

**Submission to Assistant Director General, Heritage Services DPLH on the consultation paper for the review of the Aboriginal Heritage Act, 1972 (the AHA)**

Associate Professor Jim Taylor and Dr Michael Weir welcome the opportunity to comment on the current review of the Aboriginal Heritage Act 1972 (hereafter, *The Act*).

Among the major issues the review of the Aboriginal Heritage Act 1972 raises for us is ‘Who decides on the evaluation of Aboriginal heritage objects, places and events?’ Are Local Indigenous Traditional Owners adequately represented on boards like the Aboriginal Cultural Materials Committee? Or is it left to a panel of experts who are often not directly connected to a particular place, event or object in a given region?

Further, we are particularly interested to acknowledge the intangible and tangible qualities of place and space. Our focus, as anthropologists, is not only on the inherent values in a site or property but also associated with social aspects that locals believe are important to the retention of the fabric of their community. Such values play an important role in the meaningful construction of people’s lives.

It is important to regard ‘heritage’ as a lived and living heritage, and as such, referencing vibrant and dynamic concepts of community practices in ‘cultural landscapes’. We argue that such landscapes are constantly being constructed, disturbed and transformed by everyday understandings, meanings and human actions of citizens as well as by the visions, disciplines and products of say, miners, planners and regulators. For us, it is not that positions on heritage and development should be antithetical; the two can be reconciled through negotiation based upon an Act that has the true interests of Aboriginal people at its core.

In our submission to the proposed changes to the *Aboriginal Heritage Act (1972)*, we argue for

- An inclusive heritage where not only elite views of heritage items are considered but also those relating to the vernacular, quotidian and recent as well as distant past
- That an inclusive view of heritage is needed to sustain meaningful heritage
- Meaningful heritage is associated with custodial rights and social significance that Aboriginal people associate with place/objects
- In an inclusive heritage practice, decisions of heritage do not reside solely or decidedly with certain socio-economic classes and their control over cultural capital

- An inclusive view of heritage holds that things of significance are in fact intrinsic to a sense of common identity
- Meanings and associations with place are often intangible. They are not just related to the outward appearance and preservation of a cultural landscape or its age

It is both important and effective for communities to define what is of value to them. It would seem logical that any determination of heritage significance of sites or places in a particular location would, of necessity, involve a relevant community or group in significant consultation.

More specifically we wish to make the following points:

1. That the long title of the Act be amended. As it stands the long title is as follows:

An Act to make provision for the preservation on behalf of the community of places and objects customarily used by or traditional to the original inhabitants of Australia or their descendants, or associated therewith, and for other purposes incidental thereto.

This wording appears somewhat cumbersome. The use of terms such as customary and traditional, for example, has the effect, whether intentional or not, of limiting the scope of what the Act should or could be as it closes off possibilities.

The long title could be simplified, say, to something like, as in the Aboriginal Heritage Act (1988) in South Australia (but including Torres Strait Islander heritage) to:

‘An Act to provide for the protection and preservation of the Aboriginal [*and Torres Strait Islander*] Heritage ...’

Or, alternatively, it might be compared to the long title of the Commonwealth Aboriginal and Torres Strait Islander Heritage Act (1984) which states simply:

‘An Act to preserve and protect places, areas and objects of particular significance to Aboriginals, and for related purposes’ or words to that effect.

2. In any case the Act needs to be in line with comparable other State and Federal legislation and heritage protocols and principles such as the Native Title Act (1994), the Burra Charter and the Western Australian Heritage Act 1986 and so on.

In particular the role and appointment of wardens as stated in the 1972 Act needs to be looked at and compared to the role and appointment of inspectors as noted in these other Acts so that that the appropriate people are consulted about Aboriginal Heritage Places and their protection.

**3.** Allows for the scope of co-management of heritage and an acknowledgment that Aboriginal Heritage in WA is worked around an axis of custodial rights

**4.** We would like to stress that heritage is a dynamic concept, that it exists in the here and now and references the future as well; that it is not confined to a distant past.

In addition, heritage values should not be confined solely to place. Heritage values exist just as concretely in cultural landscapes in which the tangible and intangible elements of heritage are expressed through land and water, surface and sub-surface, historic structures, social places, movable and immovable objects.

**5.** That heritage areas are associated with cultural heritage management plans

**6.** That Ranger programs be expanded and form an essential part of an on-going heritage management approach

**7.** The role of the Aboriginal Cultural Materials Committee should be reformed and replaced with two overseeing bodies: one to make assessments on heritage, the other to provide assessment of appropriate land-use. These bodies should be made up of representative Aboriginal persons/organisations and heritage professionals and must be seen as procedurally fair and adequately resourced

**8.** Current penalties appear inadequate especially when compared to other heritage Acts.

We reserve further criticism of the Act to those with a greater depth of knowledge of heritage specifics.

Sincerely,

Associate Professor Jim Taylor and Dr Michael Weir