30 May 2012

Dr Greg Gardiner
Executive Officer
Environment and Natural Resources Committee
Parliament House,
Spring Street,
East Melbourne VIC 3002

Dear Dr Gardiner,

RE: WURUNDJERI TRIBE LAND COUNCIL’S SUBMISSION TO THE PARLIAMENTARY INQUIRY ON THE ESTABLISHMENT AND EFFECTIVENESS OF RAPs

Please find attached the Wurundjeri Tribe Land Council’s second submission to the Parliamentary Inquiry on the establishment and effectiveness of Registered Aboriginal Parties, to be conducted by the Environment and Natural Resources Committee.

We have been made aware that the Parliamentary Inquiry has received a number of negative submissions in reference to the current Victorian Aboriginal Heritage Act 2006 (AHA 2006), and therefore we are making this second submission to reassert the effectiveness and importance of the new Act as opposed to the old Act, and the necessity for Traditional Owners to be the managers of Aboriginal cultural heritage under this Act.

We are also repeating our original invitation to the Parliamentary Inquiry to come to our office here at the Abbotsford Convent, or for our Elders to take the Parliamentary Inquiry out on Wurundjeri Country to explain our processes and show the successful land and cultural heritage management outcomes that the Council has been able to achieve under the new Act.

If you require any additional information about this submission or would like to follow up on this invitation, please contact myself on the numbers below

Yours sincerely,

Darren Griffin
Manager – Cultural Heritage
The role and make-up of the Victorian Aboriginal Heritage Council and Registered Aboriginal Parties:

The identification, preservation, protection and management of Aboriginal culture is fundamental to the rights and responsibilities of Indigenous Traditional Owners, which are enshrined in State, National and International legislation, policies and conventions on the protection of Aboriginal cultural heritage. Traditional Owners are the rightful custodians and managers of the Aboriginal cultural heritage within their Traditional lands. The Victorian Aboriginal Heritage Act 2006 (AHA 2006), which includes the appointment of a peak Traditional Owner representative body, the Victorian Aboriginal Heritage Council (VAHC) and Traditional Owner groups managing the Aboriginal cultural heritage on their Country, the Registered Aboriginal Parties (RAPs) is in line with all of these laws and conventions.

A Traditional Owner is a descendant of those identified as apical ancestors on Country, before contact, and who have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria. Being an established RAP gives Traditional Owners the authority to be involved in the process of legislative cultural heritage management which was previously done with little to no consultation.

The system of the VAHC and RAPs under the AHA 2006 provides certainty about who are the right people to speak for Country; these are the Traditional Owners, who have a cultural (and legal) obligation to manage their cultural heritage. The key feature of the current system is that it is the Traditional Owners who are making the appropriate decisions regarding Aboriginal cultural heritage management. Recognising and committing to Traditional Owners in this way has not excluded historical or contemporary Aboriginal people as all Aboriginal people are Traditional Owners somewhere in Australia. The Victorian approach simply recognises and strengthens the right people for Country in Victoria.

The Wurundjeri Council therefore fully supports the current system, and supports the VAHC as the peak Traditional Owner representative body in Victoria.
The Wurundjeri Council was established in 1984 in order to provide the Traditional Owners of Wurundjeri Country, descendants of the Woi wurrung language group, with the capacity to manage the Aboriginal cultural heritage within their traditional lands. From this time until the AHA 2006 was enacted on 28 May 2007 the Wurundjeri managed Aboriginal cultural heritage under the previous Commonwealth Part 2B legislation. The Wurundjeri were made a RAP by the VAHC on 28 August 2008 and have been operating as a RAP for three and a half years. The Wurundjeri therefore have over 25 years experience managing Aboriginal cultural heritage under both legislative regimes, and are therefore well placed to see the differences between the two Acts and the benefits of the new Act.

Under the old Commonwealth legislation the only way in which the Traditional Owners could manage Aboriginal cultural heritage was as it was being demolished. Aboriginal cultural heritage was often discovered while development was well under way and the Wurundjeri Council’s only say in the process was to either issue a Consent to Disturb an Aboriginal Place or refuse to issue such a Consent. This set up an antagonistic relationship with developers and land managers, which was open to bribery and corruption. The only Aboriginal people who benefitted under this legislation were the ones who were able to exploit this confrontational system and strike deals of compensation with developers and land managers for the destruction of their cultural heritage. These deals often included house lots, cars and months of ‘Aboriginal monitors’ walking in front of bulldozers and excavators as Aboriginal Places were destroyed in return for the issuing of Consents to Disturb. Aboriginal cultural heritage was hardly ever investigated or assessed let alone managed appropriately.

Under the new Act, Aboriginal cultural heritage is dealt with at the planning stage of development and tied to Planning legislation at a Local Council level. This allows the Traditional Owners to sit down with developers and land managers, and cultural heritage advisors at the start of a project and plan the development or impacts to avoid the most sensitive Aboriginal Places. Traditional Owners work together with cultural heritage advisors to investigate and assess Aboriginal Places so they can be properly managed within the Cultural Heritage Management Plan (CHMP) process. This is why the majority of all large development companies, State and Local land management agencies and cultural heritage companies prefer the new system to the old system. It provides
certainty, good heritage management outcomes and a system of appeal (VCAT), which was not present under the old system.

The Wurundjeri Council has used this system to form partnerships with State and National land management agencies, private developers and infrastructure departments in order to effectively manage Aboriginal cultural heritage as part of an overall land management system. This has provided employment and funding opportunities, and today the Wurundjeri Council employs 40 full and part time office and field workers: 34 of these are Wurundjeri people. This has all been possible because of the system of having the VAHC and RAPs. This system has provided the backbone for RAPs to be an equal and integral part of the land management system.

The capacity of RAPs to fulfill their legislative responsibilities once appointed can best be improved through the establishment of relationships with other land management agencies and developers as stated above. The current system gives the Traditional Owners the platform with which to start building these relationships and then through a collaborative approach, Aboriginal cultural heritage can be properly and effectively managed in a culturally sensitive way.

The main important feature of the current system is that Traditional Owners are making the appropriate decisions regarding Aboriginal cultural heritage management. There is a fear at the Wurundjeri Council that the rights of Traditional Owners will be taken away and given to historical Aboriginal groups, and that Traditional Owner's role in the management of cultural heritage will be watered down. This is culturally and traditionally inappropriate.

Having properly functioning RAPs is the best way to fulfill the legislative requirements of the AHA 2006, and to have the Traditional Owners effectively carrying out their cultural and legal responsibilities in managing the cultural heritage within their Country.

The Wurundjeri Council has witnessed an increase in general awareness regarding Aboriginal cultural heritage under this system. One of the Wurundjeri Council's many services is to provide cultural heritage awareness training and inductions to land management agencies, developers, schools etc. These inductions are a standard recommendation in all Wurundjeri approved CHMPs. This process increases the awareness of the importance of Aboriginal cultural heritage and in turn makes it easier and more effective to carry out the requirements of the AHA 2006.

As stated above the Wurundjeri Council believes the current system is working well to provide Traditional Owners with the foundations to effectively manage the Aboriginal cultural heritage within their Country.