will be required to consider objections before making a recommendation to the Minister on a land use proposal. The SAT will be retained as the primary review body for any person whose legal rights and interests are negatively affected by a decision by the Minister.</p> <p>WALGA supports increased transparency of decision making and equitable appeal rights in the new Aboriginal heritage legislation in order to reflect modern standards of procedural fairness. Aboriginal people and land users whose interests are affected by decision-making should have the same rights of review and appeal if they are aggrieved by a decision on proposed land use and other administrative decisions made during the decision-making process. The stages at which reasons for decisions will be published needs to be clarified to ensure certainty of processes. The process for applications for review of decisions made by the AHC also requires clarification ie is an application for review of a decision of the AHC made to the Minister or the SAT? The impact of delays caused by applications for review and appeals of decisions on statutory timeframes stipulated by the <i>Planning and Development Act 2005</i> requires explication. The preparation of a flow chart illustrating the appeals system under the proposed new legislation and impacts on statutory timeframes would be useful.</p>
Proposal 8: A modernized enforcement regime	<p>The proposal is to:</p> <p>(a) Create a modern enforcement regime by ensuring offences and penalties are brought into line with the <i>Heritage Act</i></p>	Support	<p>WALGA understands that the proposal is to:</p> <ul style="list-style-type: none"> • Maintain the current range of offences; • Limit the current 'ignorance' defence to circumstances in which the land use proponent has done everything 'reasonably practicable' to make themselves informed; • Increase the limitation period within which a prosecution must commence to three* years from the time of the offence;

Proposal Number	Proposal	Support/ Not Support	WALGA Response
	<p>2018 and other modern statutes.</p> <p>(b) The statutory limitation period is extended to 3 years.</p> <p>(c) Conducting compliance inspections and proceedings will be the responsibility of DPLH.</p> <p>The desired outcome is that the duty of care to avoid unauthorized damage to Aboriginal heritage is taken seriously.</p>		<ul style="list-style-type: none"> Reinforce that a place need not be on the Aboriginal Heritage Register for the offences to apply; and Increase penalties to match those provided for in the <i>Heritage Act 2018</i> including fines, restoration orders and compensation for damage or loss of heritage. <p>WALGA supports the increase of penalties under the new Aboriginal heritage legislation so that they align with penalties in the <i>Heritage Act 2018</i> so that the imposition of penalties is equitable across Aboriginal and non-Aboriginal heritage.</p> <p>*The Discussion Paper indicates that the limitation period within which a prosecution can be commenced is five years (page 28) while the Consultation Paper indicates that it is three years (page 26). The <i>Heritage Act 2018</i> provides a limitation period of three years.</p>
Proposal 9: Protected Areas	<p>The proposal is that:</p> <p>(a) The existing Protected Areas and the ability to declare new ones will carry forward into new legislation.</p> <p>(b) A new regulation will be created to authorize specific management activities by the relevant Aboriginal people.</p> <p>The desired outcome is that the mechanism for recognizing Aboriginal heritage places of outstanding importance is more flexible and allows for active management.</p>	Support	<p>WALGA understands that 'Protected Areas' under the current legislation will carry forward into the new Aboriginal heritage legislation, along with the process for declaring new ones. Provision will be made in the new legislation so that if an application is made to declare a new Protected Area, Regulations exist that authorize specific management activities by Aboriginal people. The declaration of Protected Areas has significant native title implications as it they are a 'future act' under the <i>Native Title Act 1993</i>.</p> <p>WALGA supports the continued use of Protected Areas in the new Aboriginal heritage legislation supported by amended Regulations authorizing specific management activities by relevant Aboriginal group(s) which is intended to facilitate the active management of heritage by Aboriginal people.</p>