

31 May 2019

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

To whom it may concern,

ABORIGINAL HERITAGE ACT 1972 REVIEW

Thank you for the opportunity to provide feedback in relation to the Review of the Aboriginal Heritage Act 1972 and the associated Discussion and Consultation Papers. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in Western Australia. UDIA is a membership organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA members include both private and public sector organisations. Our industry represents approximately 12.3% of Western Australia's Gross State Product, contributing \$30.45 billion annually to the Western Australian economy and \$251.7 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 228,500 Western Australians and over 2 million Australians across the country.

UDIA strongly supports the review of the Act and the commitment to better protecting our Aboriginal heritage whilst at the same removing the cumbersome, costly and uncertain processes of the current Act. Each of the nine proposed areas of reform should not lose sight of this principle and be appropriately tested against it. As the Discussion paper notes, whilst it is important that Aboriginal people are involved in decisions affecting their heritage, it is imperative that the 'right people speak for Country'. It is also important that the navigation of the requirements of the Act provides certainty for all stakeholders involved, including certainty of outcomes and timeframes.

Process Clarity and Communication of New Requirements

The review proposes significant changes to the Aboriginal Heritage Act 1972, therefore it is vital that these changes are clearly communicated to all stakeholders including representatives of the development industry. The Institute would be happy to assist with this and in collaboration with the Department provide member briefings and industry workshops to communicate and gather further feedback on the proposed changes.

Given the scale of the procedural changes proposed, it is important that clear guidance is provided to ensure that the requirements of the Act are implemented efficiently and effectively, by all involved including the community, industry, government and other agencies.

To help provide this clarity, UDIA recommends the inclusion of a process map and timeframes in the Draft Exposure Bill (Green Bill) to clearly explain how the proposed requirements will operate in practice.

Whilst the UDIA is broadly supportive of the proposals set out in the Discussion and Consultation Paper, the Institute offers the following feedback in relation to specific reform proposals:

Proposal 3(E): Heritage Professionals Qualifications

UDIA supports the establishment of a public directory of heritage professionals. Whilst the process for accrediting heritage professionals is not set out, it is important that consideration is given to adopting transitional arrangements to ensure that the proposed new accreditation requirements do not result in delays to the heritage assessment process, as a result of a limited number of suitably accredited persons being available upon the commencement of the Act.

Proposal 4: Renaming the existing Aboriginal Places and Objects register the Aboriginal Heritage Register

Whilst UDIA supports the proposal to revise the register and its emphasis, it is important that this is clearly and widely communicated to all stakeholders. There is a common misconception that only places and objects placed on the register are considered subject to the provisions of the Aboriginal Heritage Act, whereas as stated in the discussion paper, all of *“Western Australia’s Aboriginal Heritage places and objects, whether currently known or not”* are protected. Without a widespread communication and education program, this established misconception risks the mistreatment of unlisted heritage places and objects. The increased penalties for failing to comply with the Act also reinforces the importance of adopting a widespread communication campaign ensuring that all stakeholders are fully aware of their responsibilities under the provision of the revised Act.

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

UDIA is supportive of the development of a risk-based tier assessment of land use proposals and the offer of an early risk assessment undertaken by the Department, however it is important that this process does not become unduly burdensome, or results in excessive delays. To overcome this, UDIA recommends that clear guidance be provided setting out how the referral process will work in practice, including referral timeframes.

Proposal 6: Agreements between Aboriginal people and land users

Further details are required to explain the practical procedures involved where land use proponents seek to enact existing agreements that contain previously agreed heritage outcomes prior to the new legislation coming into effect. It is an important principle that any existing agreement, previously agreed between parties should remain valid. Only where adequate justification is provided for the termination of an agreement made prior to the new legislation coming into effect, should consideration be given to extinguishing an agreement.



Proposal 7: Transparency and Appeals

While the Institute acknowledges the reasons for including a right of appeal for affected parties, it is vital that any review process includes appropriate mechanisms to prevent the making of vexatious claims. Statutory timeframes for initiating a review should also be minimised and the appeal process must also be fully transparent to provide certainty and clarity for all stakeholders.

Conclusion

In closing, UDIA reiterates the importance of communicating the proposed changes to the Aboriginal Heritage Act to all stakeholders and providing further guidance and clarity regarding the implementation of the proposed reforms.

Should the Department require any assistance or further information regarding this matter, the UDIA would be delighted to assist. Please do not hesitate to contact Chris Green, Director Policy and Research at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tanya Steinbeck', is written over a light blue rectangular background.

Tanya Steinbeck
Chief Executive Officer