

30 May 2018

Mr Graeme Gammie
Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
PO Box 7479
Cloisters Square PO WA 6850

Emailed: AHAreview@dplh.wa.gov.au

Dear Mr Gammie,

REVIEW OF THE ABORIGINAL HERITAGE ACT 1972

Thank you for providing Pilbara Ports Authority (PPA) the opportunity to provide a submission on the State Government's review of the *Aboriginal Heritage Act 1972* (AHA). PPA has had numerous interactions with the AHA and the Department of Planning, Lands and Heritage (DPLH) and we look forward to being engaged during the review so that we might share our experiences and perspective of the AHA.

PPA recommends that the review of the AHA take into consideration the various State and Commonwealth legislation, relating the heritage protection and Native Title, that has come into force since the AHA was enacted in 1972. Such legislation includes:

- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);
- *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- *Native Title Act 1993* (Cth); and the
- *Heritage of Western Australia Act 1990* (WA)

In addition to the above legislation, the Commonwealth Government is currently considering the introduction of a new Underwater Cultural Heritage Bill. The Bill, which will replace the existing *Historic Shipwrecks Act 1976* (Cth), aims to include submerged Indigenous prehistoric sites in order to make Australian law consistent with the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage.

Consistency in definitions of heritage values and impacting processes, as detailed in other heritage protection legislation, would allow for greater cooperation and interoperation between those agencies that administer heritage protection legislation.

Key to the review, consideration should be given to the following areas:

Investigation of Aboriginal Sites

Previously section 16 of the AHA was used to undertake investigations to inform an application under section 18 as to whether or not a place should be considered a site under section 5 of the AHA and/or determine its level of significance. DPLH's current interpretation of section 16 restricts its use to only those places that are already considered sites under the AHA. This narrow interpretation is a hindrance to undertaking investigations of suspected sites, as once cultural deposits are encountered, investigations would need to cease as they would otherwise risk being in breach of section 17 of the AHA.

The review of the AHA should consider the issuing of a section 16 for any place suspected of being a site within the meaning of the AHA.

Use of Covenants

PPA recommend that consideration be given to the use of covenants under section 27 of the AHA as a means by which a land manager can provide an additional level of protection and recognition of heritage values upon that land. Although this section of the AHA has never been utilised, PPA is currently investigating its potential use in heritage agreements with Traditional Owners.

The review of the AHA should consider retaining the ability to enter into a covenant as a means of formally recognising and protecting heritage values.

Register of Places and Objects

Section 38 of the AHA requires the Registrar of Aboriginal Sites to maintain a register of protected areas, cultural material and places and objects to which the AHA applies. PPA is familiar with, and a frequent user of, the online Aboriginal Heritage Inquiry System (AHIS), however we note the following:

- AHIS has not been maintained. Currently AHIS does not record numerous reported heritage places outside of section 18 applications. AHIS also contains many errors and inaccuracies;
- Land users following the State's *Due Diligence Guidelines* could inadvertently impact upon heritage places that are known to DPLH but not displayed or accurately recorded on AHIS;
- Protected Areas, declared under section 19 of the AHA, are not displayed on AHIS; and
- Inaccuracies and omissions of data from AHIS can result in the wasting of time and resources by Land Users undertaking heritage surveys of areas that have been adequately investigated previously.

The review of the AHA should consider retaining the requirement for a publically accessible register of places and protected areas with the requirement for effective policies and procedures to ensure its accuracy.

Honorary Wardens

Through interaction with the Murujuga Rangers and the Marduthuni Rangers, who undertake land care initiatives in the Pilbara, PPA recognises the potential of the appointment of Aboriginal Rangers as Honorary Wardens under section 50 of the AHA. Appointing Aboriginal Rangers as Honorary Wardens may be beneficial to Aboriginal Ranger Groups' by enhancing their authority to manage Aboriginal heritage sites within their land management areas.

The review of the AHA should consider directly engaging with Aboriginal Ranger Groups located throughout the State to seek their views on the suitability of Honorary Wardens.

Aboriginal Heritage Regulations 1974

The functions of the AHA are aided by subsidiary legislation, the *Aboriginal Heritage Regulations 1974* (AHR). The AHR, in particular Regulation 10, provide for numerous non-deleterious activities to be undertaken within a site that do not require the proponent of the activities to seek consent under the AHA.

The review of the AHA should consider including the AHR in the review of the AHA.

Any changes to the AHA, or the introduction of replacement legislation, must be accompanied by departmental policies, procedures, guidelines and resources that will result in consistent and timely processes and advice from DPLH staff in their administration of the legislation.

PPA looks forward to being included in future discussions regarding the review of the AHA. Should you wish to discuss the above in greater detail, please don't hesitate to contact Robert Brock, Heritage Specialist (robert.brock@pilbaraports.com.au).

Yours sincerely



Brad Kitchen
Director Environment and Heritage