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20<sup>th</sup> October 2023

Dear Premier and Minister

We write to you again on behalf of the WA Chapter of the Australian Association of Consulting Archaeologists Inc. (AACAI WA) and the Australian Archaeological Association Inc. (AAA). The AACAI and AAA together represent the majority of archaeologists working in Western Australia.

The Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 has now been through its third reading in the Legislative Council. Meanwhile, draft Regulations have been circulated. We are deeply concerned with the Aboriginal Heritage (Fees) Regulations 2023 (Consultation Draft). Section 4(1) of these draft Regulations states that applications for section 16 permits will incur fees of \$250 and \$5096 per site unless the applicants are exempt. Commercial or government proponents, who comprise the largest group of applicants for section 16 permits, are not exempt. The identical fee structure is proposed for section 18 notices which enable the Minister to give consent to proponents to impact or destroy heritage sites.

Making the detailed investigation (such as archaeological excavation) as costly as destroying the site (in terms of government fees) will incentivise proponents to proceed straight to seeking approval for impact without investigating the site first. To meet typical survey recommendations for an investigation, proponents could simply propose an archaeological salvage program after the approval decision. However, charging equivalent fees for investigation and destruction undermines the fundamental principle of cultural heritage management: *first assess, then decide*.

This fee structure is possibly the fastest way to another Juukan Gorge scenario that we can imagine. It would discourage even the limited investigation under section 16 that was employed at that site. Furthermore, if post-approval salvage is omitted (as salvage is not a statutory requirement), no-one will even know if the site is a Juukan Gorge-type site before it is destroyed. The social license and direct financial costs of embarking on a process of site

destruction before attempting to understand heritage values will far exceed any short-term benefit of cost recovery that may be driving the proposed fee structure.

The Minister's proposed powers to suspend or revoke an approval on the receipt of new information, while laudable as an emergency provision, are not a practical means of enforcing the principle of 'assess first', because the financial investment committed to a development project at the point that any new information is revealed through archaeological salvage will weigh heavily on the Ministers' decision.

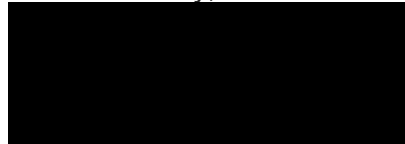
We also note that research organisations such as universities might also be considered commercial proponents but will be unable to conduct research if grant moneys are to be expended on per-site fees. This would lead to a diminishment of the whole community's understanding and appreciation of Aboriginal cultural heritage, not to mention impacting important collaborations with Aboriginal groups. We understand that our colleague Professor Peter Veth has written to the Director-General of DPLH on this matter.

The proposed section 16 fee structure will do great damage to the understanding and protection of Aboriginal heritage in Western Australia and must be replaced with a process that encourages investigation and evaluation before making decisions about impacts.

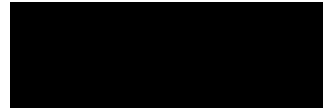
We call for the removal of section 16 permit fees from the Aboriginal Heritage (Fees) Regulations 2023, or at the very least, the substantial reduction of those fees so that they are not comparable with section 18 fees.

We urge you to follow our advice on this matter, and further, that you consider our earlier offer to provide professional representation within the Aboriginal Heritage Implementation Group since this could help avoid other, future errors of an equally serious nature.

Yours sincerely,



Dr Joe Dortch, President,  
Australian Archaeological Association



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