

Response ID ANON-X4AN-M611-Z

Submitted to **Review of the Aboriginal Heritage Act 1972 - Phase Two consultation**

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Introduction

What is your name?

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What is your organisation?

Organisation:

Koora Retreat Centre Inc

Submissions will be published as part of the consultation process. Do you wish to have your name removed from your submission?

No

Proposal 1

Will the proposal deliver the desired outcome?

No

If no, why not?:

Aiming to have the whole community value the preservation of Aboriginal heritage will require more than this new Act.

It will require a treaty.

It will require acknowledgement that colonizers massacred Aborigines and made up their own rules that disregarded the Aboriginal law and its rules.

Entrenched community racism and anti-Aboriginal prejudice alive within the development community that is now responsible for drafting the new Act, will find itself silently into the Act's intention.

Bitterness and anger among the Aboriginal communities that see themselves currently disenfranchised by land users may lead to sabotage of the new Act's intention.

What changes would you suggest and why?:

There needs to be a treaty to acknowledge Aboriginal heritage and rights and law.

There needs to be massive promotion of appreciation of Aboriginal Heritage through wide community dissemination of research that upholds and validates cultural heritage values.

One concept that this act doesn't seem to acknowledge is that Aboriginal people moved over large tracts of the country, along song-lines and according to dreaming law and geography, and so Aboriginal Heritage Act needs to be able to accommodate this wider cultural heritage than the current proposal is offering.

The proposal does not acknowledge and needs to acknowledge that there is entrenched racism and anti-Aboriginal prejudice in the pro-development community,

and this prejudice will find ways to subvert the intention of the Act. So there needs to be massive promotion of appreciation of Aboriginal Heritage for the health of

the whole community. This appreciation needs to be built by dissemination of the well-documented research that upholds Aboriginal cultural heritage and values.

The decision-makers in our governments need to take into account the traditional Aboriginal way of relating to the land, the plants, the animals, the minerals,

water and air, so that this valuable knowledge base underpins decisions about land use.

Proposal 2

Will the proposal deliver the desired outcome?

No

If no, why not?:

1. The assumption this proposal 2 is that landscapes and places are 'intangible heritage'. To the people with the spiritual awareness to apprehend these places and paths of significance, their existence is NOT intangible. It is intangible to the senses of a land user intent on extraction industry or financial gain from that use. This assumption is an inbuilt prejudice in the proposal, supported by Westminster law, but not by Dreaming law.

2. Trust will not be gained by excluding intellectual property rights, and these rights need not be excluded by hiding behind the excuse that property rights are a Commonwealth government jurisdiction. In Victoria legislators could protect intangible heritage like stories and song because the Commonwealth legislation that covered Victoria was strong. Unless WA legislators attend to this need for protection, no trust will be achieved.

3. No procedure is proposed to be available in the new Act, proposal 2, to acknowledge unregistered sites etc. If the point of heritage is not registered, how can it be 'known' and so become visible and available for protection? Reluctance of TOs or KHs to disclose locations, caused by a completely rational lack of trust or the system, means that unregistered places and objects remain vulnerable to destruction under the proposal.

What changes would you suggest and why?:

Attempts to alter the Commonwealth legislation regarding intellectual property rights to be in line with that provided for Victorian legislation needs to be undertaken by WA legislators.

Address the land users' prejudice that landscape and places and songlines and dreaming law are NOT intangibles, and remove this prejudice from the hearts of those drafting legislation.

Staffing ad LAHS and DPLH needs to be greatly increased and educated for competence, so that they can secure knowledge of places and objects in a timely manner.

And interim protection needs to be available.

Proposal 3a**Will the proposal deliver the desired outcome?**

No

If no, why not?:

1. Identification of the right tribal people, the right TOs and KHs for particular areas is still in its infancy in many parts of WA, and many TOs and KHs are disenfranchised from the process of gaining recognition by lack of communication systems, being scattered by the Mission movement, financial constraints and strong competition, together with a lack of trust that the systems of appointment have a genuine desire to find the right people rather than the loudest people.
2. Active involvement in this legal process on behalf of the rights and certainties of land users will not appeal to many TOs and KHs who have a life of responsibility for their families and their country that engages their time and energies. So how can agreement making processes be facilitated in a timely manner?
3. There exists in the Aboriginal communities a range of diverse views fostered by life experiences, and divisions fueled by scares resources. True KHs are sparsely located and this will continue the bottle-kneck caused under the 1972 Act.

The existing backlog of registration applications leads to inaction and paralysis that this proposal dies not address.

4. The aborigines present in the Kalgoorlie consultation seemed to be resistant to incorporation under CATSI and so gaining compliance for membership of LAHS may be limited.

What changes would you suggest and why?:

Massive resources will need to be applied to meeting the requirements of this proposal.

To apply the required resources, legislators will need to adopt the worldview that this is a good use of resources that will improve the health of Aboriginal Australians at all levels of their being, and more effectively close the gap that spending these resources on other identified needs. Five generations of displacement and ignorance of Aboriginal heritage will require much resourcing if it is to be remediated on both the side of Aborigines and the side of other land users.

Pressure and resources will need to be applied to update the heritage register, make information about 'Lodged Sites' available to proposed land users, remove the backlog of applications, and to reinstate de-registered sites. Using the excuse expressed in the question, 'Where is their information or informants?' needs to be removed as a practice used by heritage staff to ignore heritage sites.

Innovative procedures will need to be developed to ensure that time frames and standards are created and then applied to the processes undertaken by LAHS.

Weighting of the 'risk of future investment' against the risk of losing health-producing heritage recognition needs to change. More weight needs to be given to the need for wholesome protection of Aboriginal Heritage, despite its possible effect on land use. This change of weight will require fully devolved decision-making.

So, WA legislators need to influence Commonwealth legislation to enable State protection of intellectual property.

The approvals process needs to be made public.

there will need to be reconciliation between Aboriginal groups who will be competing for the scarce development dollar.

Education about heritage areas will need to be disseminated to the larger community as KHs are sparsely located.

Maybe the term 'Ancestral Owners' may assert the prior responsibility of Aborigines for any land for which a land use is proposed. This term will include grandchildren who may otherwise loose their rights and heritage, and will add authority to the TOs and KHs in the eyes of development proposals.

Attention to ways of ensuring timelines and standards are achieved will be crucial.

The Aborigines I have listened to say that the terms used in the proposed Act are White-fella terminology and are a tool that further dispossesses the Aborigine.

More attention to terms that are acceptable to the TOs and KHs would be some help in alleviating this sense of renewed and enhanced dispossession.

Membership of LAHS needs to be not only 100% Aboriginal-owned by to comprise membership from the local area.

Having LAHS may mean that 'there are too many chiefs', and Attention will need to be kept on the balance between too many and not enough participants.

Proposal 3b**Will the proposal deliver the desired outcome?**

No

If no, why not?:

The proposed make up of the AHC does not include experts in customary culture and Lore.

The proposed setup of the AHC uses the terminology and structure of the Westminster system of government and this is contrary to the Aboriginal way of organizing stewardship, conservation and management.

Promoting Heritage Value and assuming responsibility for the Aboriginal Heritage Register will require a great financial commitment that has no budget item responsible for it.

Offering grants to promote conservation, to offer advice, training, support research and develop policy will require huge injections of funds and there is nowhere that is earmarked as a source of funds.

What changes would you suggest and why?:

The new Aboriginal Heritage Council would be hard-pressed to take responsibility for destruction of heritage sites over the vast areas of the State of WA. so, the AHC will need to be able to co-opt LAHS members for each geographic and tribal region for each land use decision.

It may be politic that Aboriginal people elect or appoint the Aboriginal chair of AHC.

Add the qualification 'Ancestral Connections' to the qualification of Aborigines selected for the AHC makeup.

The Act will need to instigate a source of funding to accomplish the desired outcomes. It can't be assumed that good-will alone will accomplish the outcomes.

Proposal 3c

Will the proposal deliver the desired outcome?

No

If no, why not?:

The fact that DPLH has to report to 5 government ministers indicates the fragmented and compartmentalized structure that is trying to negotiate the Aboriginal Heritage Act.

Matters of Aboriginal Heritage value could easily be lost in the cracks of such a compartmentalized system where the various ministers could intervene.

There is no mechanism envisaged whereby an Aborigine discovering unauthorized activity on land of Aboriginal Heritage value could get the minister's attention in a timely manner to achieve a stop work order that could protect heritage sites and artifacts. There is unequal access to the minister and unequal bargaining positions due to low resources, poor education and the cost of legal representation.

There is not a process for the public to be able to hold the decision maker to account.

What changes would you suggest and why?:

The Uluru Statement from the Heart of May 26 2017 needs to be endorsed by the law-makers of WA in the formation of this new Act, and the Constitutional reforms outlined for adoption at a national level need to be adopted at this WA state level in formulating the way the minister may intervene in the determination of Heritage matters in this new Act.

The bargaining position of Aborigines needs to be safeguarded so that they may have equal access to the minister in the determination of the weight and value to be put on their heritage. A process free from the constraints of expensive legal and consultant/anthropological representation is required. Once the basic premise that Aboriginal knowledge, wisdom, land use practices and heritage is admitted, then there is some hope for more realistic attention to be afforded Aboriginal Heritage in the mix of competing interests.

Proposal 3d

Will the proposal deliver the desired outcome?

No

If no, why not?:

Saying that the DPLH 'remains responsible' is a signal that 'more of the same' will be provided in terms of service to the community under the proposed new Act. There remains inadequate resourcing and education within the DPLH to enable its operatives to be instrumental in achieving the desired outcomes of this proposal.

The proposal has offered no ways in which the 'issues' outlined under Proposal 3D will be addressed .

Lodged sites are not automatically made available to proposed land users who may be seeking to do the right thing for Aboriginal Heritage, and so the department is not safeguarding what will otherwise continue to be obliterated 'in ignorance'.

What changes would you suggest and why?:

Much more resources will need to be applied to the area of the department responsible for Aboriginal Heritage.

The fragmented approach to policy development needs to become a holistic approach that is encompassed within an approach that upholds the unique and important contribution that Aboriginal knowledge, ways and management practices has to offer the struggling system of law that is not achieving its objectives by sticking to and operating out of the Westminster system of law.

Enquirers for land use need to have to access all site and lodged-site information and plan to negotiate with the TOs and KHs regarding their safe keeping.

Proposal 3e

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

Proposal 4

Will the proposal deliver the desired outcome?

No

If no, why not?:

Re-badging a problem doesn't remove the problem.

Making the statement that Aboriginal heritage is protected whether it is registered or not does not make that statement true in the experience of many people in WA.

Again, re-branding will not make the issues go away.

Why would someone use the Register until trust can be established? And since there is inbuilt prejudice that upholds that:

1. the State owns the heritage
 2. the State's economic development over-rides Aboriginal Heritage
 3. the structure and wording of the proposed Act retains euro-centric per-eminence of opinion
 4. Developer land use is more valuable than Traditional Aboriginal land use and management
 5. landscapes and intangible spiritual presence is not valued by developers,
- then no trust can be established in the Register

What changes would you suggest and why?:

What is required is a deep change of heart, adoption of the Statement from the Heart at a state level, extensive re-training of operatives in the value of Aboriginal Heritage, and vastly more dissemination of the true history of dispossession and of frontier warfare. WA history needs to be re-written to take into account the previously ignored value of Aboriginal Heritage and its immense worth in the future management of WA lands.

The repository of information needs to be for everyone, so that everyone can value what is there, even potential thieves and desecrators who may be converted by such knowledge and wisdom. How can the heritage and wisdom be valued if it is not known?

Proposal 5

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

Proposal 6

Will the proposal deliver the desired outcome?

No

If no, why not?:

The proposal does not make it clear whether existing agreements, that may have been achieved by coercion, inappropriate consultations or bribery, can be brought back for re-negotiation by LAHS with reinvigorated valuing of their heritage. It is unclear how this justice may be achieved.

What changes would you suggest and why?:

A clear process for re-evaluating existing agreements, with protection for lodged sites and land values, needs to be advertised.

When old agreements are deemed unsuitable (according to advertised criteria), then land users need to be compelled to negotiate a new agreement under the new guidelines and value system.

Proposal 7

Will the proposal deliver the desired outcome?

No

If no, why not?:

The appeal process will be based on historical inequalities. The Aboriginal people will be placed 50-50 with the people who have dispossessed them from their land and the use of it.

What changes would you suggest and why?:

There needs to be some bias towards the knowledge and heritage of Aboriginal people in the review and appeal process, to mitigate against generations of inbuilt prejudice and dispossession.

Proposal 8

Will the proposal deliver the desired outcome?

No

If no, why not?:

The steps of what constitutes what is 'reasonably practicable' in relation to the plea of 'ignorance' are not provided, and they are needed for educational purposes of land use proponents.

Unless proponents have access to information about sites under consideration for or awaiting approval, then they can still plead ignorance and heritage can be destroyed.

Lack of staff and remoteness of sites means that some land use proponents do what they like unobserved and even if they are observed and reported, no one is available to enforce the law and compliance with it.

What changes would you suggest and why?:

More compliance staff are required.

A culture of defense of heritage is needed to be cultivated and strengthened.

Staff familiar with remote travel and site location need to be trained, mentored and employed.

Proposal 9

Will the proposal deliver the desired outcome?

No

If no, why not?:

The necessary access to management practices within existing Protected Areas has not been included in what is proposed here.

What changes would you suggest and why?:

Include access to existing Protected Areas for Aboriginal management and stewardship practices in the new Act.