

Response ID ANON-8EBD-41YJ-B

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

Submitted on **2018-05-31 16:18:04**

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:

Ian Ryan

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

Yes

Purpose of the Act

Question 1

No

If not, what changes should be made?:

I think that the long title should also include reference to celebrating Aboriginal heritage (where appropriate and approved by the relevant Aboriginal people). Moreover, the Act's title should ideally make it clear that the Act aims to make provision for Aboriginal control over cultural heritage places and objects. Finally, the Act should include a stated aim of facilitating the recording of Aboriginal heritage sites when they will be disturbed by development activities provided that this is consistent with the wishes of the reverent Aboriginal heritage custodians and that they are provided with the opportunity to control access to site records.

Roles under the Act

Question 2

2 - who should be consulted?:

If the current act and associated regulation and administration is not going to be substantially altered (i.e. if an entire new act is not enacted), then it may be that the best way to ensure this is to put an amendment into the Act requiring Aboriginal representatives of all regions to be present on the ACMC. Alternatively (or additionally) it may be desirable for representatives of the Native Title claimants or owners to be present at ACMC meetings that deal with site assessments (including section 18 applications).

Question 3

Ineffective

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

By combining the role of honorary warden with existing Aboriginal rangers. Also, properly resourcing people when they are appointed to the role would be a good idea.

Question 4

No

Role and functions - Minister:

The Minister's powers to over ride the ACMC (or equivalent body) should be completely removed.

Yes

Role and functions - Registrar:

No

Role and functions - Committee:

I suggest that it would be best to completely separate the assessment of the significance of places (i.e. if places constitute Aboriginal Sites under the Act) from the section 18 process. It might be desirable to have two completely separate (and independent) committees.

No

Role and functions - DPLH:

The department should have a much stronger role in pushing for high standards in the heritage consulting industry...which would require it to be much more transparent about internal processes across the board.

What is Protected?

Question 5

No

5. How can section 5 be improved?:

The Act does not adequately provide for the protection (or even recognition) of intangible elements of Aboriginal heritage.

Question 6

No opinion

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

Question 7

No

Additional comments:

Section 19 should unequivocally state that any place that is granted the status of a Protected Area is under the direct control of the relevant Aboriginal cultural custodians. Also, a Cultural Heritage Management Plan should be developed prior to an area being declared as a Protected Area.

Question 8

Yes

8. what needs to be considered?:

All that is required is a clear protocol that makes clear that the wishes of relevant Aboriginal cultural custodians are paramount in the management of skeletal material.

Protection and Enforcement

Question 9

9. Activities that should require consent or authorisation:

Any activity that would impact on a heritage plane should require some consent or authorisation - not only that provided for under section 18 of the Act (or similar) but also that provided for under a cultural heritage management plan or land access / heritage management agreement.

Question 10

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

This should be considered on a case by case basis surely? The heritage values of a place should be considered to determine the extent to which any given activity will impact on said heritage values rather than the other way around....

Question 11

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

This can only be assessed by the Aboriginal people whose non-tangible heritage values would be impacted by any land use. As such, they should be assessed by means of consulting with the relevant Aboriginal heritage custodians.

Question 12

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

Aboriginal heritage custodians must be empowered to provide consent or authorisation to provide consent or authorisation for proposal that will impact sites,. This could be within the context of a cultural heritage management plan or a land access or heritage management agreement.

Question 13

Ineffective

13. How s18 can be improved?:

While the current section 18 application process may be considered 'effective' it is clearly deeply problematic, not transparent, produces wildly inconsistent assessments and does not, I suggest, produce results in line with the long title of that Act.

It could be improved at a minimum by making the reasoning behind its assessments of Aboriginal heritage places transparent (and consistent). It is essential that the presence of relevant Aboriginal people on the APMC be made mandatory under the act and that the results of site assessments be clearly communicated to the Aboriginal people whose heritage is being impacted on by these assessments and decisions.

Ideally, the assessment of sites should be completely separated from considerations of permits to disturb sites.

Question 14

No opinion

14. provisions for long-term protection of sites:

Question 15

Yes

15. How can enforcement provisions be improved?:

Question 16

Yes

16. How can penalties be improved?:

Site Assessment and Registration

Question 17

Yes

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

Question 18

No

18. What should the criteria be?:

The criteria should be more explicit and the basis for assessments against these criteria should be clear and consistent.

Question 19

No opinion

19. Steps to report place or object:

No opinion

19. Steps to nominate a place or object:

No opinion

19. Steps to assess a place or object:

No opinion

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

No opinion

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

No opinion

19. Steps to remove place or object from Register:

Other Parts of the Act

Question 20**20. What's missing from the Act?:**

The principle missing element of the Act is a modern and more nuanced understanding of heritage values. Moreover, the Act needs to clearly state that Aboriginal people are the custodians of a range of both tangible and intangible heritage, that they are the people who should define what this heritage is, when it is appropriate to disturb heritage places and in what ways.

Question 21**21. Sections to be removed from Act?:**

The entirety of Part VI

Section 62 (lack of knowledge defense)

Any other comments**Any other comments:**