

Our Ref: A744819

Enquiries: Robert Brock – 9212 8134

29 May 2019

Mr Vaughan Davies
Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
Locked Bag 2506
PERTH WA 6001

Dear Vaughan,

REVIEW OF THE ABORIGINAL HERITAGE ACT 1972

Thank you for providing the Pilbara Ports Authority (PPA) with the opportunity to provide comments on the review of the *Aboriginal Heritage Act 1972* (AHA).

PPA supports the development of new State legislation that would align with current best-practice industry standards and those set out under Commonwealth legislation.

PPA has been closely following the review of the AHA and has previously provided feedback to the Minister for Aboriginal Affairs through the Department of Planning, Lands and Heritage (DPLH) as well as attending several information and consultation sessions run by DPLH. PPA's comments on the review (Attachment 1) have been informed by our experience in dealing with issues under the AHA, attendance at DPLH information sessions as well as the various documents relating to the review available on the DPLH website.

If you have any queries regarding the attached, our would like further information in relation to the attached comments, please contact PPAs Heritage Specialist Robert Brock (email: robert.brock@pilbaraports.com.au).

Yours sincerely



Brad Kitchen
Director Environment & Heritage

ATTACHMENT 1

Proposal 1 – Repeal of the AHA and deliver new Aboriginal heritage legislation

- The current Act came into force in 1972, and whilst it has been subject to several amendments, Pilbara Ports Authority (PPA) supports the development of new legislation that will ensure a contemporary approach to heritage management and recognition of the rights of Aboriginal people. Any review would also need to include the ancillary Regulations and supporting documents and policies. PPA would support such a proposal.
- Replacement legislation must align with the requirements of Commonwealth heritage protection legislation and charters, including the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSHPA), the *Environment Protection and Biodiversity Conservation Act 1999* (EPBCA) and the *Burra Charter*.
- The development of new legislation provides an opportunity to ensure Aboriginal people have a greater say in the preservation of their heritage and culture and should enable them to work with land owners and other stakeholders to manage heritage in an effective and timely manner.
- PPA would support the retention of key elements within the current legislation, including:
 - Covenants (s27) - This section enables the Minister to bind the land, or a portion of it, for a period of time or permanently, to preserve heritage values and impose conditions. S27 could be readily utilised to protect heritage values in agreements with Aboriginal people to ensure the protection of heritage values within an area for an agreed amount of time.
 - Honorary Wardens (s50) have the potential to assist Aboriginal people and land owners to effectively manage Aboriginal heritage values on the land. Whilst the current proposal does not support the retention of Honorary Warden, consideration should be given to incorporating this role into the powers of Local Aboriginal Heritage Service providers and/or Government employees actively involved in land management such as National Park Rangers.

Proposal 2 – Update definitions and scope of new Aboriginal heritage legislation

- The current legislation fails to acknowledge intangible values Aboriginal people place on country, nor does it adequately address the legislative status of Aboriginal mortuary practices and skeletal remains. PPA would support the updating of definitions used in any revision of the legislation.
- The discussion paper refers to the continued protection of Aboriginal objects consistent with the AHA, however, PPA is unaware of any objects ever being declared under section 6 of the current legislation.

Proposal 3(A) – Local Aboriginal Heritage Services

- The Discussion Paper identifies a desire to enable local Aboriginal people/bodies to provide heritage services. PPA supports functions under the legislation that will ensure the right people are consulted regarding heritage and the ability to make agreements

regarding heritage management etc... however, the following questions regarding these bodies need to be addressed in any new legislation:

- How are Traditional Owners or holders of cultural knowledge that are not part of the Local Aboriginal Heritage Service engaged in the consultation and approval process?
- Will there be a mechanism for aggrieved parties (e.g. Traditional Owners excluded from the Local Aboriginal Heritage Service, and land owners/proponents) to appeal against the actions of the Local Aboriginal Heritage Service?
- Will fees for services be regulated under the proposed legislation/Regulations, and if so, how?
- Will mechanisms be put in place to ensure timely responses to requests for services?
- What process will exist in instances where services or agreements cannot be agreed?
- Will agreements be registered and publicly available?
- Are Local Aboriginal Heritage Services in any way to replace Honorary Wardens under section 50 of the current legislation (i.e. have powers of inspection etc...)?

Proposal 3(B) – Aboriginal Heritage Council

- PPA supports the creation of an Aboriginal Heritage Council (AHC) to replace the existing Aboriginal Cultural Material Committee however, PPA would seek greater clarity on:
 - The composition of the AHC and their governance structure;
 - The support provided to them and relationship with DPLH; and
 - How and when will their decision-making processes and outcomes would be made available to the public?

Proposal 3(C) – The Minister’s Role

- PPA supports the Minister’s role as outlined in the Discussion Paper however, it is not clear how the process is intended to work and how and when the Minister’s involvement is determined.

Proposal 3(D) – The role of DPLH

- PPA supports the role of DPLH as outlined in the Discussion Paper however, consideration of the following is required:
 - DPLH must be adequately resourced with appropriately qualified and experienced professionals; and
 - Clearly defined accountability within DPLH to ensure actions and advice are consistently applied under the legislation.

Proposal 3(E) – Heritage Professionals – aiding selection of those with appropriate qualifications and experience and improving standards

- PPA supports the development and maintenance of a Directory of Heritage Professionals as well as Standards and Guidelines for undertaking surveys and for the recording and reporting of heritage values.
- In support of this, PPA recommend that;
 - The current Heritage Information Submission Form for site recording be reviewed;
 - Information/Fact Sheets be provided on the identification and reporting of various 'site types'; and
 - Guidelines and a Templates be provided to improve the standard of Heritage Survey Reports.

Proposal 4 – Retain the current form and function of the register of Aboriginal places and objects but rename it the Aboriginal Heritage Register

- PPA supports the retention of the Register and the renaming of this as proposed however, the following actions are recommended:
 - The Register must be maintained, regularly updated and be publicly accessible;
 - The method by which access to site files and heritage survey reports is provided must be reviewed. The current system of providing access via 'lock-lizard' is entirely ineffective with electronic access often expired by the time the requested files are sent by DPLH;
 - Mistakes and inaccuracies in the Register must be able to be easily notified to DPLH and those inaccuracies corrected in a timely manner.
 - The Register must include the mapping of Protected Areas;
 - Greater search functionality must be incorporated into the Register through the use of search engines based on 'site type', 'site informant', 'site recorder' etc...;
 - Heritage Survey Areas should be differentiated by the type of heritage survey conducted i.e. 'desktop', 'site avoidance', 'site identification' etc...;
 - The Register should display approval areas and agreement areas; and
 - The Register should display the areas in which the various Local Aboriginal Heritage Services operate and the contact details for those services.

Proposal 5 – Introduce a referral mechanism to facilitate tiered assessments and approvals of proposed land uses

- PPA supports the referral mechanism and tiered assessment of proposed land uses within the Discussion Paper but requires further detail as to how disputes will be arbitrated and/or resolved.
- PPA would also seek clarity on the expected timeframes, fee structures, recording and publication of the process and outcomes, and the ability for assessments and approvals to be transferred with the ownership of the land.
- At present, non-deleterious works that enable site protection and management can be undertaken under Regulation 10 (AHR). Consideration should be given to ensuring a process is put in place that allows for timely works to be undertaken for the protection and management of heritage values.

Proposal 6 – Encourage and recognise agreement making

- PPA supports the role of the AHC and the Minister in the ratification of agreements between Aboriginal people and land users as detailed in the Discussion Paper. It is unclear if agreements ratified by the AHC will be registered and/or publicly available.

Proposal 7 – Transparency and Appeals

- PPA supports greater transparency in the approvals process as outlined in the Discussion Paper but requests that the AHC/DPLH be required to keep all parties informed of each stage of the approvals process so that issues can be avoided and/or appeals lodged in a timely manner.

Proposal 8 – A modern enforcement regime

- PPA supports the proposed modernisation of the regulatory enforcement regime.

Proposal 9 – Protected Areas

- PPA supports the continuation of Protected Areas in the new legislation but requests that they be adequately resourced for their protection/management and that they be recorded on the Aboriginal Heritage Register.

Additional Comments

- Consideration should be given to providing copies of “open” site files and heritage survey reports (i.e. those records that currently do not require the consent of the Aboriginal informants to view) to State Government Agencies and Government Trading Enterprises that have land vested in them and/or hold reserves under management order, and are directly responsible for the day to day management of land that contains Aboriginal heritage values. Provision of this information would enable informed and effective management of heritage values.