

## Response ID ANON-8EBD-41R2-C

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

Submitted on **2018-06-01 16:39:13**

### About You

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

Organisation

### Individual details

**Are you of Aboriginal or Torres Strait Islander descent?**

No

**What is your name?**

**Optional:**

Nerilee Boshammer

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

Yes

### Organisation details

**What is the name of your organisation?**

**Organisation Name:**

South West Catchments Council

**Name of submitting officer and position.**

**Submitting officer and position:**

Nerilee Boshammer, Community Engagement Program Manager

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

Yes

**In which field is your business?**

Other (please specify below)

**If "other" please specify your field of business:**

Natural Resource Management Regional Body

### Purpose of the Act

#### Question 1

No

**If not, what changes should be made?:**

The definition does not capture the ethnographic importance of places like natural environmental features and/or information provided in support of this.

The importance of the connection of Aboriginal people to the natural environment, irrespective of the identification of objects or Dreaming stories associated with it, is paramount and not currently reflected in the Act.

The removal and then re-listing of the Collie and Swan Rivers as registered sites on the DAA on-line Heritage Site Register in recent years illustrates the importance of clarifying this, as it is currently open to interpretation, leaving very important places vulnerable in future.

### Roles under the Act

#### Question 2

## **2 - who should be consulted?:**

The Act could be amended so that it is a requirement that Aboriginal people are consulted and that the ACMC includes members of the Aboriginal community. This might prevent the process of heritage protection being over-simplified or even subverted.

The ACMC specifically could require Aboriginal community membership to ensure that the cultural and ethnographic considerations, important to this Act are enforced effectively, and considered when making recommendations on Section 18 applications and other ACMC matters. This needs to be undertaken while maintaining objectivity in terms of the recommendations made by said Aboriginal community members. A difficult, but valuable and important component of the ACMC function.

In addition, the heritage protection process in general could benefit from being more proactive in terms of community involvement, information, consultation and public education about the protection of Aboriginal culture and heritage. This could help prevent the current reactive process creating issues of the 'right' or 'wrong' people being consulted on heritage significance.

Rather than waiting for a proposal to potentially impact a site, the community at large, Local Government, the private sector and other State Government Departments (Particularly DPLH) could be educated and encouraged to participate in Aboriginal Heritage Protection. Having Aboriginal staff embedded in the Planning and Lands branches of the DPLH could assist here.

Improved communication and consultation on an ongoing basis, regardless of pending proposals, could result in improved community trust and confidence in the Heritage Protection System and for the proponents to be assured that they are meeting their requirements effectively.

## **Question 3**

No opinion

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

## **Question 4**

No

### **Role and functions - Minister:**

Information that is easy for the public to access (i.e. via the DPLH website, Land Council websites, public libraries, etc) about the roles and responsibilities of the Minister could assist in developing stronger general understanding and building of trust.

No

### **Role and functions - Registrar:**

The description of the role of the registrar could be clearer to the general community, as to how they can access the registrar to lodge heritage site queries. Currently, the information on the DPLH website does not stipulate what the registrar does operationally on a day-to-day basis that the community could potentially engage with. It could benefit from encouraging more community interaction.

Information that is easy for the public to access (i.e. via the DPLH website, Land Council websites, public libraries, etc) about the roles and responsibilities of the Registrar, along with processes and protocols for identifying and assessing heritage values, could assist in this general understanding and building of trust.

No

### **Role and functions - Committee:**

Many people in the Aboriginal and non-Aboriginal community think that the ACMC makes the final decision on Heritage matters, rather than the Minister. This can lead to community angst and unrealistic expectations about what the ACMC is expected to do.

No

### **Role and functions - DPLH:**

It could be said that some confusion exists in the Aboriginal and non-Aboriginal community as to the number of staff who work at the Department and what their roles and responsibilities are. This can lead to community angst and unrealistic expectations about what DPLH staff are able to do to facilitate heritage protection outcomes.

There is also confusion as to how the different Departments and Acts interact (i.e. the Aboriginal Heritage Act, WA Biodiversity Conservation Act and WA Planning and Development Act).

Improving the availability and accessibility of information for the public (i.e. via the DPLH website, Land Council websites, public libraries, etc) about the various roles and responsibilities under the DPLH, along with processes and protocols for identifying and assessing heritage values, could assist in this general understanding and building of trust.

## **What is Protected?**

## **Question 5**

No

**5. How can section 5 be improved?:**

As per the answer to Q1, the definition does not capture the ethnographic importance of places like natural environmental features and/or information provided in support of this.

The importance of the connection of Aboriginal people to the natural environment and family, irrespective of the identification of objects or mythological stories associated with it, is paramount and not currently reflected in the Act or heritage protection process.

The removal and then re-listing of the Collie and Swan Rivers as registered sites on the DPLH on-line Heritage Site Register again illustrates the importance of clarifying this, as it is currently open to interpretation, leaving very important places vulnerable to Section 18 application and/or Regulation 10 approval.

**Question 6**

No

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

As per the answer to Q1 and Q5, the definition does not capture the ethnographic importance of places like natural environmental features and/or information provided in support of this.

There are a lot of social customs (traditional and contemporary), memories and family connections associated with natural environmental places that are of huge significance to Aboriginal people, which are not recorded as part of heritage survey work and hence are not recorded in survey submissions or on the site register. This is a major gap in the interpretation of the current legislation by the community and anthropologists/ archaeologists alike. The Act cannot protect what is not identified as being of importance.

The importance of the connection of Aboriginal people to the natural environment, irrespective of the identification of objects or mythology associated with it, is paramount and not currently reflected in the Act or in the process of assessing heritage significance.

**Question 7**

Yes

**Additional comments:**

This is providing that it is in consultation with the local Aboriginal community, the relevant Land Council (so as not to create community tensions and to ensure a range of cultural views are considered) and it also takes into consideration the ethnographic significance, as mentioned in Q1, 5 and 6.

**Question 8**

Yes

**8. what needs to be considered?:**

Currently, if skeletal remains are found, to meet the requirements and obligations under the Act, a community member/landholder can simply place a phone call to the local police station to report it. This is often as far as it goes. There is no legal provision in the act for what happens next in terms of consultation with the local TOs, management or protection.

The discovery of any skeletal remains should trigger notification of the appropriate Aboriginal people and Departmental representatives, so that steps can be taken for management, protection, removal, and identification, in partnership and collaboration with the police if necessary.

Copies of the results of this work should then be made available to the DPLH, the relevant Land Council/s and other places as deemed appropriate. In addition, incentives for the public to engage more positively in this process and come forward with reports could be of benefit.

**Protection and Enforcement****Question 9****9. Activities that should require consent or authorisation:**

Any that may jeopardise the integrity of the values of the site. This can include physical damage, but also needs to take into account cultural protocols, such as specific men's and women's places.

The Act sets the base minimum requirements for protection of Heritage.

A culture could be fostered in all levels of Government, the DPLH and the community of valuing culture and heritage so that it is protected by default at a whole of community and government level, not by exception and not only through the minimum requirements of the Act.

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

As per previous answers, rather than waiting for a proposal to potentially impact a site, the community at large, Local Government, the private sector and other

State Government Departments (Particularly DPLH and DBCA) could be educated and encouraged to participate in Aboriginal Heritage Protection.

Improved communication and consultation on an ongoing basis, regardless of pending proposals, is the best way to build community trust and confidence in the Heritage Protection System and for the proponents to be assured that they are meeting their requirements effectively.

#### **Question 11**

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

As per previous answers, impact could be assessed in relation to environmental and social impact as they pertain to ethnographic considerations and deeper considerations of 'connectedness to Country'. This is as fundamental a consideration in terms of cultural heritage and often more important than the discovery of specific artefacts or other static, physical cultural heritage.

The Act does not currently adequately provide for this, or even require that this information be recorded as part of heritage survey consultation and assessment work. Often Aboriginal people cite this environmental and social connection in consultation, but it is not recorded, as it is not considered to be relevant by anthropologists/archaeologists, as it does not then relate back to Act minimum requirements.

The fact that environmental condition of the natural landscape and cultural importance are considered separately to the Heritage Act, under separate acts (Biodiversity Conservation Act), with very little interaction, lies at the heart of the current gaps in the Heritage Act.

#### **Question 12**

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

As per previous answers, all stages should be undertaken in consultation with the local Aboriginal community. Aboriginal people should be embedded in all tiers of government so that the process considers cultural importance of lands in the context of environmental and social sustainability, as opposed to the current approach of Heritage being considered at the tail end of the process.

#### **Question 13**

Ineffective

##### **13. How s18 can be improved?:**

As per previous answers, Section 18 applications should be assessed in relation to environmental and social impact as they pertain to ethnographic considerations and deeper considerations of 'connectedness to Country'. This is as fundamental a consideration in terms of cultural heritage and often more important than the discovery of specific artefacts or other static, physical cultural heritage.

The Act does not currently adequately provide or this, or even require that this information be recorded as part of heritage survey consultation work. Often Aboriginal people cite this environmental and social connection in consultation, but it is not recorded, as it is not considered to be relevant by anthropologists/archaeologists, as it does not then relate back to Act requirements.

Several Section 18 proposals have been approved on these grounds, much to the frustration and disappointment of the local Aboriginal people who were consulted.

The fact that environmental condition of the natural landscape and cultural importance are considered separately, under separate acts, with very little interaction, lies at the heart of the current gaps in the Heritage Act.

#### **Question 14**

##### **14. provisions for long-term protection of sites:**

As per previous answers, rather than waiting for a proposal to potentially impact a site, the community at large, Local Government, the private sector and other State Government Departments (Particularly DPLH and DBCA) could be educated and encouraged to participate in Aboriginal Heritage Protection.

It could be embedded in process and as part of the established system, with Aboriginal people involved in all areas of heritage management and protection.

#### **Question 15**

No

##### **15. How can enforcement provisions be improved?:**

They should be increased, particularly for companies and/or if it is related to a pending development proposal.

In addition, it should be made public when proponents breach the Act and it should impact on trading and reputation.

Conversely, there should be incentives for companies and individuals to be more proactive in their heritage protection efforts. The Act sets a bare minimum for Aboriginal heritage protection. There is nothing to say that these can be exceeded. If this is done, it should count towards a company's public profile and for individual landholders, some kind of incentive to protect and manage sites identified on their properties will assist in better management and protection.

## Question 16

No

### 16. How can penalties be improved?:

They should be increased, significantly so for companies and/or if it is related to a pending development proposal. It should also factor in company reputation as well as monetary penalties. Currently, the penalties for destruction/desecration are not at a level that will impact a proposal's cost-benefit analysis. They are often simply factored in as a cost of operating.

## Site Assessment and Registration

## Question 17

Yes

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

Aboriginal people should not be legally obliged to disclose highly sensitive cultural information. The retention of this by-law could illustrate that cultural respect and understanding are embedded as part of the Act.

There are those who may argue that if we don't know the sites are there on the public register of Heritage Sites, they can't be protected. This simply isn't true. Aboriginal people consulted will advise accordingly, and should be able to, without having to 'prove' to non-Aboriginal people that a site is so important as to warrant non-disclosure.

## Question 18

Yes

### 18. What should the criteria be?:

It is other elements around the Act and heritage protection process that need to be adjusted so that the above can be executed effectively and with true cultural consideration. i.e. Connection to Country, family and community.

## Question 19

### 19. Steps to report place or object:

The current on-line search and reporting tool is much improved on the previous and the steps to report a place to the registrar are quite good and clear on the site.

However most community members have no idea this great tool exists.

A culture could be fostered in the DPLH of promoting this more widely and educating people about the Act so that they aren't scared to report things.

A common (and groundless) fear of private landholders, particularly farmers, and sometimes local governments, is that if they report a site or skeletal remains, they will lose their property, or it will have serious implications for management. There are many landholders with artefacts on the mantelpiece that will never report this to the DAA.

These kinds of misconceptions need to be debunked by public education and making fact sheets and easy to absorb information about the Act available to the public via the website.

If people have easy access to information, the Act becomes more understandable and less frightening and will encourage greater sharing of cultural information between Aboriginal and non-Aboriginal people.

The current state of play unfortunately fosters mistrust on both sides, as opposed to collaboration.

### 19. Steps to nominate a place or object:

As per previous answer.

### 19. Steps to assess a place or object:

As per previous answers.

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

As per previous answers.

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

As per previous answers.

### 19. Steps to remove place or object from Register:

This needs to be done in consultation with the Aboriginal community and should only be done by exception and should take into account the environmental and social considerations.

The case of the Collie and Swan Rivers being removed from the register in 2015, with no consultation with the Aboriginal community, is a very good example of

what should not be done.

## **Other Parts of the Act**

### **Question 20**

#### **20. What's missing from the Act?:**

There is no legal requirement in the Act for proponents to make the results of Heritage surveys public. The legislation needs to be changed to make this mandatory. The results could be easily accessible to the public, via the DPLH website, Land Council offices, and other appropriate locations.

This not only makes proponents accountable to the community, but also reduces the likelihood of duplication of effort in heritage research and consultation for future proposals, which is a common issue currently. This could make the entire process more resource efficient, effective and streamlined.

### **Question 21**

No opinion

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

#### **Any other comments**

#### **Any other comments:**

Nothing to add. Thank you.