



Our Ref: 65-03814

Mr Ross Tomasini
Assistant Director General
Department of Planning, Lands and Heritage
PO Box 7479
Cloisters Square PO WA 6850

Dear Mr Tomasini

**SUBMISSION TO THE REVIEW OF THE ABORIGINAL HERITAGE ACT 1972 –
CONSULTATION PAPER**

Thank you for the opportunity for the Department of Fire and Emergency Services (DFES) to contribute to the review of the *Aboriginal Heritage Act 1972*.

Please find attached DFES' submission in response to relevant questions from the consultation paper.

For further information, please contact Paul Simpson, Principal Policy Officer, Office of Bushfire Risk Management on (08) 9395 9538 or via email on paul.simpson@dfes.wa.gov.au.

Yours sincerely

**DARREN KLEMM AFSM
COMMISSIONER**

30 May 2018

Department of Fire and Emergency Services Submission to the review of the *Aboriginal Heritage Act 1972*

No.	Question	Response
1.	<i>Is the long title an adequate description of what the amended Act should set out to do?</i>	Yes
2.	<i>What do you think are the best ways to ensure the appropriate people are consulted about what Aboriginal heritage places should be protected, and how a proposal may impact those places?</i>	<p>DFES has developed excellent working arrangements and procedures in relation to activities it is responsible for and would prefer a model that encourages development of strong working relationships with traditional land owners based on cooperation and collaboration.</p> <p>DFES recommends the inclusion of a requirement under the Act that ensures Aboriginal people are consulted but agencies/industry should develop their own protocols for stakeholder engagement.</p>
3.	<i>To what extent has the provision to appoint honorary wardens been effective and how can it be improved?</i>	<p>DFES recommends that the provision to appoint honorary wardens can be improved with the inclusion of a requirement for traditional owners to participate in the appointment of honorary wardens.</p> <p>DFES recommends improvements to Section 51 by stating access is allowed to private premises with a warrant in relation to 'objects' that may be in possession of a person contrary to the Aboriginal Heritage Act. At present it is not clear how the Act deals with this situation as the powers within s.51 are expressed as not applying to a private dwelling.</p>
4.	<i>Are the roles and functions assigned under the Act sufficiently clear and comprehensive to fulfil the objectives of the legislation to preserve Aboriginal heritage places and objects?</i>	<p>When DFES was established in 2012, section 15(2) of the <i>Fire and Emergency Services Act 1998</i> was amended so the FES Commissioner could delegate functions to a public service officer not employed in the Department. It is suggested there be consideration to expanding the current delegation powers in the Aboriginal Heritage Act to provide greater flexibility, particularly in the more remote areas of the State where officers of Department of Planning, Lands and Heritage may not be present.</p>

5.	<i>Does section 5 adequately describe the sorts of places or sites that should be protected under the amended Act?</i>	Yes
6.	<i>Do section 6 and Part VI adequately describe the sorts of objects that should be protected under the amended Act?</i>	Yes
7.	<i>Is the declaration of a Protected Area under the Act the best way to deal with Aboriginal sites of outstanding importance?</i>	Yes
8.	<i>Should the Act provide for the management of Aboriginal Ancestral (Skeletal) Remains? If so, what needs to be considered?</i>	Yes. DFES recommends that the Act provide for the management of Aboriginal Ancestral (Skeletal) Remains in line with provisions included in other states.
9.	<i>What sort of activities that may affect an Aboriginal site should require consent or authorisation?</i>	DFES recommends that clearing or excavation of land (including modification or removal of Scar Trees) should require consent or authorisation, however authorities require the ability to perform such activities when carried out in response to an emergency without consent or authority.
10.	<i>What should be the criteria against which to evaluate an activity that may affect a site (e.g. a proposal to use or develop land)?</i>	DFES recommends that any proposal to develop or clear land should be evaluated, but as stated above, would like consideration to be given to ensuring that it is clear that emergency activities are exempt.
12.	<i>Who should provide consent or authorisation for proposals that will affect Aboriginal sites?</i>	DFES recommends that the Minister or their nominated representative should provide consent or authorisation for proposals.
13.	<i>To what extent is the current section 18 application process effective and how can it be improved?</i>	No comment
14.	<i>What provisions could be included in an amended Act to ensure the long-term protection of Aboriginal</i>	No comment

	<i>sites where alternative statutory arrangements do not apply?</i>	
15.	<i>Are the enforcement provisions under the Act adequate to protect sites?</i>	No comment
16.	<i>Are the current penalties under the Act adequate?</i>	DFES is not in the position to assess adequacy of penalties.
17.	<i>Should a defence continue to be provided where the disclosure of information (section 15) is against customary laws/protocols?</i>	Yes
18.	<i>Are the criteria for assessing the significance of sites under section 39 (2) and (3) adequate to evaluate whether a site should be added to the Register?</i>	Yes
19.	<i>What should be the steps to report, nominate, assess, enter, amend or remove an entry from the Register?</i>	DFES recommends that the current process relating to the Register should be maintained.