

Assistant Director General, Heritage Services  
**Department of Planning, Lands and Heritage**

PO Box 7479  
Cloisters Square PO WA 6850

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**Submission on the 'Review of the Aboriginal Heritage Act 1972:  
Proposals for new legislation to recognise, protect and celebrate  
Western Australia's Aboriginal heritage'**

Snappy Gum Heritage Services Pty Ltd

Phone: (08) 9425 5220

Fax: (08) 6424 8786

156 Francisco Street,  
Belmont WA 6104

[ryan@snappygumheritage.com.au](mailto:ryan@snappygumheritage.com.au)

[www.snappygumheritage.com.au](http://www.snappygumheritage.com.au)

(ACN 149 071 134)

as trustee for

Hovingh Family Trust

(ABN 40 259 525 457)

To whom it may concern,

I am writing to express my thoughts regarding the proposed new Aboriginal heritage legislation, as described in the March 2019 Consultation Paper.

To provide some context for the following discussion, Snappy Gum Heritage Services Pty Ltd (SGH) is a heritage consultancy that encompasses a small team of professional archaeologists and anthropologists who regularly undertaken heritage surveys across WA. We engage with native title groups and a broad range of developers.

In general, I am pleased with the overall rationale behind the proposed changes, and particularly welcome the positive engagement with the heritage industry, Aboriginal people, the mining industry and the Department of Planning, Lands and Heritage. It is clear that the vast number of discussions have yielded positive results.

I think it should be remembered that any new Aboriginal heritage legislation needs to focus on the recognition, protection and management of Aboriginal heritage and, if possible, place much of the decision-making process on sustainable corporate bodies owned by Aboriginal people. While the Approvals process for land development needs to be considered, I think it should play a secondary role despite political pressure to the contrary.

**I am in agreeance with most of the comments discussed in the AACAI submission.** I would add to their comments and point out areas where I have particular concern:

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

I agree with the proposed broadening of what is considered 'Aboriginal heritage' to include ancestral remains and non-tangible elements such as dances and song lines. I think cultural landscapes also need to be addressed and managed accordingly.

I do disagree however with the proposal to 'Continue to protect Aboriginal objects consistent with the current Act'. Aboriginal Objects under Section 6 of the AHA often causes confusion for proponents between the need to protect Aboriginal Sites versus the need to not protect 'isolated artefacts', which is an industry term that relates to artefacts of little to no archaeological or cultural value. I think that its definition needs to be better defined as to reflect its intent.

### **Proposal 3(A) – Local Aboriginal Heritage Services.**

I am in agreeance with the change in direction towards Aboriginal management of their heritage. Proposal 3(A) calls for the adoption of Local Aboriginal Heritage Services (LAHS) who will ensure that ‘the right people to speak for particular areas of country and related cultural heritage are identified’; and ‘make agreements regarding Aboriginal heritage management and land use proposals in their geographic areas of responsibility’.

Any business, particularly those in the initial years of incorporation, are exposed to a range of issues. Juggling finances; internal and external stakeholders; managing internal knowledge, experience, political, timing and staffing resources are an ongoing concern. While existing PBCs are an option, many of the smaller bodies have struggled with these resourcing issues. At the time of writing, a prominent Pilbara PBC has recently gone under special administration despite earning a considerable income each year. The example emphasizes the need for other resources beyond money– adequate training being a definite consideration.

There is a danger that, should a company struggle with the LAHS responsibilities, the DPLH will re-assume the role. Such an action may eventually undermine the efforts of local Aboriginal people to manage their own heritage.

I propose that there be a gradual shift of LAHS responsibilities to the appointed company over a period of time commensurate with its current resourcing levels. Training and other resources should be supplied so they can take over responsibilities. Ongoing, centralised services might also be provided such as book-keeping, legal advice and IT support to help with ongoing management.

### **Proposal 3(B) – Aboriginal Heritage Council.**

I am in agreeance with the abolition of the ACMC in favour of the Aboriginal Heritage Council (AHC). I do have concern that the AHC would be a re-skinned version of the ACMC which has always struggled with resources and having access to people with specialist advice. I would propose that the AHC be resourced and structured in a manner that allows it to seek advice from Aboriginal people with the cultural authority to make decisions over defined areas; and from suitably qualified heritage professionals to ensure that the AHC can make appropriately informed decisions. Some of this resourcing may come from the approvals application process itself, with proponents paying a fee for each assessment.

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

I support the change of the register’s name to the Aboriginal Heritage Register, especially as it reflects the recognition of song-lines, ancestral remains and other non-tangible elements to the definition of an Aboriginal site.

I do express caution with the process of standardization. Around 2012/2013, the Department of Aboriginal Affairs (now DPLH) informally released a list of ‘threshold tests’ to determine what they considered a site under Section 5 of the AHA. This list was then translated by heritage practitioners and proponents into a reporting style that was effectively a ‘tick-box’ method of recording and documentation

which is still employed by many heritage practitioners in their assessments today. This method, in my opinion, devalued the diversity of Aboriginal heritage sites and limited the ability of the ACMC to make adequate assessments regarding the importance and significance of individual sites.

**Proposal 5 – Introduce a referral mechanism to facilitate tiered assessments of proposed land uses.**

As a heritage professional, I have seen many situations where ‘low impact’ activities have directly or indirectly damaged Aboriginal heritage. Often ‘low-impact activities’ allow increased access to an area, thereby facilitating vandalism, theft and damage to Aboriginal sites. Any legislation needs to focus on conserving Aboriginal heritage. The risks of any impact to Aboriginal heritage needs to be assessed in consultation with the appropriate LAHS. The need for consultation, mitigation and management should be considered from the outset so the overall impact on Aboriginal heritage can be minimised.

I understand the concerns of small mining bodies have regarding the expenses of consultation but their impact on Aboriginal heritage is still a consideration. New tracks mean increased access by larger numbers of people, and therefore more potential damage to Aboriginal heritage values. I would suggest that their costs be partially subsidised to allow for effective consultation and assessment.

**Missing Elements?**

I do think that there is a need to advocate for increased public engagement with Aboriginal heritage – such as increased community engagement, the need for increased publication about results on larger projects, and more demand for Aboriginal heritage interpretation and education. Keeping an Aboriginal Heritage Register is a necessity, but I think Western Australian public would benefit from increased general awareness and education. Encouraging the development of Cultural Heritage Management Plans by proponents at the early planning stages of all projects may encourage these developments. The Department can provide guidelines for such plans that could consider trigger points so that the more intensive a project is, or the more likely it is to impact high significance places, the greater the public engagement required.

**In conclusion**

Snappy Gum Heritage Services Pty Ltd advocates the need for the drafting of a new Aboriginal Heritage Act. We welcome the opportunity to participate in this discussion and praise the Minister for Aboriginal Affairs for his open consultation and inquiry.

Yours sincerely,

Ryan Hovingh  
*Managing Director*