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ANTHROPOLOGICAL SOCIETY OF WESTERN AUSTRALIA
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The Hon Roger Cook, BA GradDipBus (PR) MBA MLA
Premier of Western Australia
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The Hon Dr Tony Buti BPE DipEd MIR LLB DPhil MLA
Minister for Aboriginal Affairs
Minister.Buti@dpc.wa.gov.au

7th August 2023

Dear Premier and Minister

We write to you as representatives of three organisations whose members work with Aboriginal Peoples on cultural heritage matters across Western Australia: the WA Chapter of the Australian Association of Consulting Archaeologists Inc. (AACAI WA), the Anthropological Society of Western Australia (ASWA), and the Australian Archaeological Association Inc. (AAA). Our members have a wide array of expertise in cultural heritage management, anthropology, and archaeology, based on decades of working with First Peoples and landholders on the ground.

It has been widely reported that the Western Australian Government is considering repealing the Aboriginal Cultural Heritage Act 2021 (ACHA 2021), which has been in operation for just over one month. A public outcry against the ACHA 2021 has extended beyond WA to Federal Parliament and has been unjustly confounded with the proposed Voice to Parliament and Government.

The recent concern about the new WA legislation has not been about Aboriginal rights, which was the focus of earlier criticisms of the ACHA 2021, but the rights of landholders, who perceived new impositions and loss of autonomy over freehold land. Under the old legislation, new development of any land in WA already required landholders to assess the risk of impacting Aboriginal cultural heritage. However, the processes under the new Act are more complex and appear to be impractical.

If the ACHA 2021 is repealed, WA would return to the same Aboriginal Heritage Act 1972 (AHA 1972) that has enabled destruction of many important cultural heritage sites over the

last 50 years, including Juukan Gorge in 2020. The ACHA 2021 addresses some of the deficiencies of the AHA 1972, requiring developers to engage with Aboriginal people, and emphasising agreement-making. However, besides introducing vastly more complex legislation, it provides no right of appeal for Ministerial decisions. Under both Acts (the old and the new), the Minister of the day can still approve an impact to a heritage site, if necessary, over the wishes of Aboriginal custodians for that site. The lack of appeal rights leads to one-sided decision-making. Fewer than 1% of the decisions made under s18 of the AHA 1972 involved the Minister rejecting a development proposal on a heritage site.

The AAA, AACAI WA and ASWA agree with Aboriginal leaders and representative organisations in WA that there is now an opportunity to fix these fundamental inequalities. It may be possible to amend the AHA 1972 to include rights of appeal for all parties, ensure transparency in reporting and decision-making, and require developers to work meaningfully with Aboriginal people in identifying and managing Aboriginal cultural heritage. The WA Government can implement other practical and effective measures in best practice cultural heritage management. More resourcing into departmental expertise and oversight would support landholders and Aboriginal people. Greater use could be made of existing powers in the AHA 1972, such as the responsibilities for identification and protection of intangible and tangible heritage and the provisions for delegating Ministerial powers to Aboriginal organisations.

However, some aspects of the AHA 1972 may prove to be impossible to fix. Should that be the case, we would also support discussion of any alternative new legislation by the WA Government, Aboriginal representatives, and other stakeholders.

Our members and our Indigenous partners and colleagues gave detailed feedback over the 5 years of development of the ACHA 2021. Although many of our concerns about the ACHA 2021 were not taken on board at the time, we hope that they will be considered more seriously now. Whether the AHA 1972 is to be replaced or amended, we suggest more active engagement with relevant expert bodies will assist you in improving the legislation. ASWA, AACAI WA, and AAA look forward to working with WA's First Peoples, the WA Government, and other stakeholders in a renewed spirit of cooperation to achieve effective protection of Aboriginal cultural heritage.

Yours sincerely,

Dr Joe Dortch, President,
Australian Archaeological
Association

Jo Thomson, Chair,
Australian Association of
Consulting
Archaeologists Inc. (WA
Chapter)

Dirima Cuthbert,
President,
Anthropological Society
of Western Australia

cc:

Mr Shane Love BCom MLA. Leader of the WA Nationals; Leader of the Opposition.

Ms Elizabeth Mettam BA MPA MLA. Leader of the WA Liberal Party