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## **Review of the Aboriginal Heritage Act 1972**

### Roles under the Act

#### *Consultation*

There should be explicit requirements for consultation with Aboriginal people with knowledge about the relevant elements of cultural heritage under consideration in each instance. That can only be achieved in an appropriately systematic way by establishing regional consultation committees. Current knowledge and experience drawn from participation in native title processes suggests that there should at least be regional Culture and Heritage Committees for the following regions:

East Kimberley

West Kimberley

North Pilbara

South Pilbara

Murchison Gascoyne

Eastern Goldfields

Western Desert

South West.

Each of those regional Committees should have the capacity to engage expert consultants in the relevant heritage related field to assist them in gathering and assessing data relevant to any opinion on heritage which may be required to be reached.

#### *Wardens*

There is little practical experience to rely upon in assessing the likely effectiveness of honorary wardens under the Act. The appointment of compliance Wardens ought to be an improvement upon the current system which shows little evidence a compliance regime. There is no reason why compliance officers should be honorary. They should be engaged on a remunerated basis, like any other person providing a service to the community.

#### *Aboriginal Cultural Materials Committee*

There should be a Culture and Heritages Committee for each of the regions referred to above, composed of Aboriginal people with cultural knowledge of the region of each Committee, with a capacity to engage expert advice and assistance appropriate to each decision to be made.

#### *Minister for Aboriginal Affairs*

The Minister's powers should be limited to acting in accordance with conclusions of the Regional Culture and Heritage Committee, subject to a right of Review by a Culture and Heritage division of the State Administrative Tribunal.

#### *Registrar of Aboriginal Sites*

The Registrar should have a defined clerical role of registering culture and heritage determined to be so by any Regional Culture and Heritage Committee, and maintaining a register of those aspects of culture and heritage.

#### What is protected

The present definitions of places and objects to which the Act applies suffers from the problem of over-specificity and consequent lack of general coverage of protection of culture and heritage. The Act should apply to all aspects of the culture and heritage of Aboriginal peoples in the State.

'Culture' should have a broad definition: the characteristics and knowledge of a particular group of people, encompassing language, religion, cuisine, social habits, music and arts.

'Heritage' should have an equally broad and general definition: qualities, traditions, or features of life that have been passed on from one generation to another.

The culture protected under the Act should not be limited that which is of heritage significance and should include culture of contemporary significance which may not yet have achieved heritage status.

'Protected Areas' under the present Act have not had any significant role in protecting culture or assisting in the protection of culture from adverse impacts which merits them having a status beyond a general process for protection of culture.

#### Protection and enforcement

Any act or failure to act which has affected, may affect or is likely to affect culture should be prohibited by the Act and subject to penalty. A generally expressed prohibition of that kind is preferable to the more specific prohibition in the present s 17 of the Act.

Sections 16 and 18 should be replaced by a process of assessment of the impact of any act which may affect culture by the relevant Regional Culture and Heritage Committee of a similar kind to that which occurs in relation to environmental impact under the *Environmental Protection Act 1986* (WA), with the relevant Regional Culture and Heritage Committee having power to refuse to authorize an activity or authorize the activity generally or subject to conditions. The decision of the Committee should be subject to a power of review vested in a Culture and Heritage division of the State Administrative Tribunal.

#### Enforcement

Penalties under the *Aboriginal Heritage Act* should have parity with those which apply under the *Environmental Protection Act 1986* (WA).

The defences available under the *Aboriginal Heritage Act* should be those which apply under the *Criminal Code*.

There should be no limitation period on the prosecution of offences because there is a high likelihood that offences will be committed in locations where it may be difficult to detect them within a short time frame.

Greg McIntyre SC

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