

Response ID ANON-X4AN-M61Q-Z

Submitted to **Review of the Aboriginal Heritage Act 1972 - Phase Two consultation**
Submitted on **2019-05-27 15:02:50**

Introduction

What is your name?

Name:

What is your email address?

Email:

What is your organisation?

Organisation:

Submissions will be published as part of the consultation process. Do you wish to have your name removed from your submission?

Yes

Proposal 1

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

No further comment.

Proposal 2

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

The reference to Aboriginal skeletal remains should include cemeteries of the post-colonisation period that were established on remote Aboriginal communities and stations, which contain the remains of Aboriginal People, in recognition of the unlawful detention and forced sedentarisation that occurred during colonisation. The new legislation should also require mandatory reporting of any discovered human remains to the Coroner concurrent with the reporting to the relevant Aboriginal Heritage regulator.

Proposal 3a

Will the proposal deliver the desired outcome?

No

If no, why not?:

It is important to ensure that the "right people speak for the Country". However we would caution against the preferencing of Native Title Bodies Corporate as the sole provider of LAHS in a given region. The Native Title Act has contributed towards conflict within, and division amongst, Aboriginal communities. Many traditionally-oriented Aboriginal People who are not aligned with a Native Title group or who are not well connected with the management personnel within those Prescribed Bodies Corporate, have limited voice on matters that affect their Aboriginal Heritage. There is the risk that well-funded and well resourced entities would be favoured in the selection process, depriving the people who live on-country and who may have limited resources, of the opportunity to participate in the management of Aboriginal heritage.

What changes would you suggest and why?:

Bodies other than the Prescribed Bodies Corporate must not be precluded from the LAHS selection process and LAHS should never be selected based solely on Native Title status. The process of nomination and selection of an LAHS must be weighted in favour of organisations comprised of traditionally-oriented groups of Aboriginal People who reside in that LAHS region and who continue to practice their customs and traditions on that land.

In addition to the recognition criteria listed in the Discussion Paper, the organisation should have a majority of directors who are of Aboriginal descent, and who reside in that LAHS area. The organisation should commit to minimum targets for employment of locally-based Aboriginal People.

The nomination and selection process for LAHS should occur biennially, which would facilitate the removal of under-performing or non-compliant LAHS and the appointment of LAHS better suited to the role.

Proposal 3b

Will the proposal deliver the desired outcome?

No

If no, why not?:

The relationship between the Aboriginal Heritage Council and the LAHS is potentially conflicted.

What changes would you suggest and why?:

Directors and office holders of Prescribed Bodies Corporate or LAHS must not serve on the Aboriginal Heritage Council.

Proposal 3c

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

No further comment.

Proposal 3d

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

No further comment.

Proposal 3e

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

No further comment.

Proposal 4

Will the proposal deliver the desired outcome?

No

If no, why not?:

Most of the proposed changes under Proposal 4 will deliver an improved outcome, in-line with the other proposed changes in the legislation. However under Proposal 4 (vi), if LAHS are the only body involved in the refining of legacy information on Aboriginal Heritage Places, there is the risk that other relevant Aboriginal bodies and affected traditionally-oriented Aboriginal People would not be heard.

What changes would you suggest and why?:

Procedural fairness must apply to any refining of information under Proposal 4 (vi).

Proposal 5

Will the proposal deliver the desired outcome?

No

If no, why not?:

Parts of Proposal 5 refer to Local Aboriginal Heritage Services (LAHS) or other relevant Aboriginal Parties, other parts of the proposal only refer to LAHS.

What changes would you suggest and why?:

Amend 5 (i): Provide a formal referral mechanism to both government and Local Aboriginal Heritage Services or other relevant Aboriginal parties for land use proposals for advice on the Aboriginal heritage implications of the proposal and appropriate level of assessment.

Amend 5 (2): undertake further investigations, including consulting with the Local Aboriginal Heritage Service and other relevant Aboriginal parties, to determine the nature and extent of any Aboriginal heritage places.

For the part of the proposal that describes "call-in" powers, Local Aboriginal Heritage Services or other relevant Aboriginal parties may request that the department uses this call-in power, if in their opinion, there is a land use proposal within their geographic area of responsibility [requires definition] they believe ought to be formally assessed.

Proposal 6

Will the proposal deliver the desired outcome?

No

If no, why not?:

Potential for the LAHS to have veto powers or exert undue influence over the ratification of agreements between proponents and other relevant Aboriginal bodies.

What changes would you suggest and why?:

The Aboriginal Heritage Council must seek advice from any Local Aboriginal Heritage Service(s) and other relevant Aboriginal bodies.

Proponents should be able to make agreements with Local Aboriginal Heritage Services or other relevant Aboriginal bodies.

The Aboriginal Heritage Council must seek additional information, including from any relevant Local Aboriginal Heritage Service(s) and other relevant Aboriginal bodies, to ensure that a proper administrative decision is made.

Proposal 7

Will the proposal deliver the desired outcome?

No

If no, why not?:

The Local Aboriginal Heritage Services (LAHS) may not always be the suitable party for identifying the right Aboriginal people to provide input into decisions and receive notice of those decisions.

What changes would you suggest and why?:

Any affected Aboriginal group with sufficient interest must be able to challenge administrative decisions. The input into decisions, and notices must not be channeled exclusively through the LAHS. To ensure procedural fairness, all relevant Aboriginal parties must be notified.

Aboriginal group whose members practice their customs and traditions on those lands and who reside in that region would be deemed to have "sufficient interest" irrespective of their recognition by the LAHS or Native Title status.

Proposal 8

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

We strongly endorse Proposal 8.

Proposal 9

Will the proposal deliver the desired outcome?

Yes

If no, why not?:

What changes would you suggest and why?:

No further comment.