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AUSTRALIAN ASSOCIATION OF CONSULTING ARCHAEOLOGISTS INC

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## MEDIA RELEASE

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### **Aboriginal Heritage Bill requires major amendments before it will prevent another Juukan**

New Aboriginal heritage legislation for Western Australia is overdue. As the State Government has said, a new Act is needed to care for, conserve and celebrate Aboriginal heritage. The State Government has released its draft Aboriginal Cultural Heritage Bill for public comment. Without major amendments, the proposed Bill will not achieve its intended outcomes. Conversely, it increases the heritage risks for Aboriginal communities, industry and other stakeholders.

AACAI welcomes the development of new legislation to replace the *Aboriginal Heritage Act 1972* and the objective to improve outcomes for Aboriginal people, industry and the entire community. We acknowledge the Government's achievement in arriving at a draft Bill for new legislation.

To truly improve outcomes, the new law must support Aboriginal rights and ownership. It must be based upon modern heritage management principles and consider all stakeholders. AACAI is deeply concerned that the draft Bill, in its current form, does not meet its stated intentions. The Bill preserves the unequal playing field between Aboriginal people and industry that contributed to the Juukan Gorge tragedy. It even increases the probability of another such event occurring.

The issues include:

**1. The ACH Council and Local ACH Services will be unsustainable if not properly resourced.**

The Aboriginal Cultural Heritage Council (ACH Council) and Local Aboriginal Cultural Heritage Services (LACHS) must be sufficiently and sustainably resourced and funded, otherwise there is a high risk that the entire process will fail. A fee-for-service model will not cover the on-going operational costs of an effective LACHS.

Many of the failings in the current system resulted from inadequate resourcing. There is **high risk** that the same problems will occur in the new system by being devolved to underfunded organisations.

**2. The Bill's objectives are not based on modern principles of heritage management.** The Bill focuses on managing harm to Aboriginal cultural heritage, not caring for and proactively conserving it. The Bill must support actions that maintain and enhance the cultural significance of Aboriginal cultural heritage. Aboriginal heritage deserves a best practice approach.

**3. The fundamental steps of identifying and assessing Aboriginal cultural heritage are left out.** The draft Bill is completely missing the first and fundamental steps in the heritage management process – identifying heritage and understanding its significance. There is no trigger for the critical work of identifying, recording and evaluating Aboriginal cultural heritage, nor any regulation of the standards of this work. Omitting these essential elements will greatly increase confusion, delays and costs.

4. **Review provisions are unequal.** Although the Bill has given new rights of review to Traditional Owners and Aboriginal people, these rights are limited to reviews of decisions relating to ACH Management Plans by the State Administrative Tribunal (SAT). In comparison, proponents have a very wide range of rights of review for all decisions made by the ACH Council and the Minister relating to ACH Permits and ACH Management Plans. This lack of equity must be addressed.
5. **Definitions are vague or missing.** Key definitions within the Bill are vague, ambiguous, inconsistently applied, or undefined. Problematic terms in the AHA have been dragged into the new Bill. Lack of definition creates uncertainty in the application and interpretation of the Bill.
6. **Decision-making must be balanced.** The Bill provides little decision-making power to local Aboriginal people. Proponents, the ACH Council, and the Minister will still make the principle decisions under the Bill. Local ACH Services are only entitled to receive notices, to be consulted, and to accept ACH Management Plans. Where they don't accept an ACH Management plan, the matter is resolved above them. The Minister still retains the power to override ACH Council and LACHS recommendations, to refuse to recommend a Protected Area, and to make decisions about heritage in terms of other interests.

AACAI have already expressed concern about the short time frame provided for Stage 3 consultation on the draft Bill. Rushing a flawed Bill through without amendments will result in a substandard and unworkable result for everyone. Aboriginal heritage in Western Australia is consistently subjected to time and cost pressures that frequently result in its impact and destruction. Unless there is clear and fair legislation that provides certainty for all, tragedies such as Juukan Gorge will continue to occur for decades to come.

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#### **About us**

The Australian Association of Consulting Archaeologists (AACAI) is a national representative body for professionals working in all fields of contract and public archaeology. AACAI promotes professional standards and strong ethics in archaeological and heritage practice, advocates for heritage protection, and aims to bring recognition of, and respect to, our profession. AACAI is the peak professional body for archaeological consultants in Western Australia. Its members hold a wealth of knowledge and have a vast array of experience in heritage matters.

AACAI advocates for legislative change that is balanced and reasonable, acknowledges Aboriginal rights and ownership, considers all stakeholder parties, is based upon modern heritage management principles, and ensures that Aboriginal cultural heritage is recognised, conserved and celebrated.