

Aboriginal Heritage Act 1972 Review

Discussion Paper Proposals

Position comparison between current and proposed new system: Aboriginal People

CURRENT POSITION	PROPOSED POSITION
All Aboriginal heritage is protected whether it is registered or not.	No change.
Cultural landscapes not clearly recognised	Cultural landscapes will be recognised by adopting a new definition of ‘place’ that aligns with the Burra Charter definition of ‘Heritage Places’.
No statutory protection for ancestral remains	Ancestral remains will be specifically protected.
Intangible heritage is not protected	Landscape features associated with the Dreaming and the songs and stories that connect them will be recognised as cultural landscapes and therefore covered by the new Act.
Intellectual property rights in art, stories, songs, bush medicines are not protected under the <i>Aboriginal Heritage Act 1972</i>	No change - intellectual property is the jurisdiction of the Commonwealth and will not be in the scope of the new Act.
Aboriginal people have to prove why a place or object is important and have no control over what is registered on the Register of Aboriginal Places and Objects	Aboriginal Knowledge Holders will no longer have to prove or justify why a place or object is important to them, they will simply have to provide enough information to explain why it is important and where it is located. Aboriginal Knowledge Holders will be able to register any place or object that is culturally important to them as long as it meets the minimum reporting standards set by a new Aboriginal Heritage Council

	<p>to ensure the information recorded on the Aboriginal Heritage Register is clear and accurate. (The Aboriginal Heritage Register will be the new name for the Register of Aboriginal Places and Objects).</p>
<p>There is no statutory requirement for Aboriginal people to be consulted about impacts to their cultural heritage</p>	<p>Local Aboriginal Heritage Services (LAHSs), which must be 100% Aboriginal, will ensure that the right people to speak for Country are identified and either conduct or coordinate culturally appropriate consultation. Where a LAHS exists, there will be a statutory obligation to consult with the LAHS on activity within its area of responsibility. Where there is no LAHS in an area, the Department of Planning, Lands and Heritage will be required to identify and consult with the people who have cultural authority for the area.</p>
<p>There is no statutory role for Aboriginal people in making decisions about their cultural heritage</p>	<p>By law, the relevant Aboriginal people's views must be taken into account in any decision that affects Aboriginal heritage. Local Aboriginal Heritage Services (100% Aboriginal) will have the statutory role of ensuring that the right people are involved in the decision-making process and facilitating agreements between them and land use proponents in their areas of responsibility. Decisions on land use proposals that have a significant impact on Aboriginal heritage, whether they are subject to an agreement or not, will still be made by the Minister for Aboriginal Affairs, but the Minister will have a statutory obligation to have regard to the views of the relevant Aboriginal people.</p>
<p>Aboriginal Cultural Material Committee (ACMC) decisions lack cultural authority</p>	<p>The ACMC will be abolished. The new Local Aboriginal Heritage Services (or Department of Planning, Lands and Heritage where there is none) will ensure those with cultural authority have input into decisions on land use proposals. A new Aboriginal Heritage Council (AHC) will be established which will review heritage agreements between Aboriginal</p>

	<p>people and land users. If appropriate, the AHC will endorse those heritage agreements, unless the outcome has a significant impact on Aboriginal heritage or involves a project of State Significance. In these cases, the AHC will provide a recommendation to the Minister for Aboriginal Affairs that takes account of the views of the relevant Aboriginal people. The AHC will be a skills based body, not a representative one. There will be a statutory requirement for the Chair to be an Aboriginal person and members (who it is intended will be principally Aboriginal) will be selected by the Minister for their expertise in relevant disciplines.</p>
Aboriginal heritage can be destroyed unnecessarily	<p>Land users will be encouraged to avoid impacting heritage, where possible, or to demonstrate that there is no feasible alternative when applying for consent to impact or destroy Aboriginal heritage. If the Minister for Aboriginal Affairs decides that a land use proposal should proceed, he or she will have a statutory obligation to provide reasons for that decision.</p> <p>The Minister will have a new power to issue a Stop Work Order.</p>
Decisions are not transparent	<p>Reasons for all decisions affecting heritage will be published so that they are transparent.</p>
There are no rights of appeal for Aboriginal people	<p>Aboriginal people will be given the same rights of appeal as land users.</p>
There is no statutory requirement to promote public awareness of the importance of Aboriginal heritage (as there is for State heritage)	<p>The Aboriginal Heritage Council will have a statutory function to promote education, training and raise awareness of the importance of Aboriginal heritage, and provide grants and other assistance to promote its conservation.</p>

Penalties are too low to deter unlawful destruction of Aboriginal heritage	Penalties will be equivalent to those in the <i>Heritage Act 2018</i>, including an increase of fines up to \$1 million.
Offenders are not prosecuted because the time is too short	The statute of limitations period for breaches of the Act will be extended from 1 year to 5 years.
Native title rights are not recognised	The rights of native title holders and claimants will be recognised in the new Act through the Local Aboriginal Heritage Services.
Some Aboriginal people can be vulnerable to unfair 'agreements' which force the owners of the heritage to 'not object' to the destruction of their heritage	The Aboriginal Heritage Council will need to be satisfied that an agreement between a land user and the relevant Aboriginal people has been negotiated in good faith and arrived at through an equitable process before it endorses the agreement. However, the Aboriginal Heritage Council will not look at the commercial terms of any agreement.
There are restrictions on the active management of heritage in Protected Areas	New regulations will allow the appropriate Aboriginal people to manage their heritage in Protected Areas.