

## Department of Planning, Lands and Heritage (DPLH) consolidated response:

### *An Office for advocacy and accountability in Aboriginal affairs in Western Australia (Office) Discussion Paper*

September 2018

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#### **Key points:**

**Function and business:** The paper provides a good overview of the basic features of the proposed Office. However, to avoid being relegated to a clearinghouse function there needs to be a clearer and more comprehensive outline of how the Office will fit into, and leverage, existing Government structures and systems. The proposal could also outline how the Office may utilise frameworks/policy settings to achieve its goals and specify how the Office itself will be monitored and evaluated.

**Powers:** The proposal may benefit from more clearly articulating the Office's powers, to help manage expectations from the Aboriginal community as to the outcomes that may be achieved through the Office. This includes specifying, where possible, how the Office's advice and recommendations would be actioned by line agencies, or even by Commonwealth and local governments (page 11) despite it being a State instrument.

A benefit of a broad scope for the Office is that the Aboriginal community service providers, both Aboriginal and mainstream, may look to such an office to provide initiative, support and assistance to drive change across both the public and private sectors. As a result, there would also need to be a communications strategy in relation to management of stakeholder expectations.

It would also be beneficial for such an office, in conjunction with relevant stakeholders, to determine agreed policy positions, and performance benchmarks against which the Office could assess performance, identify areas of poor performance and work with State Government agencies to improve services.

**Consultation:** The process for developing the Office itself should reflect the Government's commitment to a new relationship of 'co-design' with Aboriginal Western Australians. It is recommended that the community consultation process for this proposal is conducted in a way that is cognisant of other consultations with Aboriginal people conducted by all levels of government (e.g. consultation in relation to the review of the *Aboriginal Heritage Act 1972*) and that 'consultation fatigue' is minimised.

**QU 1. What are your views about this outline of the Office’s basic features? Does it miss anything important? Is anything included that shouldn’t be?**

**FUNCTION**

- 1.1 There is a potential duplication of functions of the Office that will continue to be the responsibility of various other government entities. This is a critical matter that may inhibit the function of the Office and needs to be considered.
- 1.2 The proposal would benefit from highlighting how the new Office would complement and strengthen existing institutions. While the submission discusses the “institutional accountability gap” and the current “oversight and advocacy entities” (page 7), it should clearly articulate the anticipated inter-relationships between the Office and existing structures and reporting mechanisms.
- 1.3 Following on from the point above, there needs to be a clear demarcation and understanding of the nexus between the role of the Office and the role of Government, particularly the Aboriginal Policy and Coordination Unit at the Department of the Premier and Cabinet (DPC).
- 1.4 It is also noted that, under Aboriginal-specific government entities, there is no reference to the *Aboriginal Heritage Act 1972* or the Aboriginal Cultural Material Committee (ACMC). The ACMC provides an advisory role to the Minister on matters relating to the importance and significance of places and objects alleged to be associated with Aboriginal people.
- 1.5 Page 3 outlines that the government’s contribution to Aboriginal people’s well-being can be improved with ‘better coordination across agencies and levels of government’, however, coordination is not listed as a function of the proposed Office (page 11). For the Office to be successful, it would require an increased level of ‘joined up government’ that would respond in a coordinated fashion to key issues and strategies identified by the Office. The role that the Office will play in coordination across Government should be identified and outlined.

**BUSINESS**

- 1.6 The view that the Office should be ‘responsive to the needs and priorities of Aboriginal people’ and not be ‘limited to a particular subject matter’ is a perspective that should be maintained throughout the discussion regarding the Office and its functions.
- 1.7 A benefit of a broad scope for the Office is that the Aboriginal community service providers, both Aboriginal and mainstream, may look to such an Office to provide initiative, support and assistance to drive change across both the public and private sectors.
- 1.8 For the Office to be effective, it would be beneficial, in conjunction with relevant stakeholders, to determine agreed policy positions and performance benchmarks against which the Office could assess performance, identify areas of poor performance and work with State Government agencies to improve services.
- 1.9 To achieve its aim of holding the Government to account, the Office may consider a relevant framework for accountability. This could be internal to the Office or a State based framework that articulates key policy objectives for Aboriginal Western Australians, determined by Aboriginal Western Australians. Such a framework could also be used to monitor the effectiveness of the Office itself.

## STRUCTURE AND POWERS

### **Structure**

- 1.10 *New Entity*: Agree that the Office should be a new entity rather than adapting an existing one. Appropriate communication and consultation will be required to ensure it is not perceived as, or misunderstood to be, a revamped Department of Aboriginal Affairs or a representative 'voice to parliament' as per the Uluru statement.
- 1.11 *Legislated powers and functions*: Agree that the Office's powers and functions should be set out in legislation. Note the importance of the need to achieve bipartisan support and a timely process for this to be achieved.
- 1.12 *Office holder to be an Aboriginal person*: Agree – presumably this will be via making the Office an Equal Opportunity Act 1984 s50(d) position in the legislation.
- 1.13 *Accountable to Parliament and independent of any Minister*: Agree.
- 1.14 *Term of Office should be five years with the possibility of reappointment, and removal from Office should require Parliamentary approval*: Agree – a minimum term of five years is reasonable, particularly as it will overlap terms of Government.
- 1.15 *Office should not be subject to Ministerial directions but the Minister should have a limited power to refer specific matters to the office*: Agree – all steps should be made to ensure no perception of 'political interference' in the operations of the office, which would include having the Minister provide directions, but allow the Minister to refer matters that he/she thinks warrant being the subject of an independent view. The paper doesn't identify which Minister could do this – presumably it means the Minister for Aboriginal Affairs – however query whether it should be limited to this Minister or be available to all Ministers (or clearly outline that other Ministers can refer matters to the Minister for Aboriginal affairs so that the Office isn't swamped by referrals).
- 1.16 *Should be mechanisms for the Minister to request information from the office*: Agree – The Minister having the right to request information from the Office is an important part of the accountability process, albeit there may need to be some ability for the Office to decline if it considers a request will take up too many resources (or appears vexatious).
- 1.17 *Remuneration should be set by the Salaries and Allowances Tribunal, and protected from reduction during the term of office*: Agree – as is the case for other independent Office holders.

### **Powers**

- 1.18 *Power to table reports in Parliament at any time*: Agree – as is the case for other independent Office holders. It is important that, where there are issues relating to matters such as the provision of services to the Aboriginal community or need for changes in legislation, regulation or policy, the Office have both the power and the responsibility to bring to Parliament and the public's attention the matters of concern and recommended solutions.
- 1.19 It is suggested that, in "assessing the consistency of policy and performance" or "assessing the evidence base for government decisions and policies", the Office should be required to engage with the relevant agency/Minister to ensure the Office obtains their input and perspective.

- 1.20 This would particularly be the case in relation to decision-making processes involving – and the assessment of decisions made by – independent entities such as the various Aboriginal-specific government entities mentioned (as well as the ACMC regarding site assessments and recommendations) and Ministerial decisions such as those in relation to the *Aboriginal Heritage Act 1972* section 18 Notices where the Minister has a broad discretion relating to making a decision “having regard to the general interest of the community”.
- 1.21 *Powers to obtain documents and information*: Tentatively agree – need more information as to what this would mean, how it compares to other independent statutory authorities and how issues of confidentiality of information, particularly commercial in confidence, within government agencies would be dealt with (noting that much information is publicly available through the Freedom of Information process and would expect the Office to have greater access than this). This would include consideration as to whether the Office would have access to information for its own purposes/understanding and which might inform public reports but wouldn't be explicitly referenced. If the ambit of this power also encompasses heritage matters, then particular processes for access to, and management of, culturally sensitive information will need consideration.

## **QU 2. What should be the formal name of the office?**

- 2.1 The name should truly reflect the functions of the Office and leave no ambiguity as to why and for what purpose it was established. This could include acknowledgement of its role in advancing practical reconciliation in Western Australia.

## **QU 3. How should Aboriginal people and organisations be involved in the appointment process of the office-holder. Who should be involved?**

- 3.1 It is recommended that avenues be explored to maximise the inclusion of Aboriginal people in the appointment process. Any possible legislation may include a statutory process to establish a method for appointing the office-holder.

## **Other matters: Native Title, Aboriginal Heritage and Aboriginal employment**

The Office could play a key role in monitoring and advocating for innovative examples of development opportunities garnered through native title rights and interests. It may also provide a unique opportunity to benchmark decisions made by prescribed body corporates and the State from the perspective of accountability, and clearly articulate and advocate the economic opportunities that can be leveraged from native title