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Aboriginal Heritage Act Review  
Department of Planning, Lands and Heritage  
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## ABORIGINAL CULTURAL HERITAGE BILL 2020

On behalf of the Australian Council of Superannuation Investors (ACSI), thank you for the opportunity to make a submission in relation to the Aboriginal Cultural Heritage Bill 2020 (the Bill).

Established in 2001, ACSI exists to provide a strong, collective voice on environmental, social and governance (ESG) investment issues on behalf of our members, who include 37 Australian and international asset owners and institutional investors. Collectively, our members own, on average, 11 per cent of every ASX200 company, on behalf of millions of beneficiaries. Our members recognise that ESG risks and opportunities have a material impact on investment outcomes.

Like many in the community, investors have been shocked and saddened by the destruction of significant sites in the Juukan Gorge in Western Australia, and the irreversible loss of this cultural heritage.

We also recognise the devastating cultural impact that this event has had on the traditional owners of the land, the Puutu Kunti Kurrama and Pinikura people.

The destruction of these sites represents a clear example of a financially material ESG issue that damages a company. This includes the impact on the company's reputation, and its ability to effectively engage with stakeholders important to its operations. Financial impacts arise, not only from the time and resources allocated to respond to issues but most significantly, the reputation damage that will flow throughout the company's (and industry's) business - ultimately making it more difficult for operations to be conducted effectively and for partnerships with First Nations groups and communities around the globe. Ultimately investors bear these costs.

We are not representatives of Traditional Owners, or experts on the legislative framework. However, as a representative of large institutional investors, we support improvements being made to the Western Australian regulatory regime to improve engagement between companies and First Nations groups. While long-term investors expect companies to go beyond mere compliance with minimum standards, the legislative framework provides a critical baseline.

The Bill provides significant improvements to what many have identified as outdated legislative settings.

However, we think the Bill should be reviewed to ensure that the principles of free prior informed consent (FPIC) and self-determination are appropriately reflected. To the extent that they have not already been included, we recommend a review of the Bill to ensure standards have been adopted that accord with established international frameworks including the UN Guiding Principles on Business and Human Rights, and the UN Declaration on the Rights of Indigenous People (UNDRIP).

From a policy perspective, it is reasonable to expect that universally accepted international principles, such as that set out in UNDRIP are appropriately reflected in Australian legislation protecting Indigenous cultural heritage. The recently released Best Practice Standards in Indigenous Cultural Heritage Management and Legislation developed by the Heritage Chairs and Officials of Australia and New Zealand provides useful guidance on how the international principles can be effectively addressed in domestic legislation.

In considering the integration of international standards, we make the following submission on matters the Government should address, whether as part of the content of the proposed Bill or otherwise:

- **Independence:** While there is a need for a procedure in the case of a deadlock in discussions, we query whether the Ministerial authorisation provisions (such as those in set out in sections 121, 139 and 147 of the Bill) are consistent with the concept of free, prior and informed consent. An independent arbiter with the relevant expertise may be a viable alternative.
- **Improving the assessment framework:** A risk-based approach can be efficient. We query whether the Bill's focus on the level of ground disturbance is the most appropriate measure of risk, rather than assessing risk by reference to the impact on the cultural heritage that the Bill seeks to protect. In this respect, the provision for proponents to self-assess their own activities could also operate to exacerbate issues, and potentially undermine the aims of the Bill.
- **Appropriate resourcing:** The provision for Local Aboriginal Cultural Heritage Services (LACHS) in the Bill appears to recognise the need for Traditional Owners to have an organisation that can provide consent. However, it is unclear what provision will be made for LACHS to be appropriately resourced to ensure that they can carry out their functions as contemplated by the Bill. We note that the many improvements contained in the Bill may be undermined if LACHS are not appropriately resourced to carry out important work to protect cultural heritage and we recommend further consultation with relevant Traditional Owner groups to ensure appropriate resourcing.
- **Integrate processes:** Efficiency and certainty would be promoted by the integration of cultural heritage protection in the planning phase of a project.
- **Guidance and standards:** Government should consult with Traditional Owners and Aboriginal people to inform standards and guidance, for example on appropriate management plans, as practices (such as the use of confidentiality provisions) appear to have developed in the market that are inconsistent with the principles of FPIC.

I trust our comments are of assistance. Please contact me or Kate Griffiths, ACSI's Executive Manager – Public Policy and Advocacy, should you require any further information on ACSI's position.



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