



**Minister for Mental Health; Aboriginal Affairs; Industrial Relations;
Deputy Leader of the Legislative Council**

Our Ref: 62-26983

Ms Natalie Parker
Co-Chairperson, Pilbara Region
Yamatji Marlpa Aboriginal Corporation
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249 Hay Street
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Dear Ms Parker

Thank you for providing me with the further submission from the WA Alliance of Native Title Representative Bodies and Service Providers (Alliance) on the Aboriginal Cultural Heritage Bill (Bill).

The Aboriginal Cultural Heritage Bill 2021 represents transformative legislative reform that will fundamentally shift the approach to management and protection of Aboriginal cultural heritage in Western Australia, and acknowledge the strong partnership between Traditional Owners, Government and land users.

The State Government has conducted a thorough analysis of all submissions received from stakeholder groups on the Bill. Feedback on the Bill was provided by a wide range of stakeholders. Many submissions identified areas for improvement and suggested amendments to the draft Bill. Feedback has been taken into careful consideration and has informed over 100 amendments to an improved Bill, which I hope to introduce into Parliament later this year.

The current version of the Bill incorporates a number of positive and significant changes that recognise Aboriginal custodianship and control of cultural heritage in response to feedback from the Alliance and other Traditional Owners, including:

- Membership of the Aboriginal Cultural Heritage Council (ACH Council) will be majority Aboriginal.
- Inclusion of a separate definition for intangible Aboriginal cultural heritage.
- Proponents will be required to have sufficient knowledge of Aboriginal cultural heritage before entering into negotiations on Aboriginal cultural heritage management plans. This change will ensure that appropriate investigations are undertaken to understand the Aboriginal cultural heritage that may be harmed by a medium to high disturbance activity.

- An Aboriginal person acting in accordance with tradition, or a person or group acting at the request of the custodian, is not required to notify the ACH Council or return the ancestral remains/secret or sacred objects. Furthermore, the Bill now provides an exemption from reporting Aboriginal cultural heritage to any person acting at the request of an Aboriginal knowledge holder
- Provisions have been added to provide that Aboriginal people and landowners or proponents can enter into Aboriginal cultural heritage protection agreements. These agreements may provide for the recognition, protection, preservation and use of Aboriginal cultural heritage
- Exempt activities have been amended to remove all clearing of native vegetation from exempt activities and are now restricted to small scale clearings that are exempt under the *Environmental Protection Act 1986*.
- For informed consent to be given to an Aboriginal cultural heritage management plan, the proponent has to provide full disclosure of information about the activity, including all options that are available to the proponent

I would like to take this opportunity to respond to some of the concerns raised by the Alliance in its further submission dated 17 June 2021. Significantly, the Bill does provide for current and future Prescribed Bodies Corporate (PBCs) established under the *Native Title Act 1993* to be the preferred providers of Local Aboriginal Cultural Heritage Services (LACHS). If a non-Native Title party applies to become a LACHS, they must have the endorsement of relevant Native Title parties.

I understand the Alliance's concerns about the due diligence assessment process and can assure you that the Aboriginal Cultural Heritage Management Code (Code) will make it clear that the absence of Aboriginal cultural heritage on the Aboriginal Cultural Heritage Directory does not mean Aboriginal cultural heritage does not exist. The Code will specify that in any situation where a new low, medium or high disturbance activity is proposed in an area where Aboriginal cultural heritage is known to be present, or it is uncertain whether Aboriginal cultural heritage is present, a proponent will be required, at a minimum, to consult with the relevant Aboriginal party.

I appreciate concerns about key documents that will support the new legislation such as draft Regulations, the Aboriginal Cultural Heritage Management Code, Activity Categories and notification thresholds. Given the importance of these documents, I can assure you that the WA Government is committed to a co-design process and extensive consultation prior to their finalisation.

To inform and guide the co-design and consultation process, a regulatory advisory taskforce will be established. This taskforce will include Traditional Owners, industry and heritage professionals and will convene a number of regional workshops ahead of gazettal of the regulations. Further details around the regulatory advisory taskforce and associated workshops will be available in due course.

At my request the Department of the Premier and Cabinet will hold a stakeholder briefing session to provide details of the improvements made to the Bill in response to submissions received. We will write to you shortly to send a formal invitation and confirm the date, time and venue.

Thank you again for your continued participation in this important reform.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S Dawson', with a long horizontal flourish extending to the right.

Hon Stephen Dawson MLC
MINISTER FOR ABORIGINAL AFFAIRS

24 JUN 2021