

## Response ID ANON-8EBD-41ZG-9

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

Submitted on **2018-03-13 14:17:15**

### 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:**

Piers Verstegen

**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?:**

There should be provision for the protection of Heritage values that are not 'places or objects' including dreaming trails, songlines and other landscape-scale values. Other heritage may not even be associated with objects, such as stories or language and it should be considered if these could be protected in some way under the legislation. Certain custodians of knowledge or practices could be recognized for example.

### Roles under the Act

#### Question 2

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

Aboriginal people MUST be consulted and the ACMC must be reformed to require a majority Aboriginal voice. Traditional Ownership as provided under Native Title Legislation is one way to identify parties to consult, however there may be others with connections to places and country who are not recognized as such. The Land Councils and PBC's have a particular role and perspective as provided for (and limited by) Native Title and other legislation, so this should not be considered to be the only legitimate representation of Aboriginal people with cultural interests. Broader Aboriginal and non-indigenous community also has an interest in the preservation of heritage and this should be also taken into account. Where third-party proponents are recognized as having an interest in heritage matters, third-party public interests must also be recognised, separately from and in addition to Traditional Ownership and direct cultural connection. Before decisions are taken on applications to destroy sites or heritage values, there must be a public consultation stage where any interested member of the public can express views. This happens under planning law and under environmental law and the same process should extend to heritage protection law. There must also be an ability for Third Party Appeals against decisions of the ACMC, (not just proponent appeals). This could be handled by a specialist committee of SAT which would need to be established with appropriate representation.

#### Question 3

Ineffective

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

#### Question 4

No

**Role and functions - Minister:**

The Act should be strengthened to give the Minister the responsibility to act in the interests of heritage protection, rather than other interests, in discharging responsibilities under the Act. It appears that the Minister has had far too much discretion in appointments to the ACMC members and servants, interpretation of the legislation, and the eventual level of protection for particular sites. Recommendations of the ACMC must be published and if the Minister takes a different decision then reasons for taking a different decision must be published. Like the Environmental Protection Act, the ACMC must only consider heritage matters not broader political or economic matters in making its decisions, and must document and publish its decision. Recommendations of the ACMC must be open to third

party appeal, not just proponent appeal. There must be a regular annual report published on the status of Aboriginal Heritage protected under the Act and decisions made in relation to heritage matters and the Minister must table this in Parliament.

No opinion

**Role and functions - Registrar:**

No

**Role and functions - Committee:**

See comments above. In addition the Committee must operate according to transparent and publicly document policies and there should be a framework for assessing heritage that can be understood by the public, and decisions must be published with reasons that connect with the principles and policies for assessment, including community and TO consultation as described above.

No

**Role and functions - DPLH:**

The ACHM must be made more independent of the Department which is by its very nature subject to political direction and manipulation. The decision making process must be firewalled, independent, and protected from the kind of systematic undermining and manipulation of heritage policy and decisions that occurred during the Barnett Government.

**What is Protected?**

**Question 5**

No

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

See comments in answer to first question. 5(c) is potentially very broad but there should be a power to pass regulations giving further definition to these meanings, and describing the principles by which they will be assessed. Broader landscape-scale heritage values should be recognized especially in the form of dreaming trails, song lines and other landscape scale values. Places that are used in a contemporary context should also be able to have protection afforded.

**Question 6**

No

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

Living things including animal species and plant species should be protected if they have heritage values in particular places, or distributions and this definition may not provide for this adequately. Environmental legislation may provide some protection but only for particular species and does not protect distribution in particular areas.

**Question 7**

No opinion

**Additional comments:**

**Question 8**

Yes

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

**Protection and Enforcement**

**Question 9**

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

Anything that leads to permanent change or degradation to the cultural or aesthetic values, changes access to the site, or changes to the sites surroundings and context.

**Question 10**

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

There must be detailed criteria established however the process should not consider economic or other political factors. Only heritage matters should be contemplated in the decision making process. As a rule, sites should be by default protected from anything that leads to permanent change or degradation to the cultural or aesthetic values, changes access to the site, or changes to the sites surroundings and context. Only in exceptional circumstances should these values be destroyed or altered.

**Question 11**

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

This must be done in consultation with the Traditional Owners where they exist . There must also be community consultation as described above. access to the site and the aesthetic and environmental surroundings of the area must be considered. Connection with songlines, dreaming trails or other landscape scale cultural values must be considered.

**Question 12**

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

The ACMC but this should then be subject to appeal rights for third parties which could be dealt with by the Minister or a special committee of SAT established for this purpose. The ACMC must only consider relevant cultural and heritage factors and not broader economic interests.

**Question 13**

No opinion

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

**Question 14**

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

The creation of Aboriginal Heritage Protected Areas like National Parks which could be under the management of DBCA or another authority. Also Aboriginal Cultural Heritage protection orders should be available and these should be able to be triggered by third parties. This would have the effect of ceasing an activity until the cultural heritage values are assessed.

**Question 15**

No

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

The offenses are very low and are probably considered a cost of doing business by some proponents. There should be directors liability and significant increase to fines. The inspectorate must be given better resources and community engaged and facilitated to assist with third party compliance provisions introduced.

**Question 16**

No

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

As outlined in answer to previous question

**Site Assessment and Registration**

**Question 17**

No opinion

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

**Question 18**

No

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

they need to be codified rather than 'had regard to'. Having regard to can easily mean ignoring.

**Question 19**

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

Reporting should be made as easy as possible through various different means to reflect access and abilities of community members

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

Reporting should be made as easy as possible through various different means to reflect access and abilities of community members

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

Reported places or objects should continue to have default protection unless they have been assessed to not have value.

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

Reported places or objects should continue to have default protection unless they have been assessed to not have value.

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

The same level of rigor as the original listing with appeal rights for third parties.

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

The same level of rigor as the original listing with appeal rights for third parties.

**Other Parts of the Act**

**Question 20**

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

A more contemporary definition of Aboriginal Heritage.

Following should be considered:

Establishment of powers for certain Aboriginal Custodians to derive value, including economic value in certain cases from the heritage values (i.e. tourism, art, cultural interpretation, other industries).

The establishment of an Aboriginal management regime for sites with powers for rangers or equivalent to look after sites.

**Question 21**

No opinion

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

**Any other comments**

**Any other comments:**

The Act is one thing but if the culture of the agency and government does not change then it will not be ineffective. Cultural reform must occur. A very high proportion of applications to impact Aboriginal Heritage are approved and it is considered to be normal that this occurs. This needs to change. We will never see broader community acceptance of cultural values if our legislation allows those values to be trumped by every other short-term economic or political consideration.