

## Response ID ANON-8EBD-41CC-E

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

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### 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:**

Guy Wright

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

Yes

### Purpose of the Act

#### Question 1

Yes

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

### Roles under the Act

#### Question 2

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

An Aboriginal dominated APMC is essential to the legitimacy and smooth operation of the existing Act. During the early 1990s there was a robust majority of Aboriginal people, drawn from appropriate regions, and the process worked well. I was a bureaucrat servicing the committee at this time and was impressed by the level of discussion, and mindfulness of the local/regional nuance about Aboriginal opinion and authority.

There should be an appropriate anthropologist on the APMC, as currently required, and there should be an appropriate archaeologist. Both these professional placements should be as a result of nominations of universities, as currently required of the anthropologist.

The APMC evaluates places and objects on behalf of the community. This important role should be conducted without interference from government or industry. It should be adequately supported.

The current system of engaging heritage consultants to conduct consultation about heritage matters is entrenched and should continue. However, it must be professionalised to the extent that archaeologists, anthropologists, or others, must be part of a meaningful system of authorisation. The existing "professional bodies" are inadequate. Many of the calamitous situations that arose in the recent mining boom were the result of inexperienced and otherwise underqualified "professionals" attempting heritage consultation.

#### Question 3

Ineffective

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

There is an opportunity to use wardens for various relevant functions. This provision is rarely, if ever, used. Ideally the wardenship under the AHA would be linked with other, complementary, duties under other legislation. Aboriginal people are best for this, not simply because of their Aboriginality but also because they are likely to be local people. However, Aboriginality should not be a compulsory attribute. The best-person-for-the-role should be.

#### Question 4

Yes

**Role and functions - Minister:**

However, my experience with the last government was that the department (Registrar) tried to ease the burden on the minister by making his decisions easier.

The system works best, in my experience, where the Registrar is the effective leader of the department and provides frank advice. The minister's duty is to assess this advice and decide accordingly, taking into account the needs of the community. These decisions are often difficult. That is what the minister signed up for.

Yes

**Role and functions - Registrar:**

The Registrar should have a clear leadership role as the head of the department/branch and a tenure arrangement should be considered so that she/he is able to have a strong sense that the job is not dependent on political support. Aboriginality of the Registrar may be a preference, but should not be a requirement.

Yes

**Role and functions - Committee:**

Although the definitions under 39(2) could be tweaked, the process of tweaking them may open a can that should remain closed. The many thousands of Aboriginal sites in the state have been evaluated on the basis of these, and Aboriginal people and others have come to understand the various nuances that have developed historically. I would leave the can closed.

No

**Role and functions - DPLH:**

The Aboriginal Heritage Act 1972 is an imperfect but robust nugget of legislation. I would modify it only in minor ways. Where it stumbles is in the execution. In my experience it was best housed with the WA Museum. Although the "museum" aspect was/is unpopular, the independence afforded by being a branch of the Museum was very important. The "Aboriginal Sites Department" should be able to operate in a robustly independent way, wherever it is housed. The debilitating levels of staff turnover and general unhappiness, of the last several years, could be addressed by ensuring the Sites Department has high levels of independence; it would once again become a reasonably attractive place to establish one's career.

## What is Protected?

### Question 5

Yes

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

These definitions are endlessly problematic, but any replacement words are likely to be just as problematic. The question asks if these are the "sorts of places" that should be protected. The many thousands of Aboriginal sites currently existing in the databases are based on this wording. Any significance change could cause a re-evaluation of that material. Aboriginal people have come to understand what is protected under these definitions. Yes, they are the sorts of places that should be protected.

I think there could be a carefully constructed definition that goes to a view about "landscape." As a consultant and public servant I have dealt with situations where specific "sites" might be protected, or put through a process, but where their surroundings are so altered as to make them meaningless.

### Question 6

Yes

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

If there is an adequate level of Aboriginal representation on the APMC.

### Question 7

Yes

**Additional comments:**

Sadly this is an area where the Act has been let down by its administration. I have recently had the sad experience of dealing with the Two Mile Ridge in Port Hedland, a place of outstanding significance for its rock-art and its local Aboriginal historical values. Despite a part of the ridge being declared a Protected Area decades ago, the ridge has been degraded, disturbed, and disgracefully treated.

There needs to be a genuine expectation that a declaration as a protected area will be followed up with appropriate management arrangements.

### Question 8

Yes

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

A simple provision could be made for this.

## Protection and Enforcement

### Question 9

**9. Activities that should require consent or authorisation:**

All ground disturbing work.

**Question 10**

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

If the current standards are applied appropriately these provide adequate criteria. The bulk of Aboriginal sites are artefact scatters. No one seriously believes that all artefact scatters should be preserved. However, it is important that they are properly recorded and the information from them is managed in an appropriate way for future reference. Highly significant archaeological, or ethnographic sites, will require a stronger level of protection. Ultimately, the ACMC should be equipped to make good judgements about the relative importance of sites. Where these sites are wanted for use by another interest, the minister should be able to make a decision about the relative merits of the ground-disturbing activity and the site on behalf of the community.

**Question 11**

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

They can be assessed by sensitive and impartial consultation with the appropriate Aboriginal people. This will not always be the "Traditional Owners" or native title holders. It may include people who are somewhat removed from the locality but who are connected via their belief systems. This work should be done by well qualified anthropologists, or other suitable professionals. These experts should be engaged at-arms-length (or further) from the development proponent, and probably also the Aboriginal group. Their work should be impartial and be easily shown to be impartial. A specific commission from the ACMC strikes me as a reasonable means. The legitimacy would hinge on the perception of the ACMC as robustly independent.

**Question 12**

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

The Minister for Aboriginal Affairs

**Question 13**

Effective

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

It is effective if it is permitted to work properly. The ACMC must be resourced to deal adequately with its workload. In recent years there was an attempt to effectively gut the Committee by restricting its membership, input and permissible time for meeting. This did not work well. An ACMC with significant regional Aboriginal representation should meet over a period of days, not hours. Perhaps two full days for a monthly meeting.

There needs to be an effective triage type of system to protect the ACMC from a deluge of relatively small matters. Small artefact scatters and the like should be dealt with in some kind of job lot so that the ACMC is not brought to a standstill by them but they should be seriously considered - as Aboriginal sites - and dealt with accordingly.

**Question 14**

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

No certain what this means. The Act protects Aboriginal sites in perpetuity unless there is a need to engage the s18 process.

**Question 15**

No

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

There needs to be better follow through - site inspections and so forth - that could be done by DPLH but might also be contracted out to native title representative bodies and/or others.

**Question 16**

No opinion

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

The issues are really about inspection and enforcement. Although heritage is separate from native title, it is native title that currently drives much of the expectation to have heritage assessments done. There should be sufficient enforcement that those developers who are not tied to a specific land use agreement are convinced it will be in their interest to have an Aboriginal heritage assessment of their project.

**Site Assessment and Registration**

**Question 17**

Yes

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

## Question 18

Yes

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

The wording is awkward and dated and there have been decades of critique about the "museum" quality of the section. However, re-writing this section opens a can very similar to that which would be opened with a re-write of s5. The system has adapted and grown around these two awkwardly worded sections and dramatic alterations to them risks potentially unnecessary shocks to the system.

## Question 19

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

I would leave as it is.

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

The overly long and complicated form that was developed during the term of the previous government should be streamlined and

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

The existing steps. The Department should be capable of being entrusted to provide preliminary advice about the importance of sites. The ACMC should have overriding control of this process and should be resourced to exercise this via the Registrar.

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

As above

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

As above

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

It should be the determination of the ACMC - properly constituted with a strong regional Aboriginal presence.

## Other Parts of the Act

## Question 20

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

Some provision for a "landscape view" of Aboriginal cultural values that is not tied specifically to "sites" could be considered.

## Question 21

No opinion

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

### Any other comments

Any other comments: