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Ms Catherine Skippington  
First Assistant Secretary  
Department of the Environment, Water, Heritage and the Arts  
GPO Box 787 Canberra ACT 2601

Dear Ms Skippington,

**Submission relating to Indigenous Heritage Law Reform Discussion Paper**

Thank you for sending me the Discussion Paper on *Possible reforms to the legislative arrangements for protecting traditional areas and objects*. These were delayed in reaching me. However, I have now had the opportunity of reading the paper and discussing the proposals with John Avery of your Department.

When I reviewed the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984 in 1996, my view was that while the Commonwealth should have ultimate responsibility for the protection of indigenous heritage, effective protection should not depend solely on the Commonwealth intervening as a back-stop. Ideally, primary protection should come through effective State and Territory laws and procedures which integrate heritage issues into the planning process at State and Territory level. This would make protection more effective for all parties.

One of the main goals of the report was that the Commonwealth should “encourage more effective State and Territory laws, by developing minimum standards and by introducing accreditation and recognition procedures.”

The proposals for discussion meet this basic principle. The requirements for effective State and Territory protection regimes outlined in the paper should provide benefits both for indigenous communities and for those seeking planning approvals. They provide a consultation and assessment process which should satisfy the needs of indigenous people for protection of sites and of secret information, and should also give developers clear guidance how to proceed. They would give a greater measure of certainty to all parties than is possible at present and would almost certainly result in reduced cost of seeking development approvals of all kinds. The emphasis on reaching agreements is welcome.

One of the key proposals is that the Commonwealth should not exercise power to intervene where the State or Territory operates under “best practice” standards which have been accredited for that State/Territory. This would not preclude action to include places in the National Heritage List. This proposal would act as an incentive to States and Territories to bring their laws and practices into compliance with the required standards.

I have had some concern about the proposal that the Commonwealth in effect vacate the field where a State or Territory is accredited, particularly as the 1984 Act was designed to enable direct intervention by the Commonwealth to protect significant sites and objects which were at risk. I concede, however, that the 1984 Act has not succeeded in its aims. It has been overridden by legislation in one important instance, and has led to the prolongation of procedures and to uncertainty in others. It does not appear to have had any significant influence on the development of State and Territory regimes.

If the goal is to get the best possible regime operating at State and Territory level, then the proposal for accreditation and Commonwealth withdrawal does have

merit. It appears more likely than any other means to encourage States and Territories to adopt effective regimes which meet the standards outlined in the discussion paper. On that basis, I believe it is worth proceeding with the proposal, provided that there are proper safeguards. These would include:

an independent assessment of State and Territory regimes to ensure that the Minister has appropriate advice on whether or not to grant accreditation;

regular oversight of State and Territory systems to ensure that they implement their regimes in accordance with best practice; and

revocation of accreditation without delay where standards are not being met.

I note that the proposals envisage a review of the effectiveness of the legislation after 7 years, and then after every 10 years. This may not be sufficient, bearing in mind that the Commonwealth has a responsibility to be assured of the effectiveness of the State or Territory regime as a condition of accreditation and its own withdrawal from the exercise of power. Where a State or Territory adopts a new regime in order to gain accreditation, it is important to have oversight of the implementation of its scheme in the early years. Allocation of resources for this purpose will be needed to ensure that the Commonwealth is not seen to abdicate responsibility for indigenous heritage.

The improved procedures for dealing with applications for Commonwealth protection where a State or Territory has not gained accreditation are welcome, particularly those which would require the Department to call a conference of interested parties with a view to reaching agreement, and those relating to interim protection.

I have not commented on all the details of the proposals as I do not have up to date information about the views of indigenous people about the protection of their

significant sites and objects, nor about the current experience of developers under the existing laws and procedures.

Taken as a whole, I welcome the proposals, and believe that if implemented they would be a vast improvement on the current situation, and would give appropriate levels of protection and certainty to all those involved.

Yours sincerely,

Elizabeth Evatt

