

Mr Mark Ritter SC
Ministerial Review of the State Industrial Relations System
c/- Secretariat: Level 4, Gordon Stephenson House,
140 William Street, Perth WA 6000

1 May 2018

Dear Mr Ritter,

RE: Ministerial Review of State Industrial Relations System – Interim Report

Thank you for the opportunity to comment on the *Interim Report*, particularly in relation to Terms of Reference 4 (at paragraph 44 in the recommendations section of the Interim Report) regarding National Trust Wardens which states:

Whether the MCE Act, or if included in the 2018 IR Act, the State Employment Standards, should exclude from its coverage persons appointed under s 22 (1) of the National Trust of Australia Act (WA) to carry out the duties of wardens, being persons who are currently excluded from the definition of an employee under s 3 of the MCE Act and regulation 3 of the MCE Regulations.

In line with the *National Trust of Australia (WA) Act 1964* and the stated Objects of Trust, the National Trust has placed considerable emphasis on its volunteers to assist with public access and the presentation of its places. It is important for the National Trust to provide public access and in fact, when reporting to government as part of our Key Performance Indicators, a desired outcome is ***to engage community support for the consideration of our natural, Aboriginal and historic heritage for the present and the future***, and as a consequence, a key effective indicator is the ***number of people accessing, engaging, attending Trust places and receiving heritage services***.

The use of volunteer wardens is therefore paramount, especially for places in more remote and regional areas. Without our volunteers and volunteer wardens, the National Trust would not be able to open our places to the public. Currently there are over 300 volunteers registered with the National Trust. Of those volunteers nine are volunteer wardens (four of whom are allocated at the York Courthouse Complex) and all of these volunteer wardens are at National Trust places in regional or remote areas of Western Australia.

The National Trust currently has the following regional and remote places available for public visitation which are facilitated by the placement of volunteer wardens at these places:

1. York Courthouse Complex:

Volunteer wardens assist with the opening of this complex to the public and payment is made to assist in covering administrative and out-of-pocket expenses necessarily incurred by the volunteer wardens. No accommodation is provided.

2. Old Blythewood:

A volunteer warden is on site, with accommodation provided. Internet and telephone access is provided and energy and water accounts are paid by the National Trust. Payment is made to assist in covering administrative and out-of-pocket expenses necessarily incurred by the volunteer warden.

3. Ellensbrook:

Volunteer wardens are on site, with accommodation provided. Internet and telephone access is provided and energy and water accounts are paid by the National Trust. Payment is made to assist in covering administrative and out-of-pocket expenses necessarily incurred by the volunteer wardens.

4. Old Farm Strawberry Hill:

While there is no volunteer warden, a volunteer has accepted to coordinate all volunteers on rostered duties to assist with gardening requirements and with the opening hours for public access to the place. No accommodation is provided and all accounts are the responsibility of the National Trust. Payment is made to assist in covering administrative and out-of-pocket expenses necessarily incurred by the volunteer coordinator.

5. Wonnerup:

A volunteer warden is on site, with accommodation provided. Internet and telephone access is provided and energy and water accounts are paid by the National Trust. Payment is made to assist in covering administrative and out-of-pocket expenses necessarily incurred by the volunteer warden.

6. No 8 Pump Station:

A volunteer warden is on site, with accommodation provided. Internet and telephone access is provided and energy and water accounts are paid by the National Trust.

7. Avondale:

A volunteer warden is on site, with accommodation provided. Internet and telephone access is provided and energy and water accounts are paid by the National Trust. Payment is made to assist in covering administrative and out-of-pocket expenses necessarily incurred by the volunteer warden.

It should also be emphasised that the roles and functions of volunteers and volunteer wardens are distinctly different to those of National Trust employees.

Employees are employed under an operational structure, approved by the Council of the National Trust and in line with Public Sector requirements. This operational structure is headed by a Chief Executive Officer and includes three key operational areas of

management: Corporate Services; Asset Management and Marketing and Community Services.

National Trust employees who are employed as part of the operational structure are:

- i) Employed under the *Government Officers Salaries, Allowances and Conditions Award 1989*;
- ii) Employed with formal contracts of employment (either permanent or fixed-term);
- iii) Subject to performance management and evaluation; and
- iv) Subject to Public Sector selection criteria and process requirements prior to confirmation of employment with the National Trust.

In relation to the employees employed by the National Trust, it adheres to the compliance requirements of the *Public Sector Management Act*, including all associated employment conditions, and the *Financial Management Act*. While its appropriation ceiling has been designated at 29 FTEs, Treasury has only provided appropriation for 19.6 FTEs (now reduced by a further three FTEs as a result of the state government's Voluntary Targeted Separation Scheme) and the National Trust has relied on special projects/grants and other funding to maintain its full complement of employees to manage its core operational requirements, including the conservation, maintenance and interpretation of its significant portfolio of places, situated in both the metropolitan area and in regional and remote areas of the state. It is important to note that the National Trust has never received appropriation for the maintenance of its places.

The National Trust's engagement with its volunteers and volunteer wardens does not include these elements. As already stated, where financially possible, payment may be provided to volunteer wardens to assist with administrative and out-of-pocket expenses. The provision of accommodation in some instances is to ensure a presence at these remote or regional places and provides additional security as well as public access. Volunteer and volunteer wardens have no formal operational obligations. Their role is to facilitate public access during opening hours and assist in keeping the places presentable to the public. Volunteers and volunteer wardens are not responsible for conducting operational maintenance and conservation works. These works are coordinated by employees from the National Trust Head Office in West Perth.

The National Trust currently manages 110 places, in addition to its natural heritage covenanting and stewardship program which protects over 66,000 hectares of natural bushland. Within this context, the National Trust places considerable reliance on its volunteers and volunteer wardens to assist, wherever possible, with the presentation and opening of its places to the public. National Trust volunteer wardens are essential at places in regional and remote areas of Western Australia as this assists in providing visitors to these areas an opportunity to experience the heritage significance of the place. In most cases, due to the distant, remote nature of these places, it would be difficult to have them open for public access unless there was a volunteer warden living on site. These include Ellensbrook, Wonnerup, No. 8 Pump Station, Old Blythewood and Avondale which are stand alone landmarks/buildings in remote and isolated areas distant from neighbours and town centres.

In the metropolitan area, there are no volunteer wardens, only volunteers as they are more readily available and have easier access to the places.

It should be understood that the definition of an employee as per the *Minimum Conditions of Employment Act 1993, s 3(1)*, expressly does not include classes of persons, as prescribed by the regulations who are not to be treated as employees. The persons described above, our volunteers and volunteer wardens, are included in those classes by the Regulations Schedule 1, Clause 4.

Properly understood, this is not a process of exempting these persons from the operation of the law. These provisions simply clarify that the Act does not apply to the persons described. As discussed above, there are good reasons why the law should not be changed. National Trust volunteers and volunteer wardens are in truth appointed, not as employees under S 22 (1) (a) of the *National Trust of Australia (WA) 1964 Act*, but under S 22 (1) (b) of that Act, as “agents” of the National Trust when performing their duties as volunteers or volunteer wardens.

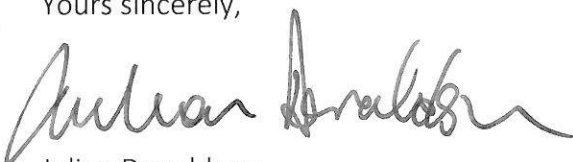
The National Trust notes the observations of the Review at paragraph 876 that it believes the exemption only applies to “employees” appointed by the National Trust under section 22(1) of the *National Trust of Australia (WA) Act*.

It is the National Trust’s submission that it does not appoint wardens as “employees” under section 22(1)(a). Rather, in practice in relation to volunteer wardens, they are either volunteers in the traditional sense and/or they are being engaged as “agents” under section 22(1)(b) of the *National Trust of Australia (WA) Act* when performing their role of volunteer warden.

To avoid any uncertainty with respect to the status of wardens the National Trust submits that an exclusion should be maintained as these persons are not accurately considered to be employees. In light of the observation of the Review as to the use of the words “appointed under section 22(1)”, perhaps the ongoing exclusion could be clarified to refer to volunteers performing the role of volunteer wardens and/or to refer to persons engaged under subsection 22(1)(b) instead.

The National Trust will be pleased to provide further information should this be required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Julian Donaldson', written in a cursive style.

Julian Donaldson
Chief Executive Officer