

## Attachment 2 of Item 9.2.2 May 22, 2018 OCM Shire of Toodyay

### Shire of Toodyay –Submission on the questions raised in the Department of Lands, Planning and Heritage’s

#### Aboriginal Heritage Act Consultation paper March 2018

The following is the Shire’s responses to the questions raised within the consultation paper on the review of the Aboriginal Heritage Act 1972. This submission looks at each heading listed and the questions nominated under each.

#### The Purpose of the Act (Page 7 of the Consultation Paper)

The purpose of the Act is set out in the long title:

*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.*

The long title sets out the general aims of the legislation to provide context for the detailed provisions of the legislation.

*Is the long title an adequate description of what the amended Act should set out to do? If not, what changes should be made?*

This title is no longer seen as adequate and should be reviewed. The scope of the act should be looked at in this statement and terms like “community” and “preservation” reviewed.

#### Roles under the Act (Page 8 of the Consultation Paper)

*What do you think are the best ways to ensure the appropriate people are consulted about what Aboriginal heritage places should be protected, and how a proposal may impact those places?*

The Act should be more specific in how Aboriginal people are to be involved.

*To what extent has the provision to appoint honorary wardens been effective and how can it be improved?*

This cannot be commented on because this is unknown.

#### Roles of the Aboriginal Cultural Material Committee & Role of Registrar of Aboriginal Sites (Page 8 & 9 of the Consultation Paper)

*Are the roles and functions assigned under the Act sufficiently clear and comprehensive to fulfil the objectives of the legislation to preserve Aboriginal heritage places and objects? If not, what changes in roles and functions would you suggest?*

The wording of these provisions doesn't appear to place enough significance on the role of indigenous persons in this function. It places a lot of weight on the "community" in general. There needs to be an increased role for Aboriginal people in this.

#### What is protected? (Page 10 & 11 of the Consultation Paper)

##### Aboriginal Sites – Section 5 of the Act

*Does section 5 adequately describe the sorts of places or sites that should be protected under the amended Act? If not, how can it be improved?*

While this is also clearly a question for experts and the Aboriginal people to one suggestion that is put forth is that there should also be provision for protection of Aboriginal stories and songs which is not currently addressed.

##### Aboriginal Objects – Section 6 of the Act

*Do section 6 and Part VI adequately describe the sorts of objects that should be protected under the amended Act? If not, how can they be improved?*

This again is clearly a question for experts and the Aboriginal people to address so will not be answered unless Council has formed a view.

##### Protected Areas

*Is the declaration of a Protected Area under the Act the best way to deal with Aboriginal sites of outstanding importance?*

This provision should be reviewed if it is not working. Having no sites declared since the 1980s seems to indicate this.

##### Aboriginal Ancestral (Skeletal) Remains

*Should the Act provide for the management of Aboriginal Ancestral (Skeletal) Remains? If so, what needs to be considered?*

No, this is not seen as the role of the act and should be addressed elsewhere.

#### Protection and Enforcement (Page 12 & 13 of the Consultation Paper)

*What sort of activities that may affect an Aboriginal site should require consent or authorisation?*

The term "any activity that affect a site whether registered or not" seems to be fairly comprehensive. This should however be reviewed and expanded, if needed.

*What should be the criteria against which to evaluate an activity that may affect a site (e.g. a proposal to use or develop land)?*

Anything that could alter or in any way change or remove from a site should be the base criteria but this may need expanding. In terms of cultural significance if an activity is seen as not respecting the significance of the site even if it does not damage or alter it, it may need to be reviewed as inappropriate.

*How can 'impact' arising from proposals for land use on sacred sites that do not have physical cultural heritage elements be assessed?*

This is seen as a question outside the scope of the Shire to be left for experts.

*Who should provide consent or authorisation for proposals that will affect Aboriginal sites?*

This is seen as a joint Governmental and indigenous person's role. There should be appropriate experts involved. Traditional land owners must be involved and there needs to be an independent appeal process where agreement can't be reached.

*To what extent is the current section 18 application process effective and how can it be improved?*

As Council has not been involved with this process, it is therefore difficult to give feedback on this.

*What provisions could be included in an amended Act to ensure the long-term protection of Aboriginal sites where alternative statutory arrangements do not apply?*

The answer is provide provisions that capture such sites where no other provisions exist. It is suggested that interim emergency protection powers be included until a site can be fully assessed be included. Also it is suggested that additional criteria be drafted that could catch such sites where they would not have been otherwise included.

#### Penalties (Page 13 of the Consultation Paper)

*Are the enforcement provisions under the Act adequate to protect sites? If not, how can they be improved?*

No the limitation period for a prosecution should be reviewed especially in the light of the remoteness of some sites and difficulties in obtaining information that could be encountered.

*Are the current penalties under the Act adequate? If not, how can they be improved?*

The penalties should certainly be reviewed against similar contemporary legislation and increased as appropriate. Some of the minor penalties should definitely be increased and there should be consideration of "on the spot fines" for minor offences.

#### Site Assessment and Registration (Page 14 & 15 of the Consultation Paper)

*Should a defence continue to be provided where the disclosure of information (section 15) is against customary laws/protocols?*

This provision should certainly be reviewed and its validity in terms of any conflict with other laws should be examined. If it is determined the customary laws/protocols in relation to Aboriginals is would breach not disclosing then this provision should be removed. It is seen as a question of law that needs further examination by experts.

*Are the criteria for assessing the significance of sites under section 39 (2) and (3) adequate to evaluate whether a site should be added to the Register? If not, what should the criteria be to assess the significance of a site?*

These appear comprehensive but certainly should be reviewed and included for further discussion in the Discussion paper.

The Register

*What should be the steps to report, nominate, assess, enter, amend or remove an entry from the Register?*

A similar system that is currently applied for other places of Heritage significance in the state is seen as appropriate.

Other Parts of the Act (Page 15 of the Consultation Paper)

*What do you think is missing from the Act?*

It does not address language, song or dance issues which needs to be.

*What sections, if any, do you think should be removed from the amended Act, and why?*

The current structure of how the Act works should be reviewed in light of contemporary legislation. This should include the role of the Minister and committee in the process. Is the current process best practice.