

Aboriginal Heritage Act Review Workshop – TONT, 23 May 2018, Geraldton

WHICH SITES SHOULD BE PROTECTED?

- Heritage is a non-Aboriginal word and does not cover all types of cultural elements that require protection. The Act also needs to protect the religious and spiritual elements of Aboriginal culture.
- Further to the point above, the word 'Culture' is currently missing from the title of the Act
- The name of the Act should expand to include 'Culture'.
- The purpose of the Act as defined in the long title also needs expanding to go beyond protection of physical 'places' and 'objects', it must also extend to intangible heritage.
- Intellectual culture and heritage, Intellectual Property and intangible heritage also require protection and preservation under legislation.
- New legislation should extend beyond sites and objects.
- Sections 5(c) to include intellectual property, religious and spiritual aspects of Aboriginal culture.
- Legislation should ensure it is inclusive of Aboriginal culture that is both pre and post European arrival.
- 'Preservation' should be in the definition of the Act and resourcing and funding be made available to carry out preservation activities.
- Act needs to manage and have a keeping place for objects and ancestral remains and include provisions for returning objects to country, and that they be reordered correctly.
- Act must include a specific provision that requires review at regular intervals, to take into account cultural adaption and evolution into the future.

ROLES AND RESPONSIBILITIES

- Process relating to key functions of the Act need to be embedded into the Act.
- There needs to be the establishment of a local authorising body of Aboriginal people at a local level (**Local Authorising Body**), which considers and approves places to be assessed and provides guidance relating to impacts to heritage. The ACMC must seek the views of the relevant Local Authorising Body prior to undertaking any consideration of place assessments or proposals to impact sites.
- The constitution of the Local Authorising Body will differ from place to place, but likely to be made up of PBC, or other representative corporation, and members of the local Aboriginal community.
- Processes and roles must be more clearly defined.
- ACMC, or comparable body with authority to perform functions under the Act, must include at least two Aboriginal representatives from each region in WA, so that it represents all Traditional Owners in the state.
- Minister to be informed by and should follow the recommendations of the ACMC.

CONSULTATION – SITES

- Local Authorising Body to review and provide advice prior to consideration by the ACMC.
- Applications to damage or impact a site should be assessed by the Local Authorising Body, then the ACMC and finally by the Minister.
- Greater clarity around section 16/18 applications, and the scope of their application, is sought.

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WHAT ACTIONS REQUIRE APPROVAL?

- Aboriginal people are reluctant to support section 18 applications as they do not support sites being impacted.
- There should be provisions in the Act requiring land users to make attempts and demonstrate efforts to avoid sites before they are able to lodge a section 18 application.
- Consultation must result in an agreed outcome before the proponent can progress to a section 18 application.

CONSULTATION – IMPACTS ON SITES

- Consultation comes back to the Local Authorising Body level for a starting point
- Consultation needs to be mandatory with the Local Authorising Body under new legislation.
- The Local Authorising Body needs to be registered with the Department of Planning, Lands and Heritage as the correct body to consult with for a specific area.

HONORARY WARDENS

- Expanding to include site management and protection functions and enforcement powers, such as issue move on notices, if there is a risk to the site.
- The local honorary warden adapted and incorporated into the role of Indigenous rangers, where possible.
- Need to be resourced and funded through the new/amended Act.
- Role would involve cultural inspection and monitoring.

WHAT IS PROTECTED?

The following should be protected by the legislation:

- Spiritual and religious intellectual places.
- Intangible needs to be protected.
- Spiritual need to be protected by location.
- Areas of avoidance (No go areas), which require signage for the public.
- Gender specific places.
- Protecting places or objects are protecting spiritual.
- Objects; it is important that new or amended legislation include provisions for the protection of objects.

ANCESTRAL REMAINS

- Need to be clearly protected through express words under legislation; the current protection is not clear enough.
- Once ancestral remains are located, there should be a requirement to report to the Local Authorising Body in first instance. The Local Authorising Body will then work with local police.
- There should be more consultation with the community about ancestral remains currently possessed by museums. The obligation to return these to the relevant Local Authorising Body should be embedded into the Act.

PROTECTED AREAS

- Protected areas should not just be allowed to be accessed by the Minister. The declaration of protected areas (past or future) should not deny access to the Aboriginal people who are the Traditional Custodians of those areas.
- The Minister should not be the only entity able to issue permits to access or visit these areas; visitations by Minister have to be authorised by the Local Authorising Body then ACMC
- Protected areas should be vested with the Local Authorising Body and not the Minister.
- Rangers should have authority to monitor and manage protected areas.

PENALTIES

- Increase penalties.
- Provide appropriate enforcement powers to rangers.
- Penalties should be proportionate with a company's income.
- A public register of offenders that been found of impacting sites, thus breaching s 17, should be maintained. Naming and shaming offenders would be a more effective deterrent.
- Another penalty is that the offering company should have to provide funds to the community affected by breaches, which they can put towards cultural heritage.
- Statute of limitations to be increased (longer than 12 months is required).
- Act should include clarification of a list of activities that are offences when conducted within Aboriginal sites.
- Restoration orders should also be included as a means of punitive measures within the Act.
- Local Authorising Body to be consulted at all stages with regard to alleged breaches of the Act.