



**THE LAW SOCIETY  
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

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25 September 2009

C43, 64.20  
JG;rp

The Honourable Jay Weatherill MP  
Minister for Aboriginal Affairs and Reconciliation  
DX 138  
ADELAIDE SA

Dear Minister

**Review of the *Aboriginal Heritage Act 1988***

I refer to your letter of 12 December 2008, addressed to the Executive Director, and thank you for providing the Society with the opportunity to participate in the Review of the *Aboriginal Heritage Act 1988*.

The Scoping paper for the Review been considered by the Society's Aboriginal Issues Committee, which has prepared the attached submission on behalf of the Society.

The Society would be pleased to contribute further when an *Aboriginal Heritage Bill* has been drafted.

Yours sincerely

John Goldberg  
**PRESIDENT**



# THE LAW SOCIETY OF SOUTH AUSTRALIA

## SUBMISSION ON THE REVIEW OF THE ABORIGINAL HERITAGE ACT 1998

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1. The Law Society of South Australia welcomes the opportunity to make a submission to this Review and notes that a detailed and comprehensive scoping paper has been prepared by the Department of Premier & Cabinet on the proposals to substantially amend the *Aboriginal Heritage Act 1988*.
2. The *South Australian Aboriginal Heritage Act 1988* was state of the art legislation at the time of its enactment. In 2009 it badly needs reform.
3. Under the *Aboriginal Heritage Act 1988*, a State Aboriginal Heritage Committee (SAHC) was set up, and the Law Society is aware that that body has combined with the Aboriginal Congress of South Australia Inc (Aboriginal Congress) to prepare a discussion paper for the purposes of the Review. The Law Society has received and considered that discussion paper and notes the considerable efforts that have been made by those two bodies to combine their interests in a recommendation that there be created a state-wide statutory authority with responsibility for site evaluation and for the administration of the legislation.
4. The Law Society understands that the joint SAHC/Aboriginal Congress Committee has met with the South Australian Native Title Resolution (SANTR) Committee, the committee with representatives from various peak bodies, including the South Australian Farmers Federation (SAFF), the Local Government Association (LGA), South Australian Chamber of Mines and Energy (SACOME), South Australian Fishing Industry Council (SAFIC) and South Australian Native Title Services and that the intention now is to produce a joint submission.
5. Accordingly, the Law Society's understanding is that the current strategy is for there to be a united approach as far as possible between the Aboriginal interests reflected in SAHC,

Aboriginal Congress and SANTS and those of the other peak bodies, the intention being that none will make contrary submissions (to the intended joint submission), although each may wish to include some qualifications.

6. There are members of the Law Society who act for each of these various peak bodies and also for many of their respective members. For this reason, the Law Society does not feel that it is appropriate to advance a particular policy position at this stage in relation to the scope and details of any new Aboriginal heritage legislation, but it welcomes and supports the expected united approach.
7. Furthermore, the Law Society recognises that there is a need for greater clarity in Aboriginal heritage legislation. It also recognises that any new legislation needs to take proper account of the very significant change which has taken place since the 1988 Act, being the development of native title law in Australia, and that any new Aboriginal heritage legislation must seek to overcome the tensions which exist between the current Act and the effect of native title law (including Part 9B of the Mining Act 1971).
8. The Law Society would like to contribute further when an *Aboriginal Heritage Bill* has been drafted.