

## Response ID ANON-8EBD-41P2-A

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

Submitted on **2018-05-17 09:37:07**

### 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:**

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

No

### Purpose of the Act

#### Question 1

No

**If not, what changes should be made?:**

While it does describe what the Act should set out to do, it is convoluted and verbose. Something much simpler could be

"...for the protection of Aboriginal cultural heritage"

Ultimately the amended Act needs to be about protecting heritage. All sorts of other Acts are available for protecting the environment, governing development etc - the revised Act should be straightforward and simple in its goals, those being to PROTECT heritage, rather than to facilitate development (the latter being what too many lobbyists are pushing for, and what the takeover in recent decades of the ACMC by non-heritage peoples has been all about)

### Roles under the Act

#### Question 2

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

The Act needs to make absolutely clear that, in line with principals of the Burra Charter:

- (1) Aboriginal people are the owners of their own cultural heritage,
- (2) Aboriginal people are the only ones who can determine what the cultural significance of Aboriginal places and objects are (though other heritage specialists such as archaeologists and anthropologists can determine what the scientific, social and aesthetics values of of Aboriginal places and objects are)
- (3) Aboriginal people should have primacy in determining appropriate management strategies for Aboriginal places and objects

#### Question 3

Ineffective

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

Wardens are essentially never used under the current Act. These individuals should be used, and they need to have power to issue on the spot fines.

One issue that has been brought up with me regarding Aboriginal people holding such positions, is that often in order to do so they must be vetted, and, as Aboriginal people have much higher incarceration rates than the non-Indigenous population, they often have former prison sentences that count against them becoming warns or the like. There should be provision to ensure that if an Aboriginal person has had a clean record for, say 5 years, that they should be eligible to become wardens. The appointment of people as wardens needs to come with adequate training so that people understand their responsibilities if appointed. The general public and proponents need to be educated to understand the powers that a Warden can exercise so that Wardens are not exposed to unnecessary risk when exercising their powers.

#### Question 4

No

**Role and functions - Minister:**

At present the Minister often over-rides or ignores the advice of the ACMC and Registrar. This has to stop.

No opinion

**Role and functions - Registrar:**

No

**Role and functions - Committee:**

The ACMC USED to be effective. Since it is now over-run by people whose primary goal is not the protection of Aboriginal heritage, but rather to facilitate develop and therefore to remove heritage as an obstacle to development, the ACMC is entirely ineffectual. The ACMC has to have a majority of members whose core interests are the protection of heritage, not facilitating development. These members have to be a mixture of Aboriginal people and experts who can provide advice, and the Minister should not be allowed to over-ride the decisions of the ACMC.

No opinion

**Role and functions - DPLH:**

**What is Protected?**

**Question 5**

No opinion

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

**Question 6**

No opinion

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

**Question 7**

No

**Additional comments:**

It would be if the process for declaring Protected Areas was simply and couldn't be over-ruled. At present, nothing stops development - it seems that it is almost impossible to have areas declared as Protected Areas.

**Question 8**

Yes

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

Need to ensure that Aboriginal people have primacy in making decisions about what happens to such remains.

**Protection and Enforcement**

**Question 9**

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

Disturbance and destruction.

**Question 10**

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

The level of disturbance involved, how it will affect the values of the site, the amount of disturbance to the area in the past

**Question 11**

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

Through consultation with Aboriginal people. Aboriginal views about the impact of proposals on intangible heritage have to be taken seriously.

**Question 12**

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

Aboriginal people

**Question 13**

Ineffective

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

Every single application for a s18 is approved at present. This is wrong. Proponents should not be guaranteed that they can always get permission to destroy sites. Sometimes, even though proponents want permission to destroy sites and should be allowed to apply for that permission, the ACMC and Minister should actually deny many of those applications. As there is no 'big picture' assessment, the cumulative effects of s18 site destruction is never considered, and under the current process there will come a day in the future when NO Aboriginal places are left in certain areas because the Minister has given consent to destroy them all bit by bit over dozens of s18 permit applications.

**Question 14**

No opinion

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

**Question 15**

No

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

Need far larger penalties, and people actually need to be prosecuted. Too often today people just say "I didn't know" and the onus is then on the government or Aboriginal group to prove otherwise. This needs to be reversed so the person accused of committing the offence has the burden of proof placed on them.

**Question 16**

No

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

For developers, the amounts are negligible and are far less than what it would cost them to actually do an assessment and mitigate their impacts. At present it is easier for them to destroy things and pay a penalty (although they're pretty much never charged) than actually go through the process of assessing and mitigating impacts - in order to change this the penalties need to be much greater so that they are incentivised to do the right thing, rather than incentivised to do the wrong thing.

**Site Assessment and Registration**

**Question 17**

No opinion

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

**Question 18**

No opinion

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

**Question 19**

No opinion

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

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

These steps need to be simplified, and the ACMC has to stop telling Aboriginal people that their places are not legally sites under some distorted interpretation of the Act that has been driven by non-heritage specialists who have taken over the ACMC

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:**

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

**Other Parts of the Act**

## **Question 20**

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

Aboriginal ownership of all Aboriginal places and objects. A specific will to PROTECT heritage rather than to facilitate development.

## **Question 21**

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

#### **Any other comments**

##### **Any other comments:**

Part of the issue with this Act, and with other Aboriginal and historic heritage protection Acts around the country, are that they are not ADMINISTERED in the spirit of the Act. While often the Acts are, in and of themselves, adequate, the administration of the Acts with underfunding, understaffing and under-resourcing is what causes the problems. One simple way to address this is to resource the agency that administers the Act adequately. Further, by setting in place a percentage fee of the overall project budget that MUST be allocated to heritage by proponents, there would be adequate funds to cover all heritage identification, assessment, mitigation and protection. Proponents have to be made to pay for heritage management, and the Minister has to have the courage and capacity to say no to some proposals to destroy Aboriginal heritage - at present this simply does not happen, and the Minister approves every request to destroy Aboriginal heritage regardless of how significant it is.