# Template FOR INPUT INTO THE

AUSTRALIAN HERITAGE STRATEGY

|  |  |
| --- | --- |
| Overview  This template should be used to provide comments on the content of the Australian Heritage Strategy. | |
| Contact Details | |
| Name of Organisation: | Kimberley Land Council |
| Name of Author: | Julia Taylor |
| Date: | 12 June 2014 |
|  | |
| Questions  Please add your comments for some or all of the questions provided with the Strategy’s three high level themes below. If you have other information you wish to provide, please add this in the “Other comments” field. | |
| 1. Improve National Leadership   What are the most important things the Australian Government should be doing to offer leadership in heritage?  How can the Australian Government provide guidance and support for our national heritage—while still empowering other government, industry and community members to take responsibility and get involved?  What priority areas are important to you, your organisation or group?  What practical actions would you suggest to improve national heritage leadership? | |
| **What are the most important things the Australian Government should be doing to offer leadership in heritage?**  The KLC submits that the most important form of leadership from the Australian Government occurs through having appropriate and effective regulatory measures for the identification, management and protection of heritage. Leadership through other means (administration, policy or programs) will not be effective if the underlying regulatory regime is not adequate, appropriate or effective.  At present, effective leadership in relation to protection of Indigenous cultural heritage is lacking because the primary mechanism of the Australia Government for protection of Indigenous cultural heritage, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (**ATSIPHA**), is an ‘act of last resort’. This means that the ATSIPHA is activated only when the relevant state regime is considered to be inadequate to protect Indigenous cultural heritage.  The ATSIPHA was originally enacted as an interim measure to protect Indigenous cultural heritage. Its adoption as the primary and permanent legislative mechanism of the Australian government to protect Indigenous cultural heritage has resulted in a flawed system, as has been recognised in a number of reviews of the Act, in particular the *Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 Report by Hon Elizabeth Evatt AC 21 June 1996* and the *Commonwealth Indigenous Heritage Law Reform Discussion Paper: possible reforms to the legislative arrangements for protecting areas and objects* (2009). The KLC made a detailed submission in response to the 2009 discussion paper, which included the following comment identifying some of the most fundamental failings of the ATSIPHA.  ***ATSIHP Act – current operation and effect***  *18 The ATSIHP Act is an ineffective protective mechanism of last resort. This claim is supported by statistics on the operation of the Act, with almost 95% of valid applications rejected since 1984 and almost half of the long term declarations made being overturned by the Federal Court. The majority of applications fail because the places or objects the subject of the application do not meet the statutory definition of a “significant Aboriginal place” or “significant Aboriginal object” on the grounds that they are not of “particular significance” in accordance with Aboriginal tradition.*  *19 That an application for protection can only succeed if a non-Indigenous decision maker determines whether or not a threatened place or object is of “particular significance” to the relevant Traditional Owners, notwithstanding the fact that it is the Traditional Owners themselves who are best, if not singularly, placed to make that decision, is one of the most damning aspects of the ATSIHP Act.*  *20 Because the ATSIHP Act is an “act of last resort” it is of limited practical assistance to Indigenous people. It assumes a subordinate role to State and Territory regimes, thereby significantly confining its scope of operation both in terms of constitutional arrangements and political relations between the States and the Commonwealth. It also depends on positive action at a political level to protect places or objects of significance to Indigenous people, often in opposition to development pressures. Furthermore, if the persons concerned with the protection of a place or object are not aware of an action which might threaten that object or place, for example through the notification procedures under the NTA or the referral mechanism under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (“****EPBC Act”)****, then they cannot be in a position to determine whether or not an application for a declaration under the ATSIHP Act is necessary or appropriate*  The KLC repeats this submission in response to the Draft Heritage Strategy and submits that effective leadership requires regulatory reform as a first step.  **What priority areas are important to you, your organisation or group? What practical actions would you suggest to improve national heritage leadership?**  A priority for the KLC is effective management of the West Kimberley National Heritage Area. At present, the primary impediments to effective management of areas on the National Heritage List are:   * the absence of any regulatory power to manage National Heritage Places (except in relation to Commonwealth areas); and * the lack of funding for management.   The KLC submits that the Australian Government should consider, as a matter of priority, introducing measures into the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) to provide for, and require, management of places on the National Heritage List. The Australian Government should also make a commitment to co-funding management of National Heritage Places. | |
| 1. Pursue Innovative Partnerships   What partnerships are most needed within the heritage sector?  What heritage roles and responsibilities should be led by governments, peak heritage organisations or community groups in the 21st century?  How should resources be shared through heritage partnerships to ensure the greatest return on agreed priorities?  Can you provide examples of successful innovative partnerships you or your organisation have established? | |
| **What partnerships are most needed within the heritage sector?**  The KLC is concerned at the focus in the Draft Heritage Strategy on the Green Army Programme, particularly in relation to management and protection of Indigenous cultural heritage and engagement of Traditional Owners in remote areas. While the Green Army Programme may be a positive mechanism for multi-party engagement in certain environmental programmes, it is not necessarily an appropriate response to all environmental (or heritage) issues in particular identification, protection and management of Indigenous cultural heritage. The KLC’s concerns about the Green Army Programme include the following.   * Projects are discrete, emphasise discrete outcomes, and are currently limited in length to 20-26 weeks. A better approach to protection and management of Indigenous Cultural Heritage, particularly in remote areas, would permit a focus of resources on personal development, collective identity, community ownership, native title-based governance, enterprise development, stakeholder investment, and research partnerships. These types of commitments take time and resources, but deliver community and project partner commitment and sustainable community outcomes at a demonstrably higher level than short term grant funding-based projects. * Participants must be 17-24 years old. Whilst there is a very high youth component amongst Aboriginal people in the Kimberley, it is not appropriate, effective or justifiable to limit Traditional Owner participation in Cultural Heritage Management programmes to such a narrow age group.  Communities are small, and key individuals/participants often drive outcomes for the broader group. Limiting the age of participants may mean that leading role models, mentors or cultural leaders are absent. * The Green Army model does not contribute to regional staffing. For effective delivery of programmes, including Cultural Heritage Management programmes in remote areas, programme costs must include sufficient funding to provide regional social and technical support services.   **Can you provide examples of successful innovative partnerships you or your organisation have established?**  The National Heritage Assessment of the West Kimberley is an example of an innovative and successful partnership between Traditional Owners, the KLC, and the Australian Government. It was based on recognition of the fact that Traditional Owners are the owners of their own cultural heritage, and the ultimate authority in relation to such. It resulted in a robust and culturally valid heritage assessment process.  The KLC submits that all heritage processes, state and Federal, should be based on the following principles which guided the National Heritage Assessment of the West Kimberley:   1. recognition that Traditional Owners are the owners and ultimate authority in relation to their own cultural heritage; 2. provision for culturally appropriate engagement, consultation, and decision making; and 3. incorporation of the principles in the United Nations Declaration on the Rights of Indigenous People, in particular the principle of free, prior and informed consent. | |
| 1. Enable encourage communities to understand and care for their heritage   What should the Australian heritage sector be doing to help the Australian community better engage in heritage activities?  How can a shared understanding of our national heritage be developed and best celebrated together?  Do you have any examples of activities that have been successful in promoting local heritage to a broader audience?  What is the role of technology and new media in providing greater community access to heritage? | |
| **What should the Australian heritage sector be doing to help the Australian community better engage in heritage activities?**  Traditional Owners in the Kimberley are currently engaged in a number of activities which actively and effectively support protection and maintenance of cultural heritage through Cultural Enterprise Economies. The KLC recently addressed a side event to the United Nations Permanent Forum on Indigenous Issues in New York on the subject matter of Cultural Enterprise Economies (see <http://klc.org.au/2014/05/09/klc-heads-to-new-york-to-host-united-nations-event/>). Critical aspects of Cultural Enterprise Economies include the following.   * Cultural enterprise economies involve the identification of cultural activities, or components of cultural activities, that have valuable outputs that can be commodified for a willing buyer. Examples of cultural enterprise economies are: * carbon farming through savannah burning, which utilises traditional burning for landscape / country management and on-sells the benefit (carbon abatement) to large emitters of greenhouse gases; * cultural emersion tourism, which provides non-Aboriginal people with an opportunity to see or experience cultural practices; and * environmental services such as feral animal and invasive species management, which utilise traditional knowledge of country, species behaviour, and knowledge transfer practices. * Cultural enterprise economies create the opportunity for Indigenous enterprise development in remote regions with otherwise limited business and employment activity. They also provide an alternative source of employment to mining and resources development, which can only offer a limited number of jobs in any event. * Cultural enterprises provide benefits beyond the immediate region such as maintenance of the national reserve system, maintenance and development of tourist assets, and development of a ‘work culture’ rather than a ‘welfare culture’.   Cultural Enterprise Economies provide an opportunity for active maintenance of cultural heritage, particularly in remote regions where a contest between cultural preservation and economic development might otherwise require economic survival to be prioritised. Cultural Enterprise Economies protect cultural heritage and provide real economic development opportunities for Traditional Owners. The KLC submits that heritage management should incorporate Cultural Enterprise economic activity as an innovative, effective, and real-world method of managing cultural heritage. | |
| Other comments | |
| The KLC notes that the Draft Heritage Strategy includes a proposed action to promote the best practice “Ask First” Indigenous consultation guidelines.  The KLC submits that a better approach to recognition of Traditional Owner interests in cultural heritage, and risk management associated with actions that might impinge on those interests, would include the following.   1. Recognition of Traditional Owners as the owners and ultimate authority on their cultural heritage. 2. Respect for culturally appropriate engagement, consultation, and decision making processes. 3. Adoption of the principles identified in the United Nations Declaration on the Rights on Indigenous People, in particular the principle of free, prior and informed consent. | |
|  | |