



Not relevant



603 REVIEW OF THE ABORIGINAL HERITAGE ACT 1988 (Jay Weatherill) -  
NOTED

Not relevant



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## **CABINET NOTE**

**TO: THE PREMIER FOR CABINET TO NOTE**

**RE: REVIEW OF THE ABORIGINAL HERITAGE ACT 1988**

### **1. PROPOSAL**

- 1.1 For Cabinet to note my intention to announce a review of the Aboriginal Heritage Act 1988.

### **2. BACKGROUND**

- 2.1 The Act was proclaimed in 1988 and there have been many developments which effect Aboriginal heritage administration and legislation. The most important have been the introduction of the *Native Title Act 1993* and the use of Indigenous Land Use Agreements (ILUAs). All ILUAs negotiated to date, across all sectors, contain extensive heritage protocols.
- 2.2 The increased use of the Aboriginal Heritage Act 1988 over the past 4 years has demonstrated its limitations. In addition, the Act is honoured more in the breach than the observance. Some of the reasons are:
- The absence of any context for the Act within the social, economic and environmental objectives of the State;
  - The lack of recognition for negotiated agreements between Aboriginal parties and development proponents;
  - The time consuming, cumbersome and costly requirements of section 12 and 23 processes under the Act;
  - The practical difficulties of identifying people or groups with broad Aboriginal community endorsement and authority to speak on heritage matters
  - The limited opportunities and resources available to Aboriginal people to exercise any practical responsibility for preserving and protecting heritage;
  - The lack of appropriate linkages between the Act and other relevant legislation and administrative provisions.
- 2.3 The Act has been the subject of two comprehensive review processes since its inception, first in 1997/1998 and later in 2004/2005.
- 2.4 In 1997, the Review, including broad community consultation, proceeded to the stage of an exposure draft of the new legislation, feedback had been received and further drafting instructions had been drawn up.

- 2.5 In 2004/2005, the Aboriginal Heritage Task Force conducted a comprehensive review of legislation in other jurisdictions and canvassed Aboriginal community views. A discussion paper proposed wide-ranging amendments to the Act and subsequently a draft amendment bill was prepared
- 2.5 Neither review resulted in amendment of the Act.
- 2.6 In addition to the two review processes, in 2002, the Statewide ILUA Negotiations parties published a Discussion Paper proposing new legislation.

### **3. DISCUSSION**

- 3.1.1 Both Victoria (2006) and Queensland (2003) have introduced new Aboriginal heritage legislation and Tasmania is currently involved in a review.
- 3.1.2 Based on previous reviews and the experiences of other jurisdictions, it is expected that new legislation that provides robust structures and real decision-making power for Aboriginal people would be well supported. In addition, developers would welcome a system that was less time consuming and provided greater certainty than does the current system.
- 3.2 New legislation could include:
- New objectives, to effect a practical balance between the broader community need to protect and manage Aboriginal heritage and for economic development, and community prosperity;
  - Recognition of the ownership by Aboriginal people of their cultural heritage;
  - A 'duty of care' to ensure that activities do not damage Aboriginal heritage,
  - A scheme for the recognition of local Aboriginal Heritage/Native Title groups;
  - A framework to support and recognise agreements between Aboriginal groups and developers, with a process for review and arbitration that ends with the Minister;
  - Integration of the frameworks and processes into relevant development and land use and management legislation; and
  - Financial arrangements for a Heritage Fund that provide a sustainable base income to groups for the preservation and management of Aboriginal heritage.

- 3.3 Although some past debates about Aboriginal Heritage matters have been divisive there appears to be consensus that there is currently a need to change the Act. South Australia's highly successful ILUA process has contributed to the creation of much good will between Aboriginal and Business interests. Initial discussions with both business and Aboriginal groups indicate that there is a substantial amount of common ground with regards to proposed reform. Current circumstances provide the productive environment for some time, to consider changes to the Act.
- 3.4 The scope and management of the consultation process will be critical. Government is vulnerable to the criticism that consultation processes are insufficient and that key stakeholders have not been sufficiently heard.

**Resources required for implementation:**

- 3.5 The review will be funded from within DPC-AARD. There will be call on the budget either this year or the subsequent year to fund the review.

**4. RECOMMENDATION**

- 4.1 That Cabinet notes my intention to announce a review of the Aboriginal Heritage Act 1988.



Hon Jay Weatherill MP

**MINISTER FOR ABORIGINAL AFFAIRS AND RECONCILIATION**

115/2007

