



5 Stevens St
Fremantle WA 6160

T: 08 9335 9231

W: www.dorthcuthbert.com.au

Wednesday, 30 May 2018

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

Dear Mr Gammie

I write in response to the Government's invitation for comments on the proposed review of the Aboriginal Heritage Act 1972 (the Act). My expertise relevant to this review is based on my career as an archaeologist with 32 years' professional and volunteer experience in Western Australia, interstate and overseas, and a PhD in the Aboriginal archaeology of south-western Australia. I currently work with diverse Aboriginal communities and other heritage stakeholders, in my roles as principal archaeologist of a consultancy firm specialising in Aboriginal heritage matters, and manager of a research project in the globally significant heritage landscape of the Dampier Archipelago.

In my view the current review is an historic opportunity to review and vastly improve the cornerstone of heritage management in Western Australia. The Act has served the community for 45 years, but its administration has been accompanied by numerous public controversies and severe impacts to Aboriginal people and heritage, and the time has come to bring it up to date.

I have had the opportunity to discuss and view submissions from interested groups, including colleagues and Aboriginal organisations. The following is based on these submissions and my own opinion and expertise.

I believe the following standards need to be addressed by a new Aboriginal Heritage Act:

- Aboriginal heritage, including archaeological heritage, belongs to Aboriginal people, but it is also an asset for the people of Western Australia, and should be celebrated and promoted as such. It covers an extraordinary fifty millennia of human endeavour, it is globally unique in its diversity and extent, and it is the living and dynamic heritage of the first peoples of Western Australia.
- Aboriginal heritage includes historic and archaeological places and objects, cultural landscapes and seascapes. It includes intangible factors such as social and cultural practices, ancestral connections and genetic heritage.

- Like all heritage places, Aboriginal heritage places may have different values, which may require different levels of management.
- Aboriginal people with cultural authority to a specific place or region should have control over their heritage, for example, through co-management, independent heritage bodies with local expertise, Native Title representative organisations, etc.
- However, some Aboriginal people without legally recognised Native Title may also have cultural heritage or knowledge. Whatever the case, traditional Aboriginal custodial rights and laws need to be recognised under the United Nations Declaration on the Rights of Indigenous Peoples, to which Australia is a signatory.
- Definitions relating to Aboriginal heritage and the processes for managing it, including any assessment of the significance of a place or landscape, must be coherent and transparent.
- Unlike the current law, assessments relating to the significance of Aboriginal heritage must be separated from decisions concerning activities that may impact Aboriginal heritage. The former should be the responsibility of independent Aboriginal heritage bodies, the latter should be the responsibility of an executive committee.
- The recommendations of an independent Aboriginal heritage body as to the significance of a site, place or landscape should be binding on the Minister.
- Aboriginal ancestral remains, wherever they are, are Aboriginal heritage and should be protected (with expert assistance where required) and returned to the appropriate custodial group.
- Developments over a certain size should incorporate Aboriginal heritage management protocols in their design phase so that impacts can be minimised effectively.
- Any Government decision that allows an impact on Aboriginal heritage must consider and be accountable to the wishes of Aboriginal custodians. It should also be supported by reasons of public interest, including social and cultural factors, and not merely the economic benefits of a proposed development.
- Aboriginal bodies and groups should be adequately resourced to maintain and manage their cultural heritage, through cash funding, in-kind support, expert assistance and professional training.
- Adequate funding, expertise and resourcing should also be afforded to the Government department administering any Heritage Act.
- An appeals process should be established for cases when Aboriginal people or any other party wish to contest decisions about Aboriginal heritage. The approach should allow for arbitration rather than judicial intervention. This appeals process must be accessible to Aboriginal people.

The above principles have been explained in detail in a submission by my professional association, the Australian Association of Consulting Archaeologists Incorporated (AACAI). I agree with the substance and the detail of this submission.

I also wish to emphasise a particular point about heritage values, as opposed to heritage places:

- Assessment of the impacts of proposed developments should consider the possible variations in heritage values of a place, as some activities may have little impact. For example, construction activity might affect some of the heritage values of a place, but not its amenity or use by Aboriginal people. A proposed activity that does not affect any of the values of a place might be allowable without further reference to

any Heritage Act. This principle is already recognised in practice, but would be important to recognise in law so that land is not unnecessarily alienated. Conversely, some places may be so important that a development (for example) would have a severe impact on Aboriginal heritage. Such places should be afforded a high level of protection under the law. Heritage values and allowable activities can be determined through community consultation and site assessments and outlined in heritage management plans.

- Principles of conservation could guide heritage management in the future. Conservation does not mean exclusion of development. It means regulation and management of development following jointly agreed principles and, as noted, the values of the affected place. Conservation of a heritage place should include, as noted above, a management plan, so that all parties are aware of the appropriate or allowable activities in that place.

In conclusion I would like to congratulate the present Government in bringing about this review. The current Act and its administration has been problematic on myriad occasions, and is well due for a change. In my view, the scale of change required necessitates a new Act, rather than an amendment to the current Act. I look forward to the future phases of review of this important legislation.

Kind regards



Joe Dortch, PhD, MAACAI
Director, Dortch & Cuthbert Pty Ltd