

Response ID ANON-8EBD-41PP-8

Submitted to **Review of the Aboriginal Heritage Act 1972**

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About You

Are you submitting a response as an individual, or on behalf of your organisation?

Individual

Individual details

Are you of Aboriginal or Torres Strait Islander descent?

No

What is your name?

Optional:

Sven Ouzman

Do you give permission for your name to be published with your feedback?

Yes

Purpose of the Act

Question 1

No

If not, what changes should be made?:

The title needs to take into account the last 20 years' of progress in the fields of Native Title and of heritage management. 'Preservation' is a rather static and outdated set of practices, whereas active 'management' -in close collaboration with relevant Aboriginal people - is required.

Stipulating only 'objects' and 'places' does not, for example, take into account 'intangible' heritage and here alignment with the Burra Charter should be made.

But the main problem is that WA has three heritage acts that serve to balkanise and racialise 'heritage', instead of having an integrated approach to all of the state's heritage over the last 60,000 years or so.

Roles under the Act

Question 2

2 - who should be consulted?:

An Aboriginal Heritage Act without meaningful Aboriginal participation is meaningless. There should thus be a properly constituted body of experts and Aboriginal people, who are remunerated for their time and expertise, to provide expert advice. Alignment with the Heritage Act would here be useful, with an eye to amalgamating these two acts.

This process should also be transparent and reasons given for decisions made by the decision-making entities.

Aboriginal people and organisations should also have the right to appeal decisions made by thge regulator.

Question 3

Ineffective

How can the provision to appoint honorary wardens be improved?:

There need to be clearer guidelines on duty and an overall plan that prioritises areas that need regular monitoring as well as ensuring episodic monitoring of other areas.

Question 4

No

Role and functions - Minister:

The Act needs to move beyond a simple object-place ambit and the Minister needs to provide guidance on how the new Act, ideally harmonised or merged with the Heritage and Shipwrecks Acts, should be deployed, allowing a flexibility that is the hallmark of Aboriginal - and all cultures.

No

Role and functions - Registrar:

Greater transparency in decision-making. Again, there needs to be a foundational shift from a simple place-object ambit.

No

Role and functions - Committee:

To date decisions on permits etc have not been supported by publicly available reasons for those decisions. The parameters under which the ACMC works have also not been clear either to external parties or to members of the ACMC.

No

Role and functions - DPLH:

As with most of my answers, by continuing to cleave to a static place-object notion of heritage and culture, the Act is always going to be out of step with other State, Federal and international legislation and best practice. The move to DPLH, which is explicitly for planning and heritage, is an important first move. It also puts the erstwhile DAA in contact with the State heritage Office, with whom joint consultations should be instituted with the end goal of producing unified, effective and resourced heritage legislation for the State.

What is Protected?

Question 5

No

5. How can section 5 be improved?:

There has for some years been considerable disagreement over what constitutes a 'site', with the regulator being out of step with eastern state's legislation or current archaeological best practice. Current staffing seems inadequate in numbers and expertise to deal with vague regulations on what is and what is not a site and this should be remedied by reference to other heritage legislation in Australia.

In addition, Aboriginal involvement and the recognition of culture as dynamic, with 'intangible' (non-material) elements, needs to be recognised and protected and regulated by the new Act.

Question 6

No

6. How can section 6 / Part VI be improved?:

It only focuses on the objects, not the associated physical and archaeological contexts or the traditional knowledge often associated with such objects. Also, the presence of such objects by definition also define the existence of a 'site', counter to what the regulator has been advising practitioners and communities.

Question 7

No

Additional comments:

All heritage - Aboriginal and non - should enjoy the same a priori standing and protection under the Act. On Aboriginal and relevant expert advice, some areas could be considered as 'cultural landscapes' that could then be accorded an additional profile (but not additional protection as values change and it is not for us to elevate one type of heritage over another).

Question 8

Yes

8. what needs to be considered?:

This is tricky and legislation around human tissue also needs to be consulted. The risk of including human remains could be that as State law deprives descendants with the determining say and access to the remains of an ancestor, for example. Also, if human remains are included they could be classified as 'objects' or similar, dehumanising them and privileging, for example, scientific analysis over descendant wishes. But they are also an important heritage in their own right. So they may have to be in a separate category, subordinate to the rights and obligations of either direct descendants or even of Aboriginal people with a lex-loci type custodial relationship.

Protection and Enforcement

Question 9

9. Activities that should require consent or authorisation:

It is not the activities per se, but access to sites first that needs to be considered. WA has a plethora of land tenure regimes, so sensitivities by many interest groups are high. Unauthorised visits to sites on, for example, Native Title land, cause considerable upset, so this need to be regulated and enforced.

Question 10

10. Criteria to evaluate activities that may affect a site:

As above, a step back needs to be taken so that site access is part of this process, then the activities can be evaluated as a series of intensities of impact they are likely to have on the site.

Question 11

11. What is an impact in relation to sacred sites?:

Obviously, by consulting relevant Aboriginal Traditional Owners, stakeholders, intellectuals and the like. Non-Aboriginal experts in, for example, intangible cultural heritage, anthropology, archaeology and the like can then provide supporting information to assess any impacts.

Question 12

12. consent / authorisation for proposals that will affect sites:

Aboriginal people + the regulator, as advised by relevant experts in a transparent process.

Question 13

Ineffective

13. How s18 can be improved?:

As above, there needs to be a more structured process, that takes the entire act and regulations into account, rather than particular readings of parts of some sections. This structured process needs to involve proper expert advice and a transparent process where the reasons for decisions are made known.

Question 14

14. provisions for long-term protection of sites:

Don't understand the question - isn't the purpose of the Act to provide this long-term protection? Again, the problem of the notion of a 'site' emerges.

Question 15

No

15. How can enforcement provisions be improved?:

There have been, I think, 7 prosecutions in 46 years - which tells a story of how ineffective the Act's policing has been.

There needs to be a strong public awareness campaign of the Act - most West Australians are unaware of it - and there need to be some high profile trials of offenders to make clear this is a law and disobeying it carries penalties.

The current mismatch between the nature and penalties for heritage offenses under the Aboriginal Heritage Act and the Heritage Act sends out a very damaging message to the public in a way that can be described as structural racism.

Question 16

No

16. How can penalties be improved?:

As above - harmonise with the Heritage Act (and ideally merge the two Acts).

Increase the penalties, and for body corporates consider making the CEO or similar liable.

Extend the period for reporting and prosecuting offenses.

Site Assessment and Registration

Question 17

Yes

17. Why shouldn't a defence be provided?:

Question 18

No

18. What should the criteria be?:

These criteria are out of step with advances in heritage legislation that acknowledges the dynamic nature of culture, and in its having both material and non-material aspects; including oral histories etc.

Question 19

19. Steps to report place or object:

Site locations should not be given out as this enables unauthorised visitation. Rather, there should be a network of sites open to the public that can be visited. Then, aona database like AHIS, areas with sites can be shown but the searcher has to contact DPLH who, together with relevant Aboriginal stakeholders, can then determine whether specific site locations should be given out. Having sensitivity maps indicating areas of know archaeological/cultural sensitivity would be useful so, for example, developers can early on see whether any potential lands for impact have known sites and values.

19. Steps to nominate a place or object:

Nomination belongs to a rather old style of heritage management. Better to have an Act that unambiguously recognises and protects all tangible and intangible aspects of a dynamic heritage; and makes provision for certain cultural landscapes, for example, to be made more widely known.

19. Steps to assess a place or object:

Again, the Act should be clear on what these are, requiring minimal assessment. But that such assessment combine Aboriginal values, knowledge and expertise, with relevant experts such as anthropologists, archaeologists and the like.

19. Steps to enter a place or object on the Register:

As above - there needs to be caution around locational information

19. Steps to amend a place or object on Register:

Again, a strong definition in the Act would militate against onerous assessment procedures.

19. Steps to remove place or object from Register:

There should be no such step. All artefacts and intangible heritage should be protected by the Act. This provision is too subject to political whim, and influenced by for example, poorly trained and inexperienced staff.

Other Parts of the Act**Question 20****20. What's missing from the Act?:**

The last 20 years of work on heritage management in other parts of the world, notable the eastern States, New Zealand, South Africa and Canada. Not much recognition of Aboriginal sovereignty as per Native Title advances since the 1980s, nor any meaningful role by Aboriginal people in the Act.

Question 21**21. Sections to be removed from Act?:**

I think a new Act is required as amendments are partial short-term fixes for a vastly changed heritage landscape from when the existing Act was first created.

Any other comments**Any other comments:**

The DPLH is to be commended on taking on addressing deficiencies in the Act.

But it should be properly costed and resourced to:

- a) produce a new Act (ideally a single heritage act for all WA);
- b) produce clear regulations on how the Act is to be administered
- c) Employ and train staff and associates to implement the act
- d) to use the Act as an instrument of reconciliation by ensuring clear but broad-based participation