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Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
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Via email: AHAreview@dplh.wa.gov.au

Dear Assistant Director General

AUSTRALIA ICOMOS SUBMISSION ON THE ABORIGINAL HERITAGE ACT 1972 (WA) REVIEW – PHASE 2

Please find below a submission by Australia ICOMOS in relation to the Review of the *Aboriginal Heritage Act 1972* Phase 2.

Australia ICOMOS (International Council on Monuments and Sites) is a non-government, not-for-profit organisation of cultural heritage professionals formed as a national committee of ICOMOS in 1976. Australia ICOMOS' mission is to lead cultural heritage conservation in Australia by raising standards, encouraging debate and generating innovative ideas. Australia ICOMOS supports national standards and best practice within the heritage field. This includes legislative and regulatory tools that contribute to the management of Australia's heritage.

We thank you for the opportunity to comment further on the review of the *Aboriginal Heritage Act 1972 (WA)* that the Western Australian Government is currently undertaking. We congratulate the Government on the thorough and broadly consultative process that it appears to be taking. As we noted in our initial submission (May 2018), review of the 1972 Act is well overdue and there is a need for new legislation, not merely an amendment to the current Act, that responds positively to the concerns of the community and meets current best practice with respect to recognising and conserving cultural heritage and in relation to recognising the rights of Indigenous people (we note that these were some of the key findings from the initial review consultation and commend the Western Australian government for recognising these needs).

The proposed new Act is also an opportunity to move away from a place/site-based management paradigm and to give Aboriginal people control over the management of their own heritage, thereby reflecting current international standards. It is also an opportunity for Western Australia to be a leader in Aboriginal heritage management.

Australia ICOMOS particularly commends, and generally supports, the following proposed directions for the new legislation:

- continued blanket protection for Aboriginal heritage;
- the expansion of what is included as Aboriginal heritage to include ancestral remains, intangible cultural heritage and cultural landscapes;
- the primary role in determining heritage significance being given to local knowledge holders;
- greater transparency of decision making;
- a reduction in the involvement of the Minister in decision making, and greater involvement given to Aboriginal people;

- improved review and appeal rights; and
- encouragement of heritage management agreements between Aboriginal heritage owners and local land users.

In addition, Australia ICOMOS offers the following comment and recommendations as part of the AHA Review Consultation Phase 2 and based on the March 2019 *Discussion Paper* and *Consultation Paper*.

Proposal 1 – Repeal of the *Aboriginal Heritage Act 1972*

1. Australia ICOMOS strongly supports the proposal to repeal the *Aboriginal Heritage Act 1972* and develop new legislation that reflects present day heritage protection and management practices and a rights based approach to Aboriginal heritage management.
2. It also supports the continuity of protection for all places currently protected under the *Aboriginal Heritage Act 1972* in the transition to the new legislation and associated heritage system.

Proposal 2 – Update of Definitions and Scope of Aboriginal heritage

3. Australia ICOMOS strongly supports the proposed change of scope of Aboriginal heritage to be protected under the Act.
4. We are pleased to see that the Western Australian government believes the *Australia ICOMOS Burra Charter* definitions provide a useful framework for defining places and heritage types. We also recommend, if it has not already done so, that the Western Australian Government also review the operation of the *Victorian Aboriginal Heritage Act 2006* in relation to the treatment of Aboriginal intangible cultural heritage. This is the only Australian state legislation that currently provides a working example of how intangible cultural heritage can be specifically recorded and managed at a statutory level and at a state level.
5. We believe that in defining Aboriginal places and providing for full recognition of them in the legislation, and given current best practice, recognised types of heritage place need to also include routes and places that comprise a number of elements that are culturally linked but geographically discrete (frequently referred to as ‘serial sites’), not only discrete areas and cultural landscapes. This is an approach that is being explored for the National Heritage List.

Proposal 3A – Local Aboriginal Heritage Services

6. The proposed Local Aboriginal Heritage Services approach presents an interesting model, but it is difficult from the information available to understand how this would work in practice. It would seem to be a core element of the new legislation as it provides the interface between government and Aboriginal people, and to do so the Local Aboriginal Heritage Services are being given considerable power. How the Local Aboriginal Heritage Services approach works will potentially make or break the legislation.

Of critical importance will be to ensure that these Local Aboriginal Heritage Services:

1. have full support of, and participation by, local Aboriginal traditional knowledge holders and owners and other Aboriginal people with custodial roles;
2. have support and advice from qualified specialists; and
3. have adequate funding and skills support to successfully provide the services required.

We therefore recommend that the details of this proposal be further developed, and that an additional round of stakeholder consultation be undertaken on the proposed details of the Local Aboriginal Heritage Services mechanism prior to drafting the legislation.

Australia ICOMOS sees a number of potential issues with the model that require resolution –

- How will the model guarantee full involvement of Aboriginal traditional knowledge holders and owners and other Aboriginal people with a demonstrated interest or custodial role in relation to local heritage?
- How will the model ensure equitable inclusion and decision making by all Aboriginal people with a legitimate interest?
- How will the Local Aboriginal Heritage Services and the Aboriginal Heritage Council interact? (We suggest there is a need for a clear two-way interaction, and that this be facilitated by articulation of relative roles and responsibilities.)

- How will competing interests be dealt with, including in relation to decision making and employment?
- What measures will be implemented to avoid potential unfair preferencing of particular heritage practitioners for consulting work?
- How will complaints be resolved?

We suggest also that there will need to be very clear Local Aboriginal Heritage Services establishment and operating regulations (including with respect to transparency), and regular government monitoring or audits of the Local Aboriginal Heritage Services.

7. In developing any model of regionally based organisations to oversee heritage management under an Aboriginal Heritage Act, we would like to emphasise the critical importance of Aboriginal custodians and Traditional Owners being included in the decision-making processes, and of comprehensive consultation with these groups. Any model should also seek to allow Aboriginal organisations to carry out their own negotiations directly with land users and with government to the greatest extent possible.

Yours faithfully



IAN TRAVERS
President, Australia ICOMOS