

Response ID ANON-8EBD-41RP-A

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

Submitted on **2018-06-01 17:06:51**

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:

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

No

Organisation details

What is the name of your organisation?

Organisation Name:

Breakaway Heritage Projects Pty Ltd

Name of submitting officer and position.

Submitting officer and position:

Vicky Winton

Do you have authorisation to make a submission on behalf of your organisation?

Yes

In which field is your business?

Heritage professional

If "other" please specify your field of business:

Purpose of the Act

Question 1

No

If not, what changes should be made?:

simpler and more contemporary.

How about inclusion of 'protection and management'? This would appropriately indicate that Aboriginal sites are part of a living culture and may change through time due to continued use / may need other treatment than 'preservation'.

How about inclusion of 'Aboriginal archaeological material within the landscape' and 'culturally significant landscape features' as descriptors

Roles under the Act

Question 2

2 - who should be consulted?:

The ACMC doesn't seem like an appropriate way to include Aboriginal people in the decision making process. Aboriginal traditional owners are best placed to provide evidence about their heritage and their deep understanding for particular places should be given primacy over the (potentially non-specialist) judgement of the ACMC.

Following the AACAI submission to this review, I support the view that the ACMC has two clearly different processes which need to be separated to maintain their independent integrity:

1. evaluation and assessment of sites (section 39) for the purposes of maintaining a register (section 38); and
2. decisions and approvals about the conservation and management of heritage in the context of development or other impacts (section 16, section 18).

Separating 1. and 2. will lead to different roles for Aboriginal people in the processes of the Act (see AACAI submission), and will allow for the proper involvement of traditional owners' in managing their own heritage.

Question 3

Ineffective

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

Working in WA Heritage since 2008 I have not had first hand experience of Honorary wardens and assume that their appointment is rare and under-used. As per the AACAI submission to this review, I agree that Aboriginal Ranger programs would provide an excellent on the ground option for monitoring sites and the application of the State heritage laws. I agree that on-going paid positions with appropriate training should be funded to modernise the role of (honorary) wardens.

Question 4

No

Role and functions - Minister:

The Minister should not have the discretionary power to decide the fate of sites. Decisions should always be arrived at via a transparent legal process where all parties have equal rights to appeal.

No

Role and functions - Registrar:

Suggest alterations as follows:

37. Registrar of Aboriginal Sites

(1) An APPROPRIATELY QUALIFIED AND EXPERIENCED officer of the Department shall be appointed to be the Registrar of Aboriginal Sites by the chief executive officer

and, with regard to Section 38, is it possible to define minimum standards for the types of information maintained on the register to identify, characterise and evaluate places and objects? This would help as a bench-mark in data collection for the purposes of heritage management. If the Act is reviewed, the Registrar's role could usefully focus more on heading up the work in curating the data held for Aboriginal heritage places and objects rather than administrative work for the Minister/Committee.

No

Role and functions - Committee:

As per the AACAI submission, I agree that the ACMC deals with 1 and 2 (below) and that these need to be separated.

1. evaluation and assessment of sites (section 39) for the purposes of maintaining a register (section 38); and
2. decisions and approvals about the conservation and management of heritage in the context of development or other impacts (section 16, section 18).

No

Role and functions - DPLH:

I have just searched for 'department' in the text of the AHA 1972 - the role of the 'Public Service principally assisting the Minister in the administration of this Act' seems to be defined with respect to taking on particular roles as delegated by the Minister or for the purpose of inspecting sites and this does not seem to reflect the current work load of the department and its officers in maintaining the register, making it accessible, providing advice...

What is Protected?

Question 5

No

5. How can section 5 be improved?:

Section 5 has led to a site-focussed recording and evaluation of Aboriginal heritage in Western Australia. However, the value of a cultural landscape often is not well represented as a sum of its parts - the whole is much greater than the parts i.e. 50 low significance sites may in fact add up to a unique pattern of landscape use in regional or inter-regional context. Moreover, Aboriginal understanding of heritage values may be discordant with a site-focused approach: it is the landscape as a whole which is significant in a multifaceted way of which tangible archaeological sites are just one part. At an academic level, the 'site' is often not the right scale of analysis - understanding how people lived in the past needs consideration of the whole landscape so Section 5 has actively been working to undermine the scientific value of Aboriginal heritage in WA because the recording and analysis has been at the level of 'site' not 'landscape'. This needs to be addressed by the review of the Act with better legislative handling of Aboriginal cultural/archaeological landscapes.

Question 6

No

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

Stone artefacts are clearly not being protected under Section 6 at the moment, despite the fact that they '...were used for, or made or adapted for use for, (any) purpose connected with the traditional cultural life of the Aboriginal people past'.

This needs to be revised to clarify what objects are protected.

Question 7

No

Additional comments:

For example, Walganha (Walga Rock) near Cue in Wajarri Country is a Protected Area but does not appear to enjoy particularly good management under the provisions of the AHA 1972.

Designated funding for places of outstanding importance and Aboriginal Ranger programs to engage in on the ground management and protection would be more effective - site registration already provides legal protection.

Question 8

Yes

8. what needs to be considered?:

This is a very important issue which needs legal governance.

Protection and Enforcement

Question 9

9. Activities that should require consent or authorisation:

to be decided in consultation with traditional owners but certainly all the things currently set out in the Act

Question 10

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

The Burra Charter 2013 has some excellent guidelines on the evaluation of heritage and so how values can be affected by development. The Act should be updated with the latest professional advice.

Question 11

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

consultation with traditional owners

historical research

Question 12

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

A court on the basis of the evidence provided?

Question 13

Ineffective

13. How s18 can be improved?:

The site-focused approach does not adequately capture Aboriginal heritage values. The Minister can decide against the advice of the ACMC which undermines the process.

The ACMC are generally assessing whether something is, or is not a site, and then immediately decided whether or not it should be protected which potentially biases the original evaluation of the site. So these two processes need to be separated.

Question 14

14. provisions for long-term protection of sites:

Question 15

No

15. How can enforcement provisions be improved?:

They don't seem to have been brought to bear in most cases.

It may be deemed unreasonable for farmers to be prosecuted for ploughing through sites, though this obviously happens, for example. Can the wording be revised to be more specific about the application of penalties? The Department probably needs more and different resources to undertake improved enforcement.

Question 16

No

16. How can penalties be improved?:

Site Assessment and Registration

Question 17

No opinion

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

not enough time

Question 18

No

18. What should the criteria be?:

not enough time

Question 19

19. Steps to report place or object:

not enough time

19. Steps to nominate a place or object:

not enough time

19. Steps to assess a place or object:

not enough time

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

not enough time

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

not enough time

19. Steps to remove place or object from Register:

not enough time

Other Parts of the Act

Question 20

20. What's missing from the Act?:

not enough time

Question 21

21. Sections to be removed from Act?:

not enough time

Any other comments

Any other comments:

not enough time