

Aboriginal Heritage Act 1972 Review

Discussion Paper Proposals

Position comparison between current and proposed new systems: small scale land use proponents (including sole prospectors)

CURRENT POSITION	PROPOSED POSITION
All Aboriginal heritage is protected whether it is registered or not	No change.
Lack of certainty about what is heritage	<p>The focus of the new system is tiered assessments of proposed land uses rather than whether heritage objects or places satisfy certain criteria and how many of what type may be affected.</p> <p>Activities that have no or low impact on heritage will follow a streamlined approval process. Activities that have a high impact on heritage of whatever type will still require Ministerial approval.</p> <p>The heritage values and the views of the relevant Aboriginal people must be taken into account by the Minister when deciding whether or not to approve the activity, with or without conditions. Land use proponents will be able to consult the Aboriginal Heritage Register and</p>

	<p>the relevant Local Aboriginal Heritage Service, or where none exists, the Department of Planning, Lands and Heritage to establish whether there is Aboriginal heritage in the area of proposed activity. Where a survey needs to be completed to answer this question, it must be done to the standards set by the Aboriginal Heritage Council. Where the land has already been surveyed to the required standard, further detailed investigation may not be required, but community consultation on specific land use proposals may still be necessary. This will reduce the number of projects delayed whilst waiting for a third party assessment of heritage values.</p>
<p>Lack of certainty about where heritage places are</p>	<p>Registered Local Aboriginal Heritage Services (LAHSs), which will be overseen by the Aboriginal Heritage Council (AHC), will be able to provide advice on where projects can proceed without delay because there is known to be no heritage there.</p> <p>A LAHS can enter into an agreement with land users on how heritage processes within their area of responsibility should proceed. If heritage will be impacted as a result of a proposed land use, this will need to be ratified by the AHC or the Minister for Aboriginal Affairs depending on the level of impact on that heritage. If the heritage values of the place have already been surveyed to the required standard then no further survey may be required, but community consultation on specific land use proposals may still be necessary. (Note if there is no LAHS in an area, the department will ensure the right people are identified and facilitate their involvement in survey processes).</p>

	<p>Over time the Aboriginal Heritage Register will become a more accurate and useful planning tool that will help proponents identify areas of high heritage sensitivity which should be avoided. Projects that do not impact heritage will be able to proceed without delay.</p>
<p>The system allows for unregulated consultants charging exorbitant fees, providing poor quality work or not delivering at all.</p>	<p>A Directory of Heritage Professionals will be published on the Department of Planning, Lands and Heritage website indicating the declared qualifications and experience of people promoting themselves as heritage professionals so that proponents can choose appropriately experienced consultants for their project.</p> <p>A listing on the Directory will not signify endorsement by the department. Standards of research and surveys will be set by the Aboriginal Heritage Council and substandard materials will be rejected and the reasons for non-acceptance clearly communicated. As proponents will be notified that the ‘clock has been stopped’ when substandard material has been submitted, market forces will eliminate poor performers from the system.</p>
<p>In some areas there is mutual mistrust between small prospectors/miners and Traditional Owners</p>	<p>The new system is designed to promote respectful relationships between land users and Aboriginal custodians of land and culture as a foundation for mutual benefit. Where genuine attempts to negotiate in good faith have broken down or do not result in agreement about a particular land use proposal, the Aboriginal Heritage Council will still be able to make a recommendation to the Minister for Aboriginal Affairs on whether the proposed activity should proceed and on what conditions. The Department of Planning, Lands and Heritage will also be able to provide assistance to the parties to try to overcome their</p>

	differences.
There is an uneven playing field (large corporate miners can buy their way out of delays to projects)	No change. National competition policy means government cannot easily intervene in the market forces of supply and demand to cap fees. Fees for geological investigations, environmental surveys, tenement surveys, etc. are not capped by government.
Land must be surveyed multiple times	Where the land has already been surveyed to the required standard, further detailed investigation may not be required, but community consultation on specific land use proposals may still be necessary.
Low impact activities are treated the same as large scale disturbances	An advice and land use proposal referral process will reduce risk and cost for land use proponents. Tiered assessments will ensure that standards applied are responsive to both the scale of the particular land use proposed and its potential heritage impacts.
There are no regulated timeframes for responses to heritage queries/survey requests	The Aboriginal Heritage Council can de-register any Local Aboriginal Heritage Service that consistently fails to meet the standards set for advice and services. Performance statistics will be published, whether the services are provided by an LAHS or the Department
The results of surveys are not public	Sufficient information about the location and nature of heritage at a place will be published on the Aboriginal Heritage Register.
The backlog of sites to be assessed creates uncertainty	As sites will no longer be assessed by a central committee before they are registered, this issue will be resolved. If the information provided about a place meets the standards of information published by the Aboriginal Heritage Council, the place will be registered.
Industry is not represented on the Aboriginal Cultural Material Committee (ACMC).	The ACMC will be replaced with a new Aboriginal Heritage Council (AHC), which will be responsible for reviewing agreements and

	<p>assessing land use proposals rather than site assessments. It will be a skills based body, not a representative one. Expertise in land use planning and development will be one of the stipulated disciplines for consideration as a member of the AHC.</p>
<p>There is a lack of transparency of ACMC decisions</p>	<p>All decisions on heritage matters will be transparent.</p>
<p>Conversion of a Prospecting Lease to a Mining Lease triggers the right to negotiate as a future act. Surveys done for this purpose should be capable of being used for Aboriginal Heritage Act purposes</p>	<p>Future Act processes are governed by the Commonwealth <i>Native Title Act 1993</i>. State legislation cannot override, modify or interfere with these requirements.</p>
<p>There is no escalation mechanism for when a survey or agreement is taking too long or can't be reached</p>	<p>Standards and timeframes for provision of services by Local Aboriginal Heritage Services will be set by the Aboriginal Heritage Council, which will have a statutory function of performance monitoring. The Department of Planning, Lands and Heritage will also be able to provide assistance to the parties to try to overcome their differences when disputes arise.</p>
<p>Currently, there is nothing to deter someone from falsely claiming that Aboriginal heritage exists at a place because there is no deterrent to making false claims.</p>	<p>For a place to be recorded on the Aboriginal Heritage Register sufficient detail about the location, nature of the heritage and whether and why it is important to the acknowledged Knowledge Holders must be provided. It will not be sufficient for an Aboriginal person to simply say that a place is important in order for it to be registered, or considered by the Minister for Aboriginal Affairs in an application for consent for an activity.</p>
<p>Cultural landscapes are not currently recognised but large areas of land are unnecessarily 'off limits' or 'sterilised' by big buffer zones.</p>	<p>As the new system emphasises avoidance of impact or co-existence wherever possible, large cultural landscapes and buffer zones are not necessarily a barrier to an activity, particularly if agreement can be reached with the relevant Aboriginal people. If heritage is going to be</p>

	<p>negatively impacted, the approval of the Minister for Aboriginal Affairs is required and that consent may be given even if the place is in a 'buffer zone' or cultural landscape.</p>
Intangible heritage is not specifically protected	<p>Landscape features associated with the Dreaming and the songs and stories that connect them will be recognised as cultural landscapes and therefore covered by the new Act. This does not mean that activity will be forbidden in large areas. Proponents will need to work with the relevant Aboriginal people (as advised by the Local Aboriginal Heritage Service or the Department of Planning, Lands and Heritage) to design their projects or conduct their activities in a way that minimises impact on Aboriginal heritage. If there is going to be significant impact they must seek the approval of the Minister for Aboriginal Affairs.</p>
The Aboriginal Heritage Act compliance related cost of doing business: high costs of surveys.	<p>If a proposed activity is in an area that has been surveyed, a survey will not usually need to be repeated if it has met the standards required by the Aboriginal Heritage Council (although consultation may still be required to agree to the specific proposed land use).</p> <p>Agreement can continue to be negotiated specifying heritage processes and the fees that are likely to be payable. Local Aboriginal Heritage Services and proponents will need to demonstrate to the Aboriginal Heritage Council that they have negotiated in good faith and conducted the negotiations equitably in order for the agreement to be endorsed and recommended to the Minister for Aboriginal Affairs.</p> <p>Where an agreement cannot be reached, the Aboriginal Heritage Council may recommend to the Minister that any approval to proceed</p>

	<p>with the activity given is done so subject to conditions, which may have associated expenditure.</p> <p>Local Aboriginal Heritage Services may choose to charge reasonable fees for their services.</p>
<p>Approvals do not run with the land</p>	<p>Approvals issued under the proposed new Aboriginal Heritage Act will run with the land and be transferable provided certain conditions are met.</p>