



c/o Cindy Shadiack
(AACAI Secretariat)
PO Box 196
585 Little Collins Street
Melbourne VIC 3000
wa.chapter@aacai.com.au
www.aacai.com.au

AUSTRALIAN ASSOCIATION OF CONSULTING ARCHAEOLOGISTS INC

2 December 2021

Hon. Neil Thomson MLC
Shadow Minister for Planning; Lands; Heritage

By email: neil.thomson@mp.wa.gov.au

Dear Hon. Neil Thomson,

Aboriginal Cultural Heritage Bill 2021

The Australian Association of Consulting Archaeologists Incorporated (AACAI) writes to you as a member of the Legislative Council to express our deepest concern regarding the inadequacies of the tabled Aboriginal Cultural Heritage Bill 2021 (ACHB 2021).

The key problems with the ACHB 2021 are:

1. **Unequal rights of review.** Traditional Owners have no enforceable rights to protect their heritage under the ACHB 2021. Traditional Owners have no rights of review of the Minister's, or the ACH Council's, decisions to allow harm to their cultural heritage. This goes against human rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) principles.
2. **Insufficient support and funding provided for Local Aboriginal Cultural Heritage Services (LACHS).** The LACHS will provide a key service in the successful delivery of Aboriginal heritage services under the ACHB 2021. If LACHS are not sufficiently resourced or funded to perform their roles effectively, the result will be lack of certainty and clarity and potentially significant delays for development projects. The fee-for-service model will not guarantee the adequate and sustained operation of LACHS.
3. **Inadequate definitions.** The definitions included in the ACHB 2021 do not meet national or international standards, for example: a) Definition of Aboriginal Cultural Heritage (ACH) remains focused on things and places, and does not adequately represent intangible heritage; b) the definition of State Significance is too narrow; and c) the definition of harm is too narrow, and is inconsistent with State and Commonwealth legislation.

The ACHB 2021, in its current form, will not adequately protect Aboriginal heritage, nor will it incorporate a meaningful Aboriginal voice into the process. Whilst the widely-criticised 'section 18 process' has been discarded in the ACHB 2021, an equivalent process is enabled under Part 6, Division 6, Subdivision 3 (see also s.321). The ACHB 2021 will thus fail to address the root causes of the Juukan Gorge disaster and it will not prevent it from happening again.

In support of the Open Letter from Eminent Australians to the WA Premier, opposing the ACHB 2021; and in light of the recently formed partnership between the Federal Government and the First Nations Heritage Protection Alliance to strengthen safeguards for Aboriginal and Torres Strait Islander heritage; we call on you to withdraw the ACHB 2021 and seek for a better, co-designed law. If you insist on supporting the passage of the ACHB 2021, being aware of all its issues, then we urge you to make the amendments attached in Table 1, as a minimum.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jo Thomson".

Jo Thomson
Chairperson, AACAI (WA)

att. Table of amendments
Open letter to the WA Premier

Table 1. Necessary amendments to improve the ACHB 2021

Part	Section	Clause	Current wording	Amendment																																																						
1	12	1(b)	<p>Includes the following –</p> <ul style="list-style-type: none"> (i) an area (<i>an Aboriginal place</i>) in which tangible elements of Aboriginal cultural heritage are present; (ii) an object (<i>an Aboriginal object</i>) that is a tangible element of Aboriginal culture; (iii) a group of areas (<i>a cultural landscape</i>) interconnected through tangible or intangible elements of Aboriginal cultural heritage; ... 	<p>Add Intangible:</p> <ul style="list-style-type: none"> (i) an area (<i>an Aboriginal place</i>) in which tangible or intangible elements of Aboriginal cultural heritage are present; (ii) an object (<i>an Aboriginal object</i>) that is a tangible element of Aboriginal culture; (iii) Aboriginal intangible cultural heritage (<i>Aboriginal Intangible heritage</i>) that includes practices, representations, expressions, beliefs, knowledge or skills comprising Aboriginal cultural heritage, including intellectual creation or innovation of Aboriginal people based on or derived from Aboriginal cultural heritage; (iv) a group of areas (<i>a cultural landscape</i>) interconnected through tangible or intangible elements of Aboriginal cultural heritage; ... 																																																						
5	90	1	To harm Aboriginal cultural heritage means to destroy or damage the cultural heritage;	<p>Revert to Exposure Draft wording:</p> <p>To harm Aboriginal cultural heritage means to disrespect, deface, conceal, diminish the value of, destroy or damage Aboriginal cultural heritage.</p>																																																						
6	100		<p>Terms used</p> <p>In this Part –</p> <p>State significance, in relation to Aboriginal cultural heritage, means that Aboriginal cultural heritage is of exceptional importance to the cultural identity of the State;</p>	<p>Remove 'to the cultural identity':</p> <p>State significance, in relation to Aboriginal cultural heritage, means that Aboriginal cultural heritage is of exceptional importance to the State;</p>																																																						
6	101	b	The proponent providing sufficient information about the proposed activity to each person to be consulted to enable them to understand the proponent's reasoning and intention;	<p>Add 'including all available options':</p> <p>The proponent providing sufficient information about the proposed activity, including all available options, to each person to be consulted to enable them to understand the proponent's reasoning and intention;</p>																																																						
12	277	1	<p>Table</p> <table border="1"> <thead> <tr> <th>Item</th> <th>Reviewable decision</th> <th>Affected person</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>A decision of the Minister under section 154(1) to cancel or suspend the approval of an ACH management plan</td> <td>A party to the ACH management plan</td> </tr> <tr> <td>4</td> <td>A decision of the Minister under section 180(1) to give a stop activity order</td> <td>The person to whom the stop activity order was given</td> </tr> <tr> <td>5</td> <td>A decision of the Minister under section 188(1)(b)(i) to give a prohibition order</td> <td>The person to whom the prohibition order was given</td> </tr> <tr> <td>6</td> <td>A decision of the Minister under section 191(1) to extend the duration of a prohibition order</td> <td>The person to whom the prohibition order was given</td> </tr> <tr> <td>7</td> <td>A decision of the Minister under section 194(1) to give a remediation order</td> <td>The person to whom the remediation order was given</td> </tr> <tr> <td>8</td> <td>A decision by the Minister under section 203(1)(a) to amend a prohibition order or a remediation order</td> <td>The person to whom the order was given</td> </tr> </tbody> </table>	Item	Reviewable decision	Affected person	1	A decision of the Minister under section 154(1) to cancel or suspend the approval of an ACH management plan	A party to the ACH management plan	4	A decision of the Minister under section 180(1) to give a stop activity order	The person to whom the stop activity order was given	5	A decision of the Minister under section 188(1)(b)(i) to give a prohibition order	The person to whom the prohibition order was given	6	A decision of the Minister under section 191(1) to extend the duration of a prohibition order	The person to whom the prohibition order was given	7	A decision of the Minister under section 194(1) to give a remediation order	The person to whom the remediation order was given	8	A decision by the Minister under section 203(1)(a) to amend a prohibition order or a remediation order	The person to whom the order was given	<p>Revert to 2020 Exposure Draft table under s.258:</p> <table border="1"> <thead> <tr> <th>Item</th> <th>Reviewable decision</th> <th>Affected person</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>A decision of the Minister under section 165(1)(b) to authorise or refuse to authorise an ACH management plan</td> <td>The applicant for the ACH management plan to be approved if the plan is found to relate to Aboriginal heritage of State significance</td> </tr> <tr> <td></td> <td></td> <td>The applicant for the ACH management plan to be authorised</td> </tr> <tr> <td></td> <td></td> <td>A person who is, or would be, an Aboriginal party in relation to the ACH management plan</td> </tr> <tr> <td>2</td> <td>A decision by the Minister under section 170 to authorise or refuse to authorise an amended ACH management plan</td> <td>A party to the ACH management plan</td> </tr> <tr> <td>3</td> <td>A decision of the Minister under section 154(1) to cancel or suspend the approval of an ACH management plan</td> <td>A party to the ACH management plan</td> </tr> <tr> <td>4</td> <td>A decision of the Minister under section 180(1) to give a stop activity order</td> <td>The person to whom the stop activity order was given</td> </tr> <tr> <td>5</td> <td>A decision of the Minister under section 188(1)(b)(i) to give a prohibition order</td> <td>The person to whom the prohibition order was given</td> </tr> <tr> <td>6</td> <td>A decision of the Minister under section 191(1) to extend the duration of a prohibition order</td> <td>The person to whom the prohibition order was given</td> </tr> <tr> <td>7</td> <td>A decision of the Minister under section 194(1) to give a remediation order</td> <td>The person to whom the remediation order was given</td> </tr> <tr> <td>8</td> <td>A decision by the Minister under section 203(1)(a) to amend a prohibition order or a remediation order</td> <td>The person to whom the order was given</td> </tr> </tbody> </table>	Item	Reviewable decision	Affected person	1	A decision of the Minister under section 165(1)(b) to authorise or refuse to authorise an ACH management plan	The applicant for the ACH management plan to be approved if the plan is found to relate to Aboriginal heritage of State significance			The applicant for the ACH management plan to be authorised			A person who is, or would be, an Aboriginal party in relation to the ACH management plan	2	A decision by the Minister under section 170 to authorise or refuse to authorise an amended ACH management plan	A party to the ACH management plan	3	A decision of the Minister under section 154(1) to cancel or suspend the approval of an ACH management plan	A party to the ACH management plan	4	A decision of the Minister under section 180(1) to give a stop activity order	The person to whom the stop activity order was given	5	A decision of the Minister under section 188(1)(b)(i) to give a prohibition order	The person to whom the prohibition order was given	6	A decision of the Minister under section 191(1) to extend the duration of a prohibition order	The person to whom the prohibition order was given	7	A decision of the Minister under section 194(1) to give a remediation order	The person to whom the remediation order was given	8	A decision by the Minister under section 203(1)(a) to amend a prohibition order or a remediation order	The person to whom the order was given
Item	Reviewable decision	Affected person																																																								
1	A decision of the Minister under section 154(1) to cancel or suspend the approval of an ACH management plan	A party to the ACH management plan																																																								
4	A decision of the Minister under section 180(1) to give a stop activity order	The person to whom the stop activity order was given																																																								
5	A decision of the Minister under section 188(1)(b)(i) to give a prohibition order	The person to whom the prohibition order was given																																																								
6	A decision of the Minister under section 191(1) to extend the duration of a prohibition order	The person to whom the prohibition order was given																																																								
7	A decision of the Minister under section 194(1) to give a remediation order	The person to whom the remediation order was given																																																								
8	A decision by the Minister under section 203(1)(a) to amend a prohibition order or a remediation order	The person to whom the order was given																																																								
Item	Reviewable decision	Affected person																																																								
1	A decision of the Minister under section 165(1)(b) to authorise or refuse to authorise an ACH management plan	The applicant for the ACH management plan to be approved if the plan is found to relate to Aboriginal heritage of State significance																																																								
		The applicant for the ACH management plan to be authorised																																																								
		A person who is, or would be, an Aboriginal party in relation to the ACH management plan																																																								
2	A decision by the Minister under section 170 to authorise or refuse to authorise an amended ACH management plan	A party to the ACH management plan																																																								
3	A decision of the Minister under section 154(1) to cancel or suspend the approval of an ACH management plan	A party to the ACH management plan																																																								
4	A decision of the Minister under section 180(1) to give a stop activity order	The person to whom the stop activity order was given																																																								
5	A decision of the Minister under section 188(1)(b)(i) to give a prohibition order	The person to whom the prohibition order was given																																																								
6	A decision of the Minister under section 191(1) to extend the duration of a prohibition order	The person to whom the prohibition order was given																																																								
7	A decision of the Minister under section 194(1) to give a remediation order	The person to whom the remediation order was given																																																								
8	A decision by the Minister under section 203(1)(a) to amend a prohibition order or a remediation order	The person to whom the order was given																																																								

Amalgamated Prospectors and Leaseholders Association of W.A. Inc.

PO Box 2570 Boulder WA 6432.

29/11/2021



Representing Prospectors
Since 1904

APLA issues with the new ACH Bill.

The Amalgamated Prospectors and Leaseholders Association (APLA) is a peak body representing Prospectors and Small Mine operators in Western Australia since 1904. Prospectors historically have been the discoverers of the majority of past and current mines and need to be out there discovering the future resources that will keep Western Australia at the forefront of mineral discoveries domestically and internationally. These current and future discoveries will be the backbone of many regional areas, both, economically and socially. Many of these regional areas are where Aboriginals live and access services that simply would not exist without the local Prospectors and Small Mine operators who make these areas and services viable.

The report from the Juukan inquiry highlighted the power imbalance between Mining Companies and Aboriginal groups when it comes to consultation and negotiation. There is also a power imbalance between Aboriginal groups who have access to funding and legal expertise and Prospectors and Small Mine operators, most of whom are individuals trying to eke out a living, who often do not have access to funding or legal expertise.

This Bill seriously threatens the livelihoods of Prospectors and Small Mine operators which in turn has immense long-term economic and social implications for WA.

What we would like you to consider is that the State of Western Australia already has a State Register of Heritage Places, within the current Aboriginal Cultural Heritage act and, to date, has not placed unmanageable impositions on others. Unlike the new ACH Bill, that has the potential to impact on a large section of W.A's. community being private, Local Authority or Industry Stakeholders. Whereas the new ACH bill appears to be all about money changing hands, so that the everyday workplace can continue.

APLA urges every WA Politician to fully understand the implications of this Bill before they cast their vote.

Following are some of APLA concerns.

1. The inclusion of the concept of "Unknown Sites" and the statement that the Directory cannot be relied on as a source of information is truly concerning as this means any activity in any area across the State could affect "Unknown" Heritage. The logical conclusion from this is that every activity will require consultation in order to confirm Heritage does not exist. This will present an inordinate time and cost impost on both Proponents and Aboriginal parties. This proposal is unreasonable and "**Totally Unacceptable**" and **should be removed from the Bill**. During the process of clearing a Tenement (Mining Lease or Prospecting Licence) application there is a 4-month period where all Native Title and Heritage issues are resolved. APLA is of the option this period of time is where "Unknown Sites" are cleared at the Aboriginal expense, not the Proponent.

1. Need clarification on Heritage Status. It appears some Heritage Sites can accommodate some Ground Disturbing Activities over them. Also the criteria used on determining these Heritage sites needs to be clear that trivial reasons are not sufficient, as, a "Heritage Site, needs to be a place of Cultural Heritage significance to the State Of Western Australia".
2. There is proposed, far too much engagement with Aboriginal Parties and associated corporate bodies, that consume too much valuable time and expense. Within the current ACH act all that was needed was a letter or email to DPLH if some clarification was needed. This was made possible by being able to using the current Heritage Site Directory, a Directory that should be relied upon as being up to date at the time of investigation and the Proponent can't be held responsible for any "Unknown Sites". They will, be added when discovered at the Aboriginal expense.
3. With all of this engagement, there is far too much private, commercially sensitive and highly confidential information exposed unnecessarily during these engaged discussions. It is very problematic, in that Aboriginal peoples have a direct conflict of interest here, because they are Prospectors themselves. That leaves Prospectors vulnerable to them taking advantage, legally or illegally, of all the hard work the Prospector has put in making their new discovery. APLA feels the penalties being proposed are insufficient to be a real deterrent.
4. These Aboriginal bodies, LACHS, PBC, Native Title representative bodies or whoever is chosen as the elective body for a particular area, will have financial charges to support themselves. Where as previously it was an email to the DPLH at no cost. This then is an unnecessary duplication of administration and should be dropped.
5. Will these Aboriginal Bodies be made of qualified Aboriginals who have "Cultural Authority" to give out sound reliable advice?
6. The State Government has promised \$10million in the 2021-22 budget, to provide a one-off establishment, administration and capacity building funding for LACHS. There is no guarantee that once those funds have been used, that there will be any follow up funding. This leaves them no other option to charge fees for the services they provide. All this extra cost in the establishment of these Aboriginal bodies, when we already have a working system. Then we notice that there is no other funding for other stakeholder groups like the Prospector?

The new system may be appropriate for Mining Companies who have Shareholder funds and systems set up already to accommodate it, but will break the average Prospector who is just scraping by.

APLA accepts and respects any groups Heritage, but we must compare Aboriginal Cultural Heritage with General Cultural Heritage and the latter doesn't impose on anyone's lifestyle like what is proposed by this new Bill on the people of Western Australia.

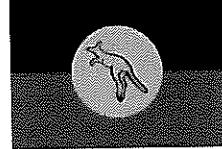
I can be contacted via email at pres@apla.com.au or by mobile on 0400 308 126

James Allison

James Allison
APLA President

KIMBERLEY LAND COUNCIL

ABN 96724252047 ICN 21



24th November 2021

To the elected Members of the Parliament of Western Australia,

Urgent request – Vote no to the Aboriginal Cultural Heritage Bill

The Kimberley Land Council (KLC) is writing to request your urgent intervention in the passage of the *Aboriginal Cultural Heritage Bill 2021 (WA)* through the Parliament of Western Australia.

On November 17, 2021, the KLC was shocked to witness the introduction of the amended Aboriginal Cultural Heritage Bill despite widespread condemnation from Aboriginal people and heritage experts across the State and country.

We were further dismayed by the WA Government's actions in releasing the amended Bill less than 24 hours before its introduction to Parliament, as well as the suspension of normal parliamentary processes to fast-track the Bill through the Legislative Assembly.

As this legislation continues to be debated we ask that you consider both its content and the fundamentally flawed process that has led to its introduction to the WA Parliament.

The KLC does not support the Aboriginal Cultural Heritage Bill and we call on you, our elected representatives, to hear the voices of Aboriginal people and vote in accordance with our wishes.

The KLC formally requests that you:

- Vote no to the Aboriginal Cultural Heritage Bill.
- Refer the Aboriginal Cultural Heritage Bill for further investigation by the appropriate Standing Committee.
- Address as a matter of public record, misinformation about the purported benefits of the Bill (see pages 2 & 3).

At this critical moment for heritage and culture, we implore you to hear our concerns and fight on our behalf to protect Aboriginal heritage and culture.

This Bill will not prevent further tragedies like Juukan Gorge. Ignoring the wishes of Traditional Owners is a lost opportunity when commitment for change, and a better future for Aboriginal people, has never been more important.

Yours sincerely,

Anthony Watson

Chairman

Kimberley Land Council

GETTING BACK COUNTRY. LOOKING
AFTER COUNTRY.
GETTING CONTROL OF OUR FUTURE.

P.O. BOX 2145
BROOME WA 6725 Ph:
(08) 9194 0100
www.klc.org.au

Aboriginal Cultural Heritage Bill - The Facts

Failure to embed Free Prior and Informed Consent

Free Prior and Informed Consent means that Traditional Owners can say "no" and this will be respected. Under the proposed legislation, if Traditional Owners fail to reach agreement with a proponent then the Minister has final say. The Minister can override the wishes of Traditional Owners and impose the terms of an Aboriginal Cultural Heritage Management Plan over the concerns and objections of Traditional Owners. The proposed legislation does not meet the international standard of Free Prior and Informed Consent.

No right to say no

The *Aboriginal Cultural Heritage Bill* will give every other party, other than Traditional Owners, the control over decision making about Aboriginal cultural heritage. The Aboriginal Cultural Heritage Bill gives Traditional Owners the right to say "yes" to impacts on cultural heritage but no right to say "no".

- Proponents control decisions about cultural heritage if they assess their proposal as "exempt" or "tier 1".
- The ACH Council controls decisions about cultural heritage if proponents assess their proposal as "tier 2".
- The Minister ultimately controls decisions about cultural heritage if proponents assess their proposal as "tier 3".

Rebranding Section 18

Under the current Aboriginal Heritage Act, Section 18 allows the Minister to approve damage or destruction to Aboriginal cultural heritage. The new Aboriginal Cultural Heritage Bill also includes the same mechanism, and expands on the ways that Aboriginal cultural heritage can be damaged or destroyed without the approval of Traditional Owners. If the Aboriginal Cultural Heritage Bill is made into law, entire categories of activities will be exempt from approval before damaging, destroying or impacting on cultural heritage. This is in fact a step backwards from the current law, which prohibits all impactson cultural heritage without approval.

- The new 'section 18' process has been rebranded as an 'ACH Permit' and an 'ACH Management Plan'.
- Under the new law, proponents, the ACH Council, and the Minister make decisions on whether or not an activity can occur if it impacts Aboriginal cultural heritage. The only parties who are not afforded any role in the decision making under the new law (other than the role of 'agreeing' to management plans) are Traditional Owners.

Burdensome agreement making

The Bill mandates a process that forces Traditional Owners to engage with proponents and imposes an obligation on PBCs (if they are a Local Aboriginal Cultural Heritage Service) to use "best endeavours" to reach agreement, even if they do not want their cultural heritage impacted. This process is very similar to the right to negotiate process under the *Native Title Act*, and will compel Traditional Owners and their representative organisations to take part in forced negotiations for the benefit of a third party, without any clear commitment on how PBCs and LACHS will be funded. If agreement is not reached the Minister can impose an Aboriginal Cultural Heritage Management Plan over the concerns and objections of Traditional Owners.

Protected Area limitations

Protected Areas cannot be made over areas already covered by a Section 18 application, ACH Permit or ACH Management Plan. As a result, areas that are already impacted by proponents' activities can't be protected. For areas of unallocated Crown land that have recognised exclusive possession native title, the Minister for Lands has been given the same rights as a private landowner under the Aboriginal Cultural Heritage Bill. This diminishes and erodes the standing of native title holders, who are not given the same status as "landowners" under the Bill.

Loss of rights of review

The proposed Aboriginal Cultural Heritage Bill does not include rights of appeal to the State Administrative Tribunal for decisions of the Minister in relation to an Aboriginal Cultural Heritage Management Plan or other critical decisions that affect significant rights. The consultation draft Bill released in September 2020 included these rights of review, as do most modern laws in Western Australia and other Australian jurisdictions. The State Administrative Tribunal [website](#) lists 159 Western Australian laws that include a right of appeal or

review to the State Administrative Tribunal, including the *Aboriginal Heritage Act 1972*, the *Heritage Act 2018*, *Petroleum and Geothermal Energy Resources Act 1967*, *Petroleum and Geothermal Energy Safety Levies Act 2011*, *Petroleum Pipelines Act 1969*. The abandonment of these rights in the Bill introduced into Parliament will have significant impacts on the ability of some of the State's most disadvantaged citizens to access justice.

Ineffective consultation

Throughout the consultation process, Traditional Owners have consistently stated that they do not want a new law that allows Government to make the final decision on whether or not cultural heritage is damaged or destroyed. Consultation should mean concerns are listened to, not ignored. Genuine engagement does not involve including people in a process only to exclude them from the outcome.

Unclear regulation process

There is currently no detail as to what the "co-design" process will look like or who it will involve. Given the flawed consultation process so far, we have zero confidence that any future consultation or co-design will respect the views and concerns of Traditional Owners.

For further KLC resources and information please refer to:

[Punturr Punturr Statement](#)

[KLC media release 17 November 2021](#)

[Letter to UN Special Rapporteur on the Rights of Indigenous Peoples](#)

GETTING BACK COUNTRY. LOOKING
AFTER COUNTRY.
GETTING CONTROL OF OUR FUTURE.

P.O. BOX 2145
BROOME WA 6725 Ph:
(08) 9194 0100
www.klc.org.au

4
5



Dear Premier Mark McGowan

Open Letter - Opposition to Aboriginal Cultural Heritage Bill

We bring to your urgent attention widespread Aboriginal opposition to the Government's proposed *Aboriginal Cultural Heritage Bill*, 2021 and notify you of its serious breaches of Australia's international human rights commitments.

We do not believe that the Bill will 'recognise, protect and preserve Aboriginal cultural heritage'. The Bill does not allow for Aboriginal people to ensure heritage and site protection - without the agreement of the proponent and/or the Minister for Aboriginal Affairs.

Aboriginal people have repeatedly requested improved legal protection of heritage sites, but the Bill is weighted against Indigenous custodians in all processes involving heritage applications to conduct activities that disturb or destroy areas of cultural heritage.

We consider that the Bill breaches our commitments under the United Nations *Declaration of the Rights of Indigenous Peoples*. It fails to meet the protection of the rights that Indigenous Peoples have under the UNDRIP to access and enjoy their cultural heritage. It is also incompatible with Australia's obligations under the *Convention on the Elimination of All Forms of Racial Discrimination* and is now the subject of an *Early Warning and Urgent Action* before the UN Committee for the Elimination of Racial Discrimination for their review of the Bill.

We draw your attention to the Senate Inquiry *A Way Forward* report into the destruction of Juukan Gorge which called on the WA Government to improve heritage protections to a standard appropriate to the national and global value it holds.

Respectfully, we request you to withdraw the Bill and ensure the law is co-designed with Aboriginal people to respect human rights and ensure a 'best practice' system to protect Aboriginal cultural heritage in our state.

Yours faithfully

Slim Parker, Banjima Native Title Aboriginal Corp • **Hannah McGlade**, UN Permanent Forum for Indigenous Issues • **Anthony Watson**, Kimberley Land Council • **Kado Muir**, National Native Title Council • **Clayton Lewis**, Aboriginal Heritage Action Alliance • **Brendon Moore**, South West Aboriginal Land Council • **Tyronne Garstone**, Kimberley Land Council • **Kay Goldsworthy AO**, Anglican Archbishop of Perth • **Emeritus Prof Carmen Lawrence**, Conservation Council of WA • **Prof Fiona Stanley AC**, Telethon Kids Institute • **Sam Walsh AO**, Banjima Native Title Aboriginal Corp • **Prof Megan Davis**, UN Expert Mechanism on Rights of Indigenous People • **Janet Holmes-A-Court AC**, Hon FAHA, Hon FAIB • **Prof Bill Hare**, Climate Analytics • **Greg McIntyre SC**, Law Council of Australia • **Prof Marcia Langton AO**, Uni of Melbourne • **Ronald Lameman**, International Indian Treaty Council • **Prof Stephen van Leeuwen**, Biodiversity and Environmental Science, Curtin Uni • **Adj Prof James Fitzgerald**, Australasian Council for Corporate Responsibility • **Dr Anne Poelina**, Martuwarra Fitzroy River Council • **Prof Peter Veth**, Head of Archaeology Discipline, UWA • **Tony McAvoy SC** • **Fr Frank Brennan SJ AO**, Uni of Melbourne • **Hon Robin Chapple** • **Dennis Egginton**, Aboriginal Legal Service WA • **Ernie Dingo AM** • **Jamie Lowe**, National Native Title Council

• **Andrea Carmen**, International Indian Treaty Council • **Piers Versteegen**, Conservation Council of WA • **Melissa Parke**, Chair WA Museum • **David Ritter**, Greenpeace • **Nick van Hattem**, Francis Burt Chambers • **Dr Joe Dorch**, Archaeology, UWA • **Graham Doppert SC**, President, Australian Lawyers Alliance • **Dr Carolyn Tan**, Lawyer • **Les Schultz**, Ngajju Conservation Aboriginal Corp • **Lester Coyne**, Albany Aboriginal Heritage Reference Group • **Melynn Farmer Chair WDLAC** • **Darren Farmer** • **Richard Evans** • **Sandra Evans** • **Michelle Rev Lorna Green**, Anglican Parish of Carine-Duncraig • **Hon. Kelvin Thomson**, former ALP Member for Wills • **Dr Murray Garde OAM**, Gundjeihmi Aboriginal Corp • **Michelle Broun**, Creating Australia • **Assoc Prof Katie Glaskin**, Anthropology and Sociology, UWA • **Ruth Brown**, Human Rights Law Centre • **Eddie Cubillo**, Law School, Uni of Melbourne • **Ruth Barson**, Human Rights Law Centre, Melbourne • **Ed Armstrong**, SWALSC • **Simon Hawkins**, YMCA • **David Lanagan**, Central Desert Native Title Services • **Malcolm Connolly**, CAERP, ANU • **Prof Sharon Sullivan AO**, Fellow, Australian Academy of the Humanities • **Distinguished Prof Paul Tacon**, Anthropology and Archaeology, Griffith Uni • **Assoc Prof Ian Keen**, School of Archaeology and Anthropology, ANU • **Dr Michael Donovan**, Wollotuka Inst, Uni of Newcastle • **Glenda Kickett**, Archaeology, Griffith Uni • **Assoc Prof Martin Porr**, Centre for Rock Art Research and Management, UWA • **Jo Thompson**, Australian Association of Consulting Archaeologists Inc • **Dr Yasmine Anu** • **Assoc Prof Martin Porr**, Centre for Rock Art Research and Management, UWA • **June Moorhouse**, Community Arts Network • **Monica Kane**, Community Arts Network • **Megan Krakouer**, Director, National Suicide Prevention Social Reinvestment WA • **June Moorhouse**, Community Arts Network • **Karrina Nolan**, Original Power • **Distinguished Emeritus Prof**, Suwendri Perera, & Trauma Recovery Unit • **Rodney Dillon**, Aboriginal Heritage Council Tasmania • **Shirley Harris**, Yikala • **Devon Taylor**, Aboriginal Men's Healing Curtin Uni • **Prof Patrick Keyzer**, Aust Catholic Uni • **Herbert Bropho**, Swan Valley Noongar Community • **Shirley Harris**, Yikala • **Devon Taylor**, Aboriginal Men's Healing Curtin Uni • **Gerry Georgetas**, National Suicide Prevention & Trauma Recovery Project • **Teddy Biljabuwa**, Wati Men's Council • **Selina Egginton**, Dumbartong Aboriginal Centre • **Adj Prof Vicki Grieve-Williams**, Department of History, Sydney Uni • **Dr Sandy Chong**, UNAWWA • **Assoc Prof Annie Ross**, School of Social Science, Uni of QLD • **Dr Dirima Cuthbert**, Anthropologist • **Neil Murray**, Musician • **Dr Georgia Stannard**, Dept Archaeology & History, La Trobe Uni • **Dr Jillian Garvey**, Senior Research Fellow, La Trobe Uni • **Dr Ute Eickelkamp**, Social Anthropologist, UNSW • **Dr Susan Lowish**, Australian Art History, Uni of Melbourne • **Ryan Crough-Heaton**, Terra Rosa Consulting • **Dr Vicki Winton**, Archaeologist • **Sally Hodson**, Anthropologist • **Callista Barratt**, Kimberley Land Council • **Dr Sarah Holcombe**, Uni of QLD • **Dr Paul Gorecki**, Anthropologist & Archaeologist • **Dr Anna Fagan**, Yinhawangka Aboriginal Corp • **Prof Celimara Pocock**, Centre for Heritage and Culture, Uni of Sthn QLD • **Dr Geoffrey Samuel**, Uni of Sydney • **Emeritus Prof John Professor**, Cardiff Uni • **Ian Perdrisat**, Madjula Inc, Balglinjir Community • **Emeritus Prof Stephen Muecke**, School of Ethnography, UNSW Sydney • **Emeritus Prof John Boulton AM**, Health and Medicine, Uni of Newcastle • **Emeritus Prof Peter Reason**, Centre for Action Research in Professional Practice, Uni of Bath • **Prof Russell Tytler**, Chair, Science Education, Deakin Uni • **Prof Mindy Blaise**, Centre for People Place & Planet, ECU • **Prof Danielle Celermajer**, Sydney Environment Inst, Uni of Sydney • **Dr Michael Lobo**, School of Humanities and Social Sciences, Deakin Uni • **Dr Sandra Woolerton**, Nulungu Institute Research, Uni of Notre Dame • **Dr Tanya King**, School of Anthropology, Deakin Uni • **Sven Ouzman**, Archaeologist • **Jenita Enevoldsen**, The Wilderness Society • **Carolyn Bloye**, Conservation Council WA • **Cathy Eatock**, IPO, Aust • **Alison Orme**, Original Power • **Dr Peta White**, Science and Environmental Education, Deakin Uni • **Dr Cynthia Hunter**, Anthropology and International Public Health, Uni of Sydney • **Sophie Stewart**, Campaign & Coalition Manager, Social Reinvestment WA • **John Locke**, Director, Biocultural Strategist, Biocultural Consulting P/L • **Louise Giolotto**, Western Australian Council of Social Services • **Dr Tamasin Ramsay**, Garwarrd Animal Biodiversity Alliance (GABA) Inc • **Juliette Millar**, Aboriginal well-being advocate • **Dr Georgia Stannard**, Secretary, Australian Archaeological Assoc • **Carmen Jaques**, Anthropologist • **Dr Anthony Redmond**, Department of Anthropology, Griffith Uni being advocate • **Assoc Prof Neale Draper**, Department of Archaeology, Flinders Uni • **Assoc Prof Lynley Wallis**, Griffith Centre for Social and Cultural Research, Griffith Uni • **Johanna Ramsay**, CEO, Banjima Aboriginal Corporation • **Kirsty Anderson**, Director of Projects, Yamatji Marla Aboriginal Corporation • **Assoc Prof Carol Warren**, Academic Chair, Asian Studies Program • **Prof Julie Marcus**, Anthropologist • **Dr Stephen Bennetts**, Anthropologist • **Robin Stevens**, Anthropologist • **Karen A Hansen**, Archaeology and Anthropology, ANU • **Rod Holden**, Exec Director, Natural Impact Group • **Dr Jude Philip**, Chau Chak Wing Museum, Uni of Sydney • **Gareth Lewis**, Anthropologist • **Dr Mary-Jean Sutton**, Anthropologist • **Jodi Neale**, Anthropologist • **Naomi Howells**, Anthropologist • **Jenny Kiss**, Lawyer • **Rachel Fry**, Archaeologist • **Dan Mavric**, Graphic Design • **Tania Phillips**, Heritage Consultant • **Adele M Millard**, Anthropologist • **Karen A Hansen**, Anthropologist • **Jocelyn Cleghorn**, Anthropologist • **Pia Pagotta**, Concerned Australians • **Janet Osborne**, Anthropologist • **Dr Sean Winter**, Archaeologist • **Emily Sexton**, Anthropologist • **Phil Hunt**, Archaeologist • **Guillette Holborn**, Law/Archaeology student • **Sarah Easson**, National Native Title Council • **Dr Caroline Bird**, Archaeologist • **Christina Araujo**, Native Title Lawyer • **Louahna Lloyd**, Lawyer • **Olivia Norris**, Anthropologist • **Emily Egerton-Warburton**, Anthropologist • **Ben Cuiermara Taylor**, Yued Elder • **Mingli Wanjurri McGlade**, Kurin and Mineng Elder



Rio Tinto - we have spent
the past year making
changes

1100

New code fixed

Land Use Approvals under ACH Bill

Tier Category	Description	Approval Pathway
Exempt Activity	Small Scale Residential Emergency Services Recreational Activities	Does not require Approval
Activities specified in the ACH Bill	Minimal Ground Disturbance Activities	Proponents encouraged to avoid ACH
Tier 1 Activities will be specified in the Regulations	Low Ground Disturbance Activities	Does not require Approval Proponents takes all reasonable steps possible to avoid or minimise risk of harm ACH
Tier 2 Activities will be specified in the Regulations	Moderate to High Ground Disturbance Activities	Requires issue of ACH Permit by ACH Council Proponents takes all reasonable steps possible to avoid or minimise risk of harm ACH
Tier 3 Activities will be specified in the Regulations		Where Aboriginal Party and Proponent reach agreement ACH Council approves ACH Management Plan. Where Aboriginal Party and Proponent are unable to reach agreement it is the decision of the Minister whether or not to authorise an ACH Management Plan

Land Use Approvals under the ACH Bill

Policy Objectives

- Land use activities managed in a manner that avoids or minimises harm to Aboriginal cultural heritage where possible
- System that provides clarity and certainty of process for all stakeholders
- System that facilitates the making of well informed decisions
- Approval process where the effort required to seek an approval is commensurate with the level of impact an activity may cause
- In circumstances where heritage may be harmed, requires Aboriginal people to be involved in the decision making process
- Approval only required when proposed activity may harm heritage



Aboriginal Cultural Heritage Bill 2021





Aboriginal Cultural Heritage Bill 2021



Clause [Consultation draft]	Change(s) made	Part 3 Provisions of general application	Reason for change
10. Aboriginal Cultural Heritage and related terms	<ul style="list-style-type: none"> [Amendment] The definition of Aboriginal cultural heritage has been amended to link it to Aboriginal tradition and now includes a definition of intangible Aboriginal cultural heritage. 	<ul style="list-style-type: none"> Aboriginal stakeholders and heritage professional groups raised concerns that the Bill does not adequately cover intangible Aboriginal cultural heritage and that intangible Aboriginal cultural heritage is not separately defined. Amendments to the Aboriginal cultural heritage definition respond to concerns that the definition was unclear, industry stakeholders requested for the term to be linked to the definition of Aboriginal tradition. Definitions for Aboriginal cultural heritage and intangible Aboriginal cultural heritage separated for clarity as requested by some stakeholders. 	
14. Act binds Crown	<ul style="list-style-type: none"> [Deletion] The following paragraph has been removed: 'Nothing in this Act makes the State, or the Crown in any of its other capacities, liable to be prosecuted for an offence.' 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that the provision provided that the State or Crown is not liable to be prosecuted for an offence under the Act. The amendment means that State or the Crown is now liable for prosecution for an offence. 	
New	<ul style="list-style-type: none"> [Addition] New clause added to ensure that culturally sensitive information is not required to be provided as part of Freedom of Information (FOI) requests. 	<ul style="list-style-type: none"> Clause was added in response to Aboriginal stakeholders concerns regarding the disclosure of culturally sensitive information as part of FOI requests. This has been an ongoing issue in regards to FOI request relating to approvals under the <i>Aboriginal Heritage Act 1972</i> (1972 Act). 	
Part 4 Aboriginal Cultural Heritage Council (ACH Council) and local Aboriginal cultural heritage services (LACHS)			
17. Membership	<ul style="list-style-type: none"> [Amendment] The Minister will appoint two Aboriginal co-chairpersons (one female and one male) rather than appointing a chairperson and a deputy chairperson. [Amendment] The Minister must ensure (as far as is practicable) that the majority of members of the ACH Council are Aboriginal people rather than just giving preference to Aboriginal people. 	<ul style="list-style-type: none"> The Government's Aboriginal Advisory Council WA recommended that the ACH Council should have co-chairpersons (one female and one male) to appropriately manage gender-restricted information as part of any applications. Change in response to Aboriginal Stakeholder feedback that the ACH Council should have majority Aboriginal membership. 	
34. Appointment of LACHS	<ul style="list-style-type: none"> [Amendment] Requirements for designation (formerly appointment) have been expanded to ensure that the person: <ul style="list-style-type: none"> has the endorsement of both registered native title bodies corporate or registered native title claimant for the area or part of the area; has sufficient support of the local Aboriginal community in the area to enable it to provide all LACHS functions (as opposed to just consultation); and is able to engage and negotiate as appropriate (rather than just promote negotiations). [Deletion] Requirement for the person to be impartial has been removed. 	<ul style="list-style-type: none"> Change to respond to Aboriginal stakeholder concerns that the endorsement of Native Title (NT) parties as a requirement for the appointment as LACHS, was not adequately addressed in drafting. 	
37. Suspension or cancellation of appointment of LACHS for area	<ul style="list-style-type: none"> [Amendment] Clause expanded to allow for the suspension or cancellation of designation as LACHS for all or part of an area. [Addition/Amendment] The Minister or the ACH Council may suspend or cancel the designation if they are no longer satisfied that the person has priority for designation (i.e. if the LACHS is not a NT party, when a NT party is subsequently registered, the NT party would have priority to be designated as a LACHS) or the person is not providing LACHS functions. [Addition] Public notice of a suspension or cancellation now required. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that priority for the appointment of NT parties was not adequately addressed in drafting. Change was made based on feedback to address issues when LACHS do not perform their functions set out in the Bill. Public notice for cancellation/suspension of an appointment was added for openness and transparency. The need for improved transparency was raised in a number of submissions made on the Bill. 	
New	<ul style="list-style-type: none"> [Addition] Clause added to require the ACH Council to give a person who may object to decisions of the ACH Council about LACHS, written notice of that decision along with reasons for the decision within 14 days. 	<ul style="list-style-type: none"> Change to ensure transparency and consistency with the requirements to give notice of decisions that can be reviewed. 	



Clause (Consultation draft)	Change(s) made	Reason for change
32. Functions of LACHS	<ul style="list-style-type: none"> [Addition] Clause added to ensure LACHS use best efforts to perform functions in a timely manner, particularly in respect to matters affected by time limits. 	<ul style="list-style-type: none"> Change in response to industry stakeholder feedback to provide a positive obligation on LACHS to perform their functions.
New	<ul style="list-style-type: none"> [Addition] New clause added to provide that a LACHS may apply to the Council for funding for the purpose of enabling the LACHS to perform its functions. 	<ul style="list-style-type: none"> Change in response to stakeholder concerns regarding inadequate funding and resourcing of LACHS.
50. ACH Council to be notified about Aboriginal ancestral remains	<p>[Addition] Subclause added to provide for exemptions to subclause 1 (written notice to be provided to the ACH Council to notify of possession of ancestral remains). Exceptions include:</p> <ul style="list-style-type: none"> an Aboriginal person acting in accordance with their traditional rights, interests and responsibilities in respect of Aboriginal ancestral remains; a person acting at the written request of an Aboriginal person described above; or a person who had reasonable cause to believe, and did in fact believe, that the ACH Council was already aware of the existence of the Aboriginal ancestral remains. 	<ul style="list-style-type: none"> Changes in response to stakeholder feedback that Aboriginal people and a person acting at the request of an Aboriginal person should be exempted from the requirement to notify of possession of ancestral remains.
Part 5 Rights and duties in relation to Aboriginal cultural heritage		
51. Duties of organisations to return Aboriginal ancestral remains	<p>[Addition] Requirement for an organisation to identify a custodian of the ancestral remains (prior to having to return the ancestral remains to a custodian/hold on to them for a custodian).</p> <ul style="list-style-type: none"> [Addition] An organisation must seek the advice of the ACH Council as to compliance with their obligations to return Aboriginal ancestral remains. 	<ul style="list-style-type: none"> Changes in response to concerns raised by some stakeholder groups that it is unfair to expect some persons/organisations to know how to identify the custodian of Aboriginal ancestral remains and that some people/organisations may not have the capacity to return ancestral remains, which could present a risk to those ancestral remains. These changes will ensure the ACH Council has an active role in the return of ancestral remains.
52. Duties of individuals to return Aboriginal ancestral remains	<ul style="list-style-type: none"> [Addition] An individual must seek the advice of the ACH Council as to compliance with their obligations to return Aboriginal ancestral remains. 	<ul style="list-style-type: none"> Change to ensure consistency with the process required for organisations when returning Aboriginal ancestral remains.
58. ACH Council to be notified about secret or sacred objects	<p>[Addition] Added sub-clause to provide for exemptions for the following:</p> <ul style="list-style-type: none"> An Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in respect of the object; or A person acting at the written request of an Aboriginal person described above; or A person who had reasonable cause to believe, and did in fact believe, that the ACH Council was already aware of the existence of the secret or sacred object. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that Aboriginal organisations who are holding on to Aboriginal ancestral remains and secret or sacred objects on behalf of custodians may be penalised for not reporting to the ACH Council. Amendments have been made to provide an exemption for Aboriginal people and a person acting at the written request of an Aboriginal person.
59. Duties of prescribed public authorities to return secret or sacred objects	<ul style="list-style-type: none"> [Addition] Requirement for a prescribed public authority to identify a custodian of the object (prior to having to return the object to a custodian/hold on to them for a custodian). [Amendment] A prescribed public authority must now seek advice of the ACH Council as to compliance with returning secret or sacred objects (previously was may request). 	<ul style="list-style-type: none"> Amended to ensure consistency with process to return Aboriginal ancestral remains.
62. Reporting Aboriginal cultural heritage	<ul style="list-style-type: none"> [Amendment/Addition] Exemptions amended to add 'a person acting at the written request of an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in respect of an Aboriginal place, object or ancestral remains.' 	<ul style="list-style-type: none"> Change in response to stakeholder feedback that a person acting at the request of an Aboriginal person should be exempted from reporting Aboriginal cultural heritage.

Clause [Consultation draft]	Change(s) made	Reason for change
Part 6 Protected Areas		
63. Terms used	<ul style="list-style-type: none"> [Amendment] Definition of 'outstanding significance' amended to make it clear that the heritage has to be of outstanding significance to the knowledge holders for that heritage. 	<ul style="list-style-type: none"> Change in response to Aboriginal groups and industry groups concerns that some applications for protected areas may be made by people with no cultural knowledge for the heritage.
New	<ul style="list-style-type: none"> [Addition] New clause to ensure that the factors set out in the protected area orders guidelines are considered when determining whether Aboriginal cultural heritage is of outstanding significance. 	<ul style="list-style-type: none"> Addition in response to stakeholder concerns that there is insufficient guidance as to the criteria for determining whether Aboriginal cultural heritage is of outstanding significance for the purpose of a protected area order.
69. Preliminary assessment by ACH Council	<ul style="list-style-type: none"> [Addition] Added a prescribed period within which the ACH Council must make a preliminary assessment. 	<ul style="list-style-type: none"> Change to ensure decisions are made in a timely manner.
71. Review of preliminary view of ACH Council that area not be declared as protected area	<ul style="list-style-type: none"> [Addition] Added a prescribed period by which a person who is given notice that the ACH Council has formed a preliminary view that no part of an application area should be declared as a protected area may request the Minister consider the Council's decision. 	<ul style="list-style-type: none"> Change to ensure decisions are made in a timely manner. Unlike State Administrative Tribunal (SAT) reviews where there is a timeframe for an affected person to apply to SAT for a review of decisions, there was no timeframe in which people can object to the Minister regarding a decision of the Council. This change will provide consistency with SAT reviewable decisions.
72. Recommendation of ACH Council	<ul style="list-style-type: none"> [Addition] Added a prescribed period within which the ACH Council must make a recommendation. 	<ul style="list-style-type: none"> Change to ensure decisions are made in a timely manner.
74. Decision of Minister	<ul style="list-style-type: none"> [Amendment] Minister 'must' make a decision (changed from 'may') if the ACH Council makes a recommendation on an application for an area to be declared a protected area. [Addition] Added a prescribed period within which the Minister must make a decision. [Addition] Added requirement for the Minister to give public notice of a decision (by the Minister) that no part of an application area should be declared as a protected area. 	<ul style="list-style-type: none"> Changes to ensure decisions are made in a timely manner and to increase transparency of decision making.
<i>Formerly part of 76. Amending and repealing orders</i>		
New	<ul style="list-style-type: none"> [Addition] Requirement for CEO to lodge a notification with the Registrar of Titles and Registrar of Deeds and Transfers when a protected area order is made, amended or appealed. On lodgement of a notification, the Registrar must make any endorsement or notation the Registrar considers necessary on the certificate of title or other register in respect of the land to which the notification applies. [Addition] New clause added to provide for a penalty of \$20,000 for the contravention of any conditions on a protected area order. It is a defence to this charge to prove that the person did not know and could not by the exercise of reasonable diligence have known, of the condition to which the charge relates. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that protected areas may be reduced in size to accommodate land use activities. Due to the importance of protected areas, addition was made to ensure lodgement of notifications of protected area orders with the Registrars, similar to certain notices that need to be lodged under the Heritage Act 2018. Changes to ensure compliance with conditions on protected areas.
Part 7 Offences about harming Aboriginal cultural heritage		
81. What constitutes harm to Aboriginal cultural heritage	<ul style="list-style-type: none"> [Deletion] Acts that demonstrate disrespect or diminish or otherwise affect the value of Aboriginal cultural heritage have been removed from the definition of harm. 	<ul style="list-style-type: none"> Change in response to industry and land user stakeholder feedback that the definition of harm was too broad and subjective thus creating significant risks and uncertainty for stakeholders.

Clause [Consultation draft]	Change(s) made	Reason for change
83. Serious harm to Aboriginal cultural heritage: offence	<ul style="list-style-type: none"> [Addition] Summary conviction penalties added: <ul style="list-style-type: none"> Individual: Imprisonment for 2 years or a fine of \$700,000 or both and a fine of \$35,000 for each day or part of a day during which the offence continues. Body corporate: fine of \$7,000,000 and a fine of \$350,000 for each day or part of a day during which the offence continues. [Deletion] Imprisonment removed as a possible penalty for an individual. 	<ul style="list-style-type: none"> Additions in response to feedback from industry and Government stakeholders to ensure consistency with other indictable offences within State legislation. Deletion in response to industry stakeholder concerns that an imprisonment penalty is disproportionate for an offence that requires no intent or negligence.
84. Serious harm to Aboriginal cultural heritage: strict liability offence		
90. Terms used	<ul style="list-style-type: none"> [Amendment] Previous heritage agreements and native title agreements have been combined and renamed related agreements and are no longer restricted to those entered into before this section comes into effect. [Amendment] Exempt activity amended : <ul style="list-style-type: none"> No longer include clearing of native vegetation in accordance with a clearing permit granted under Part V Division 2 of the <i>Environmental Protection Act 1986</i> (EP Act) and amended to only allow exemptions for clearing of a kind set out in EP Act Schedule 6 item 10, 10A, 11 or 12. Construction, renovation or demolition of a residential building expanded to make it clear it covers single houses/dwellings. Exemptions for prescribed burns will cover any undertaken by a public authority on crown land and not just to those undertaken by the FES Commissioner. [Amendment] Amendments to replace references of minimal, low and medium to high impact activities in the Bill to Tier 1, 2, 3 activities. 	<ul style="list-style-type: none"> Change in response to industry stakeholder concerns that the previous definition for previous heritage agreements was limited and did not include any agreements that may be entered into after the Bill is proclaimed. Change in response to Aboriginal people and heritage professional's feedback that native vegetation clearing permits may cover vast areas of land. This has been amended to allow exemptions for small-scale clearings that are exempted under the EP Act. Change in response to Government stakeholder feedback that residential buildings do not cover single houses/dwellings. Change in response to Government stakeholder concern that the exemptions for burning and firebreaks did not cover some activities that are undertaken by public authorities. Change in response to Aboriginal stakeholders concerns regarding implied correlation between physical impacts of activities with impact on Aboriginal cultural heritage.
93. What is due diligence assessment	<ul style="list-style-type: none"> [Amendment] Wording amended to provide that a person undertakes an assessment, and not a 'preliminary determination' about whether an area is a protected area, the level of activity, whether Aboriginal cultural heritage exists in the area and whether there is a risk that Aboriginal cultural heritage may be harmed by the Tiers 2 and 3 activity and persons to be notified and consulted about the activity. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that proponents, and not Aboriginal knowledge holders are determining whether Aboriginal cultural heritage exists and determining impact on Aboriginal cultural heritage. Provisions have been amended to clarify it's an assessment and not a determination.
98. Who is Aboriginal party to ACH management plan	<ul style="list-style-type: none"> [Amendment] Amended to provide for where there is no LACHS and no native title party for an area, the native title representative party for the area is the Aboriginal party to an ACH management plan (knowledge holder has been removed). [Addition] Provision added to provide for arrangements where an Aboriginal Council nominates an Aboriginal party to a plan e.g. Council nominates an Aboriginal party to a plan. 	<ul style="list-style-type: none"> Change in response to stakeholder concerns that there is no requirement for knowledge holders who are a party to a plan (when they aren't a LACHS) to be a body corporate. This change will prevent situations where a proponent has to enter into a management plan with multiple individual knowledge holders. Knowledge holders can still be a party to a plan if they are appointed as a LACHS for the area. Change to provide for contingency arrangements for when an Aboriginal party ceases to exist e.g. CATSI Corporation is deregistered, or LACHS has been cancelled or suspended.
102. Authority to carry out Tier 2 activity that may harm Aboriginal cultural heritage	<ul style="list-style-type: none"> [Addition] Addition of requirement to undertake due diligence prior to carrying out a Tier 2 activity that may harm Aboriginal cultural heritage. 	<ul style="list-style-type: none"> Amendment to clarify the requirement to undertake due diligence prior to carrying out a Tier 2 activity that may harm Aboriginal cultural heritage.
103. Authority to carry out Tier 3 activity that may harm Aboriginal cultural heritage	<ul style="list-style-type: none"> [Addition] Addition of requirement to undertake due diligence prior to carrying out a Tier 3 activity that may harm Aboriginal cultural heritage. 	<ul style="list-style-type: none"> Amendment to clarify the requirement to undertake due diligence prior to carrying out a Tier 3 activity that may harm Aboriginal cultural heritage.
105. Notice of intention to carry out Tier 2 activities	<ul style="list-style-type: none"> [Amendment] Amended to make it clear that a notice is to be given when a Tier 2 activity may harm Aboriginal cultural heritage. 	<ul style="list-style-type: none"> Change to address industry stakeholder concerns that notice will need to be given for all Tier 2 activities even when a due diligence assessment identified no Aboriginal cultural heritage.

This table reflects changes to the latest version of the Draft Bill. Further amendments may be made prior to Bill being introduced to Parliament.

Clause [Consultation draft]	Change(s) made	Reason for change
107. Application for ACH permit	<ul style="list-style-type: none"> [Amendment] Amended to provide that an application for an ACH permit must include details of the steps that will be undertaken to ensure that the proposed activity is managed to avoid or minimise the risk of harm to Aboriginal cultural heritage. [Amendment] Amended to provide that the permit application must identify Aboriginal cultural heritage that has been assessed as part of a due diligence assessment that exists in the area and the characteristics of the Aboriginal cultural heritage that the proponent is aware of. 	<ul style="list-style-type: none"> Changes in response to Aboriginal stakeholder concerns that Tier 2 activities may have significant impact on Aboriginal cultural heritage.
110. Further information in support of application	<ul style="list-style-type: none"> [Amendment] Clause amended to make it explicitly clear that the information the ACH Council may request has to be in relation to the information that must be provided as part of an application. 	<ul style="list-style-type: none"> Changes in response to industry stakeholder concerns that 'stop the clock' can occur when the ACH Council requires "further information" and that it is not clear if the requests have to be in relation to information required as part of the application and therefore the concept is open-ended.
112. Grant of ACH permit	<ul style="list-style-type: none"> [Amendment] Amended to make it clear that the ACH Council must (instead of may) issue a permit if requirements are met (including setting out how the proposed activity will be managed to avoid or minimise the risk of harm to Aboriginal cultural heritage). An additional subclause has been added to confirm that the ACH Council must refuse to grant a permit if the requirements are not met. 	<ul style="list-style-type: none"> Changes in response to industry stakeholder concerns that the way the clause was written provided discretion for the ACH Council to not issue a permit even if requirements are met.
113. Duration of ACH permit	<ul style="list-style-type: none"> [Amendment] Clause amended to increase the duration of ACH permits from 2 years to 4 years. 	<ul style="list-style-type: none"> Change in response to industry stakeholder feedback that the duration of ACH permits should be increased to 4 years, to align with the period for Programmes of Works under the Mining Act 1978.
115. ACH Council to give public notice of application for extension of ACH permit	<ul style="list-style-type: none"> [Amendment] Amendments made to make it clear that the ACH Council's notice of a permit application is to be given to Aboriginal people of the area to which the application relates. 	<ul style="list-style-type: none"> Change to increase transparency and notify Aboriginal stakeholders of permit extension applications.
New	<ul style="list-style-type: none"> [Addition] Clause added to provide that applications can be refused if not made in accordance with the Bill. 	<ul style="list-style-type: none"> Change progressed to achieve consistency with the process for seeking new permits.
110. Further information in support of application	<ul style="list-style-type: none"> [Addition] Additional provision to allow the ACH Council to request further information from the application in relation to the application for an extension of an ACH permit. 	<ul style="list-style-type: none"> Change progressed to achieve consistency with the process for seeking new permits.
118. Conditions	<ul style="list-style-type: none"> [Addition] Additional provision to provide that the ACH Council must within the prescribed period give written notice to persons to be notified about the ACH permit about the ACH Council's decision to impose, amend or revoke a condition. 	<ul style="list-style-type: none"> Change to achieve better transparency of decisions made. Additional notice of decision given to persons to be notified e.g. Aboriginal parties.
119. Amendment of permit area	<ul style="list-style-type: none"> [Addition] Addition to provide that ACH Council must give written notice of amendment of an ACH permit area to the holder of the ACH permit and person to be notified of the ACH permit. 	<ul style="list-style-type: none"> Change to achieve better transparency of decisions made. Additional notice of decision given to persons to be notified e.g. Aboriginal parties.
120. Suspension or cancellation of ACH permit	<ul style="list-style-type: none"> [Addition] Addition to provide that the ACH Council must give written notice to each of the persons to be notified about the ACH Council's decision to suspend or cancel an ACH permit. 	<ul style="list-style-type: none"> Change to achieve better transparency of decisions made. Additional notice of decision given to persons to be notified e.g. Aboriginal parties.
121. Objection to decision of ACH Council	<ul style="list-style-type: none"> [Addition] Addition to provide that a person who objects to a ACH Council's decision to refuse to extend, grant, suspend or cancel a permit, impose, amend or revoke a condition under a permit must give notice of the objection to persons to be notified of the activity. [Amendment] Clause amended to provide that an objection must be made within a prescribed timeframe. 	<ul style="list-style-type: none"> Change to achieve better transparency of decisions made. Additional notice of objection given to persons to be notified e.g. Aboriginal parties.
122. Notice of objection	<ul style="list-style-type: none"> [Addition] Additional provision to provide that the Minister must give a person who has a right to object to the Minister written notice about the decision, the notice must state a description of the decision, reasons for the decision and a statement that they have a right to object to the Minister. 	<ul style="list-style-type: none"> Change to achieve better transparency of decisions made. Additional notice of objection given to persons to be notified e.g. Aboriginal parties.

Clause [Consultation draft]	Change(s) made	Reason for change
	<ul style="list-style-type: none"> [Addition] Clause added to provide that it is an offence to breach a condition of an ACH permit. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that there was no offence provisions for non-compliance with conditions.
123. Contents of ACH management plan	<ul style="list-style-type: none"> [Amendment] Added requirement for plans to identify the characteristics of Aboriginal cultural heritage in the area. [Amendment] Added requirement that plans need to include a clear explanation of the steps, if any, that will be taken to avoid or minimise risk. [Addition] Clause added to make it a requirement for a proponent to take reasonable steps to identify, and obtain an understanding of, the characteristics of the Aboriginal cultural heritage that exists in the area. 	<ul style="list-style-type: none"> Change in response to heritage professional and Aboriginal stakeholders concerns that the Bill does not adequately cover the process for assessing and identifying Aboriginal cultural heritage. Change to clarify that plans need to include a clear explanation of the steps, if any that will be taken to avoid or minimise risk of harm to Aboriginal cultural heritage.
127. Reaching agreement about ACH management plan	<ul style="list-style-type: none"> [Amendment] Amendment to provide that parties to a plan may agree on a longer negotiation period, if required or if imposed by the ACH Council. [Amendment] Amendment to provide for a positive obligation for both proponent and Aboriginal party to use their best endeavours to reach agreement on an ACH management plan. 	<ul style="list-style-type: none"> Heritage professionals and Aboriginal stakeholder groups raised concerns that the Bill does not adequately cover the process for assessing and identifying Aboriginal cultural heritage. A key object of the Bill is Aboriginal people are responsible for determining what Aboriginal cultural heritage is important to them and should be added to the Directory or nominated as protected areas. To respond to the concerns, the Bill provides that a proponent has to have sufficient knowledge of Aboriginal cultural heritage before entering into negotiations with Aboriginal parties when developing an ACH management plan. The ACH management code will outline the steps that will need to be undertaken to understand the Aboriginal cultural heritage that may be within an area of activity. Change in response to Aboriginal and industry stakeholder feedback that there should be a provision in the Bill to allow for parties to an ACH management plan to be able to seek an extension to the negotiation timeframe. Change in response to stakeholder feedback that both parties to a plan should use their best endeavours to reach agreement on an ACH management plan.
130. Informed consent	<ul style="list-style-type: none"> [Amendment] Clause amended to ensure that the requirements for informed consent includes the requirement for proponents to provide details of all feasible options available to undertake the activities. 	<ul style="list-style-type: none"> Change in response to stakeholder feedback that suggested informed consent should make it clear that proponents are required to provide details of options available to undertake the activity.
132. Information in support of application	<ul style="list-style-type: none"> [Amendment] Clause amended to make it explicitly clear that the information the ACH Council may request has to be in relation to the information that must be provided as part of an application. 	<ul style="list-style-type: none"> Change in response to industry concerns that 'stop the clock' can occur when the ACH Council requires "further information" and that it is not clear if the requests have to be in relation to information required as part of the application and therefore the concept is open-ended.
New	<ul style="list-style-type: none"> [Addition] Clause added to provide that a standard condition of an approved ACH management plan is that a party to a plan must notify the ACH Council of new information about the existence or significance of Aboriginal cultural heritage. 	<ul style="list-style-type: none"> Change to ensure that the ACH Council is notified of new information about the existence or significance of Aboriginal cultural heritage.
137. Suspension or cancellation of ACH management plan approval	<ul style="list-style-type: none"> [Amendment] Clause amended so that only the Minister can cancel or suspend an approved ACH management plan and allows the Minister to cancel or suspend an approved ACH management plan if the proponent carries out an activity that may harm Aboriginal cultural heritage that is not authorised under the plan and if the proponent breaches a condition imposed on a plan. 	<ul style="list-style-type: none"> Change in response to industry stakeholder concerns that the ACH Council can cancel/suspend approved plans. As approved plans are those agreed to by all parties only the Minister should be able to cancel/suspend them.
New	<ul style="list-style-type: none"> [Addition] Clause added to require notice to be given of a decision that may be objected to and what information needs to be included. 	<ul style="list-style-type: none"> Change progressed to achieve consistency with requirements for notices that have to be given for SAT reviewable decisions.
140. Application for authorisation of ACH management plan	<ul style="list-style-type: none"> [Amendment] Clause amended to make clear that application for authorisation of an ACH management plan can only happen after period to reach agreement on a plan has ended and proponent has not been able to reach agreement despite using their best endeavours. 	<ul style="list-style-type: none"> Technical change to make it clear that application for authorisation of plan can only happen after period to reach agreement on an ACH management plan and proponent has not been able to reach agreement using their best endeavours.
141. Information in support of application	<ul style="list-style-type: none"> [Amendment] Clause amended to make it explicitly clear that the information the ACH Council may request has to be in relation to the information that must be provided as part of an application. 	<ul style="list-style-type: none"> Change in response to industry stakeholder concerns that 'stop the clock' can occur when the ACH Council requires "further information" and that it is not clear if the requests have to be in relation to information required as part of the application and therefore the concept is open-ended.

This table reflects changes to the latest version of the Draft Bill. Further amendments may be made prior to Bill being introduced to Parliament

Clause [Consultation draft]	Change(s) made	Reason for change
143. Assistance to reach agreement on ACH management plan	<ul style="list-style-type: none"> [Addition] Clause to provide that if ACH Council is acting as a mediator, it must not disclose or use information to which it has access to other than for specific purposes. 	<ul style="list-style-type: none"> Addition to ensure confidentiality obligations apply to the ACH Council as mediator.
147. Decision of Minister	<ul style="list-style-type: none"> [Amendment] Clause amended to require the Minister to give notice of decision to relevant parties. 	<ul style="list-style-type: none"> Change progressed to improve openness and transparency and to achieve consistency with requirements to give notice for other decisions made under the Bill. The need for improved transparency was raised in a number of submissions made on the Bill.
149. Conditions	<ul style="list-style-type: none"> [Addition] Clause added to provide that a standard condition of an authorised ACH management plan is that a party to a plan must notify the ACH Council of new information about the existence or significance of Aboriginal cultural heritage. This clause also allows for the authorisation of an ACH management plan to be subject to other conditions that the Minister considers appropriate to minimise or avoid risk of harm to Aboriginal cultural heritage, and for conditions to be amended, imposed or removed when new information is provided. 	<ul style="list-style-type: none"> Change progressed to achieve consistency with the ability to add conditions on permits when new information becomes known. The reporting of new information is a key feature of the Bill and the Government believes that power should be provided to amend, impose or remove conditions in light of new information about the existence, or the significance, of Aboriginal cultural heritage.
New	<ul style="list-style-type: none"> [Addition] Clause added to allow the Minister to cancel or suspend an approved ACH management plan if the proponent carries out an activity that may harm Aboriginal cultural heritage that is not authorised under the plan and if the proponent breaches a condition imposed on a plan. 	<ul style="list-style-type: none"> Change made in response to feedback that authorisations should be subject to cancellation or suspension if proponent breaches conditions on a plan.
New	<ul style="list-style-type: none"> [Addition] Clause added to provide that approved or authorised ACH management plan continues to have effect despite change to identify of party. 	<ul style="list-style-type: none"> A number of comments were made on what happens to approved or authorised plans when a LACHS is suspended or cancelled, as some stakeholders were concerned this may result in plans being invalid. As such, amendment was made to provide that when a LACHS is suspended/cancelled an approved or authorised ACH management plan continues to operate and proponents are required to continue to meet their obligations under the plan.
151. State significance guidelines	<ul style="list-style-type: none"> [Amendment] Amendment to provide that the Council must consider the factors set out in State significance guidelines in determining Aboriginal cultural heritage is of State significance for the purposes of the Bill. 	<ul style="list-style-type: none"> Change in response to stakeholder concerns that there is insufficient guidance as to the criteria of State significance.
Part 5 Aboriginal Cultural Heritage Directory		
164. Information and documents on ACH Directory	<ul style="list-style-type: none"> [Addition] Provides for information on intangible Aboriginal cultural heritage to be on the ACH Directory. 	<ul style="list-style-type: none"> Aboriginal stakeholders have raised concerns that the Bill does not adequately provide for intangible Aboriginal cultural heritage. To be kept alive, intangible Aboriginal cultural heritage must be relevant to its community, continuously recreated and passed on from one generation to another. The inclusion of intangible Aboriginal cultural heritage on the ACH Directory will allow Aboriginal people to record and preserve intangible Aboriginal cultural heritage.
170. Access to assess activities that may harm Aboriginal cultural heritage	<ul style="list-style-type: none"> [Amendment] Clause has been amended to make sure that culturally sensitive information about Aboriginal cultural heritage is not made available to a person unless knowledge holders for the Aboriginal cultural heritage have given explicit consent to the disclosure of the information. 	<ul style="list-style-type: none"> Change in response to stakeholder concerns regarding the disclosure of culturally sensitive information about Aboriginal cultural heritage to wider public.
New	<ul style="list-style-type: none"> [Addition] Provisions to provide include a new function for the ACH Council to consider and endorse Aboriginal cultural heritage protection agreements, which are voluntary and proactive agreements between Aboriginal groups and proponents to protect Aboriginal cultural heritage. Clauses allow for ACH protection agreements to be recorded on the ACH Directory. 	<ul style="list-style-type: none"> Change in response to stakeholder feedback that the Bill focuses on managing harm to Aboriginal cultural heritage and there are no measures to deal with the conservation of Aboriginal cultural heritage. The Bill provides for voluntary Aboriginal cultural heritage protection agreements to be entered into. These agreements will deal with the protection, maintenance or use of land containing an Aboriginal place or Aboriginal objects. They cannot allow for the harm of Aboriginal cultural heritage.
Part 10 Stop activity orders, prohibition orders and remediation orders		
173. Terms used	<ul style="list-style-type: none"> [Addition] New term added for 'new information about Aboriginal cultural heritage' to provide that it is relation to new information about the existence of Aboriginal cultural heritage or the objective characteristics of Aboriginal cultural heritage in the area that are identified in permits and plans. 	<ul style="list-style-type: none"> Change in response to industry stakeholder feedback that the threshold for new information about Aboriginal cultural heritage is not clearly defined.

Clause [consultation draft]	Change(s) made	Reason for change
New	<ul style="list-style-type: none"> [Addition] Clause added to provide that the ACH Council can recommend the making of a prohibition order without a stop activity order being in place. 	<ul style="list-style-type: none"> Change progressed to ensure that a prohibition order can be issued even without a stop activity order being in place. There may be situations where there is no imminent threat of harm to Aboriginal cultural heritage, therefore not requiring a stop activity order, but there will still be a need to issue a prohibition order as there is ongoing or longer term risk of harm to Aboriginal cultural heritage.
	[New part] Compensation for harm to Aboriginal cultural heritage	
New	<ul style="list-style-type: none"> [Addition] The Bill amends Schedule 1 of the Sentencing Act 1995 to allow penalties for harm to Aboriginal cultural heritage offences to be paid to a Special Purpose Account rather than to Consolidated Revenue to facilitate the payment of compensation to Aboriginal parties. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder feedback that the Bill should provide for compensation to be payable to relevant Aboriginal parties for harm to Aboriginal cultural heritage. In particular, stakeholders commented that penalties for harm to Aboriginal cultural heritage offences should be provided to Aboriginal stakeholders as compensation for harm to their heritage.
	Part 11 Securing compliance	
204. Aboriginal inspectors	<ul style="list-style-type: none"> [Addition] New clause to provide that the CEO is to notify the relevant LACHS when appointing an Aboriginal inspector. Where there is no LACHS for the area in which an Aboriginal inspector is to be appointed then no notification needs to occur. 	<ul style="list-style-type: none"> Change in response to stakeholder feedback that the penalty for impersonating an inspector was not strong enough considering the powers provided to inspectors. This change will be the penalties in line with those under the Criminal Code for impersonating a public officer.
208. Impersonation	<ul style="list-style-type: none"> [Amendment] The penalty for impersonating an inspector will be increased to \$12,000 and imprisonment of 12 months. 	<ul style="list-style-type: none"> Change to ensure increased transparency and accountability.
218. Seizure of thing relevant to an offence	<ul style="list-style-type: none"> [Addition] Clause added to include a requirement for inspectors to issue a receipt of seized things to the person the item was seized from. 	
	Part 12 Legal proceedings	
240. Who may commence proceedings for simple offence	<ul style="list-style-type: none"> [Amendment] Remove of 'simple' to allow the CEO and person authorised by the CEO, or DPPSSO to commence prosecution for all offences in the Bill. 	<ul style="list-style-type: none"> Change in response to Government stakeholder feedback suggesting retaining maximum flexibility as to who can commence a prosecution for all offences in the Bill and not limiting it to simple offences. This amendment allows the CEO and person authorised by the CEO, or the Director of Public Prosecutions, State Solicitor's Office to commence prosecution for all offences in the Bill.
249. Liability of partners	<ul style="list-style-type: none"> [Amendment] Provisions regarding liability of a partner when another partner is charged with an offence or has been proved to have committed an offence have been removed. 	<ul style="list-style-type: none"> Industry and Government stakeholders have raised concerns that these provisions will dis-incentivise partnership arrangements and go against principles of criminal law.
New	<ul style="list-style-type: none"> [Addition] Additional clauses to provide that if an agent contravenes the Bill, the agent's principal is taken to have contravened the Bill. 	<ul style="list-style-type: none"> Additional clauses to enforce accountability and ensure that principals can be held accountable for their agent's contravention under the Bill.
245. Liability of employer for offences by employee	<ul style="list-style-type: none"> [Amendment] Amended to remove the words 'in the course of employment', to align with s241 of the Biodiversity Conservation Act 2016. From the perspective of an employer, balance is provided by the defence available to the employer. 	<ul style="list-style-type: none"> Change to address Government and industry stakeholders concerns as to the scope of the clause.
251. Application of Division	<ul style="list-style-type: none"> [Amendment] Amendment to provide that for a matter to be taken to be proved applies only in the absence of evidence to the contrary. 	<ul style="list-style-type: none"> Change to address stakeholder feedback that the words 'proof to the contrary' were not sufficiently clear and it needed to be clarified whether the accused should prove the fact to be otherwise (having both evidentiary and legal burden of proof) or just produce some evidence or raise the matter on the evidence.
252. Certain matters taken to be proved if alleged in prosecution notice or indictment	<ul style="list-style-type: none"> [Amendment] Amendment to remove Items 2, 3, Item 5 amended to reflect the land of a specified description only. 	<ul style="list-style-type: none"> Change in response to industry stakeholders concerns regarding Items 2, 3 and 5, which they assert in effect reverses the burden of proof.
	Part 13 Review by State Administrative Tribunal	
258. Review of certain decisions	<ul style="list-style-type: none"> [Addition] Addition to provide that each affected person in relation to the reviewable decision is entitled to a copy of the application. [Amendment] Removal of SAT review of Minister's decisions to authorise or refuse to authorise, cancel or suspend the authorisation of an ACH management plan or amended ACH management plan. 	<ul style="list-style-type: none"> Change in response to stakeholder feedback that the Bill should require relevant parties to be notified when a SAT review is requested. Change made to reflect accepted principles of modern governance, public administration and the recognised responsibilities of the elected government of the day.

This table reflects changes to the first version of the Draft Bill. Further amendments may be made prior to Bill being introduced to Parliament.

Clause [Consultation draft]	Change(s) made	Reason for change
	<ul style="list-style-type: none"> [Amendment] Addition of review for affected Aboriginal people in respect of a decision to amend or cancel a prohibition order. [Amendment] Amend the Bill to include provisions that SAT may receive submissions from Aboriginal parties, and be joined as a party, in respect of an application by the proponent for a review of a prohibition order/remediation order decision. 	Changes in response to Aboriginal stakeholders concern regarding the lack of review rights for Aboriginal parties. The amendments provide that Aboriginal parties are able to seek a SAT review if a prohibition order is amended or cancelled, establishing equity in the process. SAT may also receive submissions from Aboriginal parties or be joined as a party in relation to an application for a review of the decision to give a prohibition order or remediation order.
	Part 14 Miscellaneous	
New	<ul style="list-style-type: none"> [Addition] This clause provides power to make regulations as to procedures to determine whether certain information is culturally sensitive information for the purposes of the Bill, including for the review of that decision. 	<ul style="list-style-type: none"> Amendment to address Aboriginal stakeholders concerns on how culturally sensitive information will be handled.
New	<ul style="list-style-type: none"> [Addition] New clause to provide head of power for regulations to be made to facilitate cost recovery. 	<ul style="list-style-type: none"> Change made to allow for the charging of fees for certain services provided by the ACH Council and Government.
267. Guidelines	<ul style="list-style-type: none"> [Addition] Addition of guidelines for the fee structure for the fees to be charged in connection with the provision of LACHS functions. 	<ul style="list-style-type: none"> Change in response to stakeholder feedback that guidelines should be provided for fee structures that a LACHS may charge.
268. Consultation on proposed guidelines	<ul style="list-style-type: none"> [Amendment] Clause amended so that the period in which an opportunity will be provided for people to make a submission on the draft guidelines under is increased from 28 days to 60 days. 	<ul style="list-style-type: none"> Change in response to stakeholder feedback that the period to consult on significant guidelines was too short.
272. No contracting out	<ul style="list-style-type: none"> [Amendment] Amendments to strengthen the no circumventing or contracting out clause. 	<ul style="list-style-type: none"> Change in response to stakeholder concerns that no contracting out clause didn't go far enough to limit no objection/gag clauses in agreements.
	Part 15 Repeals and transitional matters	
New	<ul style="list-style-type: none"> [Addition] Amendment to provide that all historical AHA Act section 18 consents issued under the AHA 1972 expire 10 years after transition day, unless the landowner subject of the consent has substantially commenced the purpose specified in the consent. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that historical section 18 consents do not expire and continue indefinitely.
New	<ul style="list-style-type: none"> [Addition] Clauses added to provide that persons with a transitional AHA Act section 18 consent can request an extension from the Minister for a further five years for State significant projects. 	<ul style="list-style-type: none"> Change in response to industry stakeholder feedback that transitional section 18 consents should be able to be extended for State significant projects.
New	<ul style="list-style-type: none"> [Amendment] Amendment to provide that clause that a 1972 Act section 18 consent us taken to be an authorised ACH management plan. [Addition] Clause added to provide that for the purpose of Part 10 order in respect of a transitional 1972 Act section 18 consent, the term new information about the existence or characteristics of Aboriginal cultural heritage means information about the existence or characteristics of Aboriginal cultural heritage that was not identified in the notice given to the ACMC under section 18 of the 1972 Act or to the Minister before such consent was given. 	<ul style="list-style-type: none"> Change in response to Aboriginal stakeholder concerns that section 18 consents should not be taken to be an approved ACH management plan where parties have agreed. Change in response to stakeholder concerns that transitional section 18 consents will not be subject to various protection provisions in the Bill. This change allows stop activity orders and prohibition orders to be issued where there is risk of harm to Aboriginal cultural heritage due to the carrying out of activities that are authorised under a transitional section 18 consent but where there is new information about Aboriginal cultural heritage.
New	<ul style="list-style-type: none"> [Addition] Provisions added to provide that on and after transition day, an activity being carried out in accordance with a 1972 Act approval is taken to be an activity that is authorised under Part 8 Division 4 in circumstances including to provide a defence to a charge of offence. 	<ul style="list-style-type: none"> Change in response to stakeholder concerns that historical section 18 consents will not be subject to various protection provisions in the Bill. This change allows for stop activity orders and prohibition orders to be issued where there is risk of harm to Aboriginal cultural heritage due to the carrying out of activities that are not authorised under the historical section 18 consents.
	Part 16 Amendments to Aboriginal Heritage Act	
298.	<ul style="list-style-type: none"> [Amendment] Changes will amend section 18 of the 1972 Act to provide that the owner of a section 18 consent is to report new information about the existence or significance of Aboriginal cultural heritage. 	<ul style="list-style-type: none"> This change applies to section 18 consents issued during the transitional period. Aboriginal people and heritage professionals raised concerns that section 18 consents would not be subject to various protection provisions in the Bill.

Clause [Consultation Draft]	Change(s) made	Reason for change
299.	<p>[Amendment] This subdivision sets out the changes to be made to the 1972 Act on the day section 86 comes into effect (proclamation date). Amendments to the 1972 Act on this date include:</p> <ul style="list-style-type: none"> ○ Amending the long title of the 1972 Act to provide that it is an Act to deal with certain applications. ○ Removal of definitions no longer required. ○ To limit the 1972 Act to deal with applications made under section 16; section 18 and the Aboriginal Heritage Regulations 1974. ○ Deletion of sections 6(3); 8, 9, 10, 14, 15, 17, 19, 27, 38, Part VI, 55, 59 and 62. ○ Technical amendments will be made to various sections to link the operation of the remaining clauses to the new Act. 	<ul style="list-style-type: none"> • This change provides the Aboriginal Cultural Material Committee and Minister 6 months to deal with any unfinished applications made under the 1972 Act following the proclamation of the new Act.
	Part 17: Amendments to other Acts	<p>The consultation draft did not include amendments to other Acts as the Department was still consulting other agencies.</p> <ul style="list-style-type: none"> • Amendment to the <i>Environmental Protection Act 1986</i> will provide for the removal of unnecessary duplication in the environmental impact assessment process where there are legislative overlaps between the two Acts.

- Part 13 Division 2 of the Consultation Draft Aboriginal Cultural Heritage Bill 2020 lists a number of decisions that could be reviewed by the State Administrative Tribunal. These reviewable decisions include those that

Unequal rights of review - SAT

- Jukun George was destroyed because the Minister approved it. The ACH Bill allows cultural heritage to be destroyed without the agreement of Traditional Owners if the Minister approves it. How is this any better?

No right to say no

- Bill to be withdrawn, who supports this Bill besides the Government?

Support/opposition

- Noting that industry groups, institutions investors and Aboriginal people across the State have called for this meet annual operating costs through cost recovery? What are the regional differences in these costs?

- What analysis has been done on the costs (costs plus service fees) LACHS will need to charge to be able to cost recovery at the 3, 5, 10 and 15 year mark?

- What percentage of LACHS statewide will not be able to cover their basic annual operating costs through will, at a point in the future, be able to undertake enough annual activities as LACHS to cover their operating costs? How long will this take?

- What costs have been done by Treasury on projections of the total number of LACHS in the State that LACHS for basic operating costs of:

 - o An employee to manage and receive notices
 - o A phone
 - o An email
 - o A PO Box
 - o A vehicle

- What are the estimated annual base operating costs of a Local Aboriginal Cultural Heritage Service (LACHS)? How many LACHS will there be in the State? What is the ongoing annual commitment of funding for all LACHS for basic operating costs?

Costs

Kind Regards,

Good morning Neil,

Please do not hesitate to get in touch if you or your staff require any further information.

Assistance raising some important questions during any future debate/discussion. We have detailed these below.

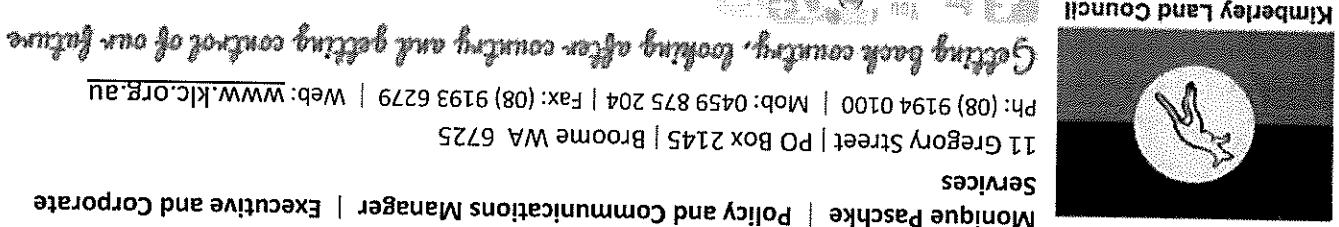
As the Aboriginal Cultural Heritage Bill continues to make its way through Parliament we would appreciate your

From:	Monique Paschke <monique.paschke@klc.org.au>
To:	Neil.Thomson
Subject:	Aboriginal Cultural Heritage Bill
Attachments:	Aboriginal-Cultural-Heritage-Bill-Changes-following-2020-Bill-Consultation.pdf
Follow Up Flag:	Follow up
Flag Status:	Flagged

Thomson.MLC, Neil



This communication and any attachments may contain confidential or legally privileged information and are intended only for the use of the individual/s to whom they are addressed. If you are not the intended recipient or authorised agent, you are hereby notified that you may not use the information and that any dissemination, distribution, copying, or disclosure to anyone is prohibited. If you have received this email in error, please contact the sender.



- The Government information on the Aboriginal Cultural Heritage Bill and the removal of the right of review to the State Administrative Tribunal states that the right of review of a Ministerial decision has been removed from s258 "to reflect accepted principles of modern governance, public administration and the responsibilities of the elected government of the day that are offered by giving Aboriginal people a right of review to the State Administrative Tribunal for decisions that affect their irreplaceable cultural heritage, and which are not remediation orders, all of which are retained in the bill introduced into Parliament". And why is it that none of these principles of modern governance are offered by a Ministerial stop work, prohibition and separate laws that are listed on the State Administrative Tribunal website as being within the jurisdiction of the Tribunal?

Why were the only decisions that were reviewable under the Consultation Draft that provided heritage. Why were the native title holders opposed to the destruction of their cultural provided for a right of review for native title holders that a bad decision by a Minister could be reversed, removed from the Aboriginal Cultural Heritage Bill 2021 introduced into Parliament? comfort for native title holders that were reviewable under the Consultation Draft that provided heritage. Why were the only decisions that were reviewable under the Consultation Draft that provided for a right of review for native title holders that a bad decision by a Minister could be reversed, removed from the Aboriginal Cultural Heritage Bill 2021 introduced into Parliament?

Cultural Heritage Management Plan over the objections of Traditional Owners, but the Consultation Draft Aboriginal Cultural Heritage Management Plan almost universally oppose the Minister's power to approve an Aboriginal Cultural Heritage Management Plan. The submissions of Aboriginal parties on the Consultation Draft Aboriginal Cultural Heritage Management Plan refuse an Aboriginal Cultural Heritage Management Plan or an Amended Aboriginal Cultural Heritage Management Plan. The submissions of Aboriginal parties on the Consultation Draft Aboriginal Cultural Heritage Management Plan over the objections of Traditional Owners, but the Consultation Draft Aboriginal Cultural Heritage Management Plan almost universally oppose the Minister's power to approve an Aboriginal Cultural Heritage Management Plan.

