

Response ID ANON-8EBD-41PZ-J

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

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About You

Are you submitting a response as an individual, or on behalf of your organisation?

Organisation

Organisation details

What is the name of your organisation?

Organisation Name:

SJC Heritage Consultants Pty Ltd

Name of submitting officer and position.

Submitting officer and position:

Stephen Corsini

Do you have authorisation to make a submission on behalf of your organisation?

Yes

In which field is your business?

Heritage professional

If "other" please specify your field of business:

Purpose of the Act

Question 1

No

If not, what changes should be made?:

The purpose of the Act should be to support Aboriginal Communities in the protection of Aboriginal sites against undesirable impact.

The current Act predates the recognition of Native Title Rights to protect heritage places and objects - although Sections 7, 8 and 9 recognises that Aboriginal communities maintain their cultural responsibilities and rights. Obligations on custodians continue under Traditional Law, even after so-called "Extinguishment" of Native Title.

The Act should also protect people's traditional intellectual property rights.

It should also use common English language, not the archaic legalese.

Roles under the Act

Question 2

2 - who should be consulted?:

Any new legislation should require rigorous consultation with the Traditional Owners in accordance with consultation requirements under the Native Title Act.

The Act should provide an appeals process that enables Aboriginal Communities/ Traditional Owners to seek a review of decisions which is not afforded to Aboriginal Traditional Owners under the current Act.

Question 3

Ineffective

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

As far as I am aware, this provision has only been used a couple of times.

Question 4

No

Role and functions - Minister:

In 25 years involvement with Heritage Protection and management, Aboriginal custodians and traditional owners see the AHA1972 as little more than a rubber stamp for site destruction.

No opinion

Role and functions - Registrar:

No

Role and functions - Committee:

IF the current Act is to be amended (rather than repealed and replaced by an entirely new Act) the removal of the phrase "of importance and significance" under Section 5 should be removed. If the Committee recognises a place is of importance and significance under Section 5 then it MUST also be of importance and significance under Section 39.

No opinion

Role and functions - DPLH:

What is Protected?

Question 5

No

5. How can section 5 be improved?:

1. Get rid of the "importance and significance" in 5b.

2. Section 15 states that "burial grounds" are a category of place that must be reported to the Registrar but the Act does not specifically identify skeletal remains or individual graves as protected places/objects. Under the current Act one has to argue that a skeleton or burial is "an natural object, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people ..." but I believe there should be a specific reference to graves and /or skeletal remains, framed in terms of Section 20 & 21 of the Commonwealth ATSIHPA. .

Question 6

Yes

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

The definition is sufficiently broad so as to encompass the entire range of Aboriginal cultural material.

Question 7

No

Additional comments:

Not always: It really depends on the site, the context and what it is.

Different sites with different levels of significance.

A scarred tree in a recreation reserve in Forrestdale is entirely different from the landscape of engravings, grinding patches and habitation sites preserved across Woodstock/Abydos.

Question 8

Yes

8. what needs to be considered?:

Yes. As a DAS/AAD officer (1992-95) and as a consultant archaeologist, I have been involved in 36 separate projects involving the management of unmarked graves either accidentally disturbed, or found eroding from beachside dunes (in one case, at Waroora Station, there were four exposed skeletons). In many cases it is quite obvious that the remains are those of an Aboriginal person but in other cases where it is not so clear cut, there are a number of issues which arise in the discovery of skeletal remains because of overlapping responsibilities of the Coroner, the Police, and the Registrar (and their staff or consultants engaged to manage discoveries of Ancestral remains).

1. There should be Specific reference to, or even direct copying of, the provisions in the ATSIHPA Sections 20 and 21, which dictate the process for dealing with such matters.
2. There have been issues with Police investigations of Aboriginal burial sites - Of course, in the discovery of any unmarked grave, the Police MUST determine if it is a recent murder victim or the body of a recently missing person. However, I have seen varying approaches and attitudes - in a number of cases Police removed remains from a site which was clearly a Traditional Aboriginal burial, and with less than optimal recording and handling. However, in my more recent experiences Police HAVE been respectful of the remains and are nowadays less likely to interfere if they can determine the remains are Aboriginal (such as by

sending digital photographs to a forensic anthropologist to review).

3. Where the relevant Aboriginal community direct that remains are exhumed for reburial elsewhere (or buried deeper at the same site), there must be provision for an emergency Section 16 permit to deal with skeletal remains to be issued by the Registrar. At present any S16 permit application requires review by the ACMC, so there can be a delay of as much as 6 weeks to obtain a permit, by which time an exposed skeleton can be completely destroyed by UV rays, heat, cycles of day-time drying and night-time moisture from dew or sea spray and ablation by wind borne sand grains. The Registrar IS empowered under the Act to authorise a departmental officer (and others as they see fit) to undertake urgent investigations (and management according to the wishes of the Aboriginal Community) for the purposes of the Act.

Protection and Enforcement

Question 9

9. Activities that should require consent or authorisation:

Any activity which might impact on the Native Title Rights of Traditional Owners.
It should be the FIRST consideration in any Land Use Planning.

Question 10

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

Question 11

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

By not just "consultation" with Traditional Owners and Custodians, with the expectation that no matter how important the place is the Minister will just rubber-stamp destruction where it stands in the way of economic "development" >

If Traditional Owners say a place is of importance and significance, then it should be protected.

Question 12

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

Traditional Owners and Custodians,

Question 13

Ineffective

13. How s18 can be improved?:

TRANSPARENCY - At present the ACMC does not publish any minutes, deliberations or reasons for making decisions. as to whether a place is a "site" and if it is of importance and significance.

Question 14

14. provisions for long-term protection of sites:

Question 15

No

15. How can enforcement provisions be improved?:

Question 16

No

16. How can penalties be improved?:

Site Assessment and Registration

Question 17

Yes

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

BUT, this provision should not be an excuse for sub-standard anthropological reports.

Question 18

No

18. What should the criteria be?:

Question 19

19. Steps to report place or object:

A person should be able to simply report the presence of Aboriginal heritage places and objects.

19. Steps to nominate a place or object:

19. Steps to assess a place or object:

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

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

19. Steps to remove place or object from Register:

There should be NO provision to Remove sites from any Register.

Other Parts of the Act

Question 20

20. What's missing from the Act?:

THE RIGHT OF APPEAL BY ABORIGINAL PEOPLE against Ministerial decisions

The recognition of Native Title Rights.

An explicit requirement for any land users to take reasonable steps to ensure their activities will not alter, damage, conceal or destroy a heritage place. (At present the Act provides for the defence of ignorance, that a person couldn't reasonably know a place is a site, which hinges on what are considered "reasonable" steps).

Question 21

21. Sections to be removed from Act?:

Section 56 the defence of ignorance.

Any other comments

Any other comments: