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From: [REDACTED]
Sent: Monday, 5 August 2019 12:05 PM
To: CHA_Review
Cc: [REDACTED]
Subject: Cultural Heritage Acts Review Submission - Indjalandji-Dhidhanu Aboriginal Corporation RNTBC

SUBMISSION BY INDJALANDJI-DHIDHANU ABORIGINAL CORPORATION RNTBC (IDAC):

1. Ownership and defining cultural heritage

- a) Consider developing a 'thematic list' to assist interpretation and mutual understanding between land users, practitioners and Aboriginal parties – addressing topics such as, What is our understanding and definition of 20th century Aboriginal heritage? What should we be recording and managing as historic or contemporary history?
- b) Clarify that the dictionary definition of 'area' is inclusive of natural vegetation and/or physical environment and subterranean environment.
- c) Clarify that the Act protects the values of significant cultural vegetation, i.e., resource use areas/plants and their surrounding area, recognising the symbiotic relationship of an area, object and environment.
- d) Extend the definitions to include significant cultural landscapes and cultural routes (including sea and subterranean-scapes) with more information about the spatial context of 'travelling dreamings, trade and travel routes'. (Adopt the Australian ICOMOS definitions)
- e) Extend section 12 to clarify that significant Aboriginal areas also include Aboriginal story places and Dreamings.
- f) Clarify and extend references in the Act and Guidelines to intangible cultural heritage by adopting the UNESCO definitions.

2. Identifying Aboriginal and Torres Strait Islander parties

- a) While we recognise there are nuances and conflicts around 'last claim standing' and no native title party areas, overall, IDAC considers the A&TSI Party identification for an area based on the hierarchy set up in the Native Title Act to be appropriate. Where the above-mentioned problematic areas exist, IDAC believes that the Minister/Department should take the lead to consult, resolve, negotiate and reach agreement between Individuals and parties for these areas. This would in turn deliver certainty for proponents/land users. Land users are not equipped to navigate and consult within the Aboriginal politics space – it is setting people up to fail or fight.
- b) IDAC would not support the development of an overarching Body or Council, where Indjalandji-Dhidhanu Traditional Owner rights and interests are supplanted as the primary guardians, knowledge holders and decision-makers for their country.

- c) In 2018, Indjalandji-Dhidhanu native title holders resolved to consolidate and streamline the management and delivery of the Indjalandji-Dhidhanu Peoples' native title, cultural heritage and land management services and functions, within a new integrated "Country and Culture Unit" within IDAC. In operationalising this directive, the process of registering a new, and deregistering an existing, cultural heritage body was well-supported by the practical and clear approach afforded by the CHU in their administration of the Act.

3. Land user obligations

- a) Self-assessment based on the Duty of Care Guidelines is problematic and creates a space of conflict with the onus often being on the Aboriginal party to educate, persuade and argue the interpretation and application of the Duty of Care Guidelines. In IDACs experience land users frequently:
- misrepresent the nature of their activities and the nature and extent of past uses in the area,
 - self-assess activities as Category 1 - 4 in an attempt to avoid having to reach agreement about managing cultural heritage,
 - fail to consider that an area may have residual cultural heritage,
 - fail to provide adequate scope of work details, location details and/or supporting evidence of past use,
 - fail to articulate, for a shared understanding, the nature of surface disturbance likely to be caused by mobile plant and equipment used in carrying out an activity.
- b) Duty of Care Categories could be strengthened by including more examples of activities as well as new and emergent activities and techniques particularly within the geoscience discipline.
- c) Develop a voluntary agreement template - that doesn't require lawyers to draft and interpret - that can be readily populated and operationalised by a Land user and/or Aboriginal party.
- d) Lower the development threshold for a part 7 CHMP – SPA to trigger a referral notification or alert under the ACHA for material change of use and high impact development activities.
- e) CHMP compliance can be a daily issue for Aboriginal parties to manage particularly on large scale projects. To this end, Part 7 approved CHMPs should include standardised annexure flow charts so that the process for managing incidents and/or breaches is clearly set out for all parties.

4. Compliance mechanisms

- a) The Department and Aboriginal parties need to be adequately supported and empowered to carry out on-ground compliance inspections and audits. The government should therefore increase the number of authorised officers or people in regional areas.
- b) Self-assessments made via searches of the cultural heritage database need to be reviewed and investigated (by DATSIP) to ensure compliance with the cultural heritage duty of care. Perhaps there is a need for some mechanism that cross-checks information declared by applicants on applications for SPA and EPA licences, permits and authorities, with information declared on CH database searches.
- c) There is a need for better resourcing of the CHU to respond to compliance issues and grievances, and provide ACHA users with technical and administrative education, capacity building and tools.

5. Recording cultural heritage

- d) There has been a progressive move away from the Government's centralised database and register with many Aboriginal parties having invested in and maintaining their own cultural heritage databases. For this reason:
- Land users need to be fully aware that DATSIP's database and register is not exhaustive and this could be better reflected in the wording of s.23 (2)
 - For example, s 23(2) could include reference to consideration of whether a person has requested information from Aboriginal parties about whether they hold information (e.g., local database information) about the area including the location and extent of known Aboriginal cultural heritage in the area.
- e) Notices/alerts should be sent to the CH Body / Aboriginal Party for an area of search requests of the DATSIP database for their area.

6. Additional thoughts and comments

- a) Annual administration payments/grants should be awarded to CH Bodies / Parties that perform their functions and meet reportable deliverables, to help support Parties meet the burden of overheads, administration costs and/or carry out compliance inspections.

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