

Response ID ANON-8EBD-41CT-Y

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:

Archae-aus

Name of submitting officer and position.

Submitting officer and position:

Fiona Hook

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 long title needs to acknowledge Aboriginal people as primary custodians of Aboriginal Heritage in the State. Further it needs to include the words conversation and management to articulate the current needs for protecting and interpreting heritage.

Therefore the wording needs to include the following words - recognise, respect, promote, celebrate, commemorate, conserve and manage Aboriginal heritage

Roles under the Act

Question 2

2 - who should be consulted?:

Aboriginal people must be written into the AHA as custodians with legal rights to appeal decisions under the AHA.

The ACMC functions need to change with the decisions of site determination and permission to impact split. Aboriginal people with authority to speak for particular part of the country need to be acknowledged.

The ACMC are currently underfunded, overworked and placed in an impossible situation with conflicted decision making. There is a complete lack of experience and the Aboriginal members are asked to fulfill an impossible task that tarnishes them and the decision making.

Question 3

Ineffective

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

By funding and supporting the positions by the Department. In addition, the Honorary Wardens need to be integrate with IPA and other ranger programmes and create a formalised heritage training programme.

Question 4

No

Role and functions - Minister:

The Minister's role needs to be completely changed back to the pre 1980 model, where there is no involvement from the minister in decisions to allow impact to heritage places.

The current situation is over bureaucratic and time consuming for land developers.

The Minister's role is currently so compromised that they cannot make decisions to protect heritage places in the face of economic importance to the State.

No

Role and functions - Registrar:

The Registrar's role needs to be more clearly identified and in the AHA detailed that the position needs to be filled by an experienced (20+ years) and qualified heritage practitioner preferably of Aboriginal descent.

The Registrar must be placed in control and management of a register of all Aboriginal heritage places and objects irrespective of their determined status. In our opinion all Aboriginal heritage places are significant with different levels of significance that can be managed through an administrative process that is clearly articulated in the AHA.

No

Role and functions - Committee:

The ACMC is currently compromised and heritage is being adversely impacted and there are massive delays in decision making.

To streamline this we recommend that the ACMC is abolished and two new bodies created:

1. Decisions and approvals for research and permission to use land (section 16, section 18) is handled by a new and semi-autonomous body, the Aboriginal Heritage Advisory Council (AHAC). This would include Aboriginal people with cultural authority and practitioners with skills in cultural heritage, including but not limited to anthropologists, archaeologists, historians, cultural geographers and heritage management specialists.
2. A Heritage Appeals Tribunal, should be established to facilitate and mediate cases where heritage evaluations and assessments of sites, impacts and management decisions are contested and would benefit from arbitration. This body would have a mandate to hear and evaluate issues relating to the values, planned actions, potential land uses and impacts, and management options relating to Aboriginal heritage objects, sites, buildings and places.

No

Role and functions - DPLH:

Currently the DPLH are not mentioned in the AHA. There needs to be a clear mandate in the AHA that the administration of Aboriginal heritage is managed by experienced professional heritage practitioners and bureaucrats with the Registrar identified as the lead practitioner.

What is Protected?**Question 5**

No

5. How can section 5 be improved?:

Section 5 is woefully inadequate in the 21st Century in terms of its language and lack of focus and definitions. It needs a complete overhaul using the Burra Charter and Significance 2.0 as a guide.

Firstly, the use of both terms importance and significance create a hamstring for assessments. Importance is a condition of significance and should be removed.

Secondly, the use of the term importance and significance to the cultural heritage of the State is misleading and ignores local, regional, State significance as well as the greater significance to the custodian Aboriginal community.

The definitions need to include all aspects of contemporary Aboriginal custom and traditions, both tangible and intangible; including, but not limited to, places of spiritual, contemporary and anthropological significance, historic places, archaeology, cultural landscapes, seascapes, waterscapes, dreaming trails, song lines, intangible heritage, underwater sites, built environment such as contact sites and missions, resource procurement areas, hunting and camping places, and subsurface heritage. The AHA must also include skeletal and ancestral remains in its scope. The AHA must protect burials, skeletal and ancestral remains and provide for their repatriation and management. We strongly recommend that a mandate for the repatriation and restitution of ancestral remains and other cultural materials be added into the AHA.

Section 5 would need to be re-written to make provision for a much broader and inclusive concept of Aboriginal heritage.

Question 6

No

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

Section 6 definitions of an 'object' are ambiguous and narrow. A much broader range of objects, in addition to sacred objects, should be subject to protection under the AHA.

Question 7

Yes

Additional comments:

These need to be retained, however, it needs to be linked to a cultural landscape rather than one site. Further if determined the area required management and conservation funds allocated as part of the AHA to allow for ongoing management with links via DPAW and Ranger programmes.

The ability for a PA to be revoked needs to go through a tribunal process with independent assessments at arms length from government.

Question 8

Yes

8. what needs to be considered?:

This is a glaring omission. The amendment needs to include

1. mandatory reporting into a closed register of burials and skeletal remains
2. provisions of application for funds by Aboriginal communities to protect, manage and research skeletal remains
3. DPLH requirement to inform land owner of the presence of Aboriginal Ancestral (Skeletal) Remains on their property and funds in needed to ensure their protection
4. Provisions for the repatriation of Aboriginal Ancestral (Skeletal) Remains
5. defined legal articulation between the Registrar and the Corner with regards to the identification of Aboriginal Ancestral (Skeletal) Remains
6. requirement for confirmation of presence of Aboriginal Ancestral (Skeletal) Remains to be determined by a qualified osteoarchaeologist/physical anthropologist
7. requirement for the DPLH to develop with custodian community management procedures where necessary.

Protection and Enforcement

Question 9

9. Activities that should require consent or authorisation:

Any impact to the values of the heritage would require consent.

Question 10

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

This would entirely depend on the heritage values.

Question 11

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

This needs to be negotiated outcome with the custodians determining whether the proposed impact will adversely affect the intangible heritage values.

Question 12

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

The relevant custodian group with this reviewed by the new and semi-autonomous body, the Aboriginal Heritage Advisory Council (AHAC) and if necessary referred onto the Heritage Appeals Tribunal (HAT), should be established to facilitate and mediate cases where heritage evaluations and assessments of sites, impacts and management decisions are contested and would benefit from arbitration.

Question 13

Ineffective

13. How s18 can be improved?:

By streamlining the log jams along the process - the DPLH review, the ACMC decision process and the Ministerial process.

Remove the monthly submission process, fund the Aboriginal Heritage Advisory Council to continually assess and increase the level of skill and experience in the DPLH.

Question 14

No opinion

14. provisions for long-term protection of sites:

Question 15

No

15. How can enforcement provisions be improved?:

Greater investigative powers for the Registrar.

Increased penalties to match other heritage legislation with jail terms for CEOs.
Removal of the defense of contractor failures and make it the responsibility of the parent organisation to ensure compliance.
Lengthening of the statute of limitations to at least 10 years.

Question 16

No

16. How can penalties be improved?:

Greater investigative powers for the Registrar and delegates.
Increased penalties to match other heritage legislation with jail terms for CEOs.
Removal of the defense of contractor failures and make it the responsibility of the parent organisation to ensure compliance.
Lengthening of the statute of limitations to at least 10 years.

Site Assessment and Registration

Question 17

Yes

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

Question 18

No

18. What should the criteria be?:

They need to be better articulated with Section 5 and need to be modernised.

Firstly it must clearly define all and any specialist terms used with reference to the assessment of Aboriginal heritage, with reference to contemporary best practice.

Secondly, this section needs to be enhanced and added too using already well defined criteria such as those outlined in best practice guides such as the Australia ICOMOS Burra Charter (Australia ICOMOS 2013a), Significance 2.0 (Russell and Winkworth 2009) and other state and commonwealth heritage legislation such as the Heritage of Western Australia Act 1990. The Australia ICOMOS (2013b) Practice Note: Understanding and assessing cultural significance offers specific guidance assessing significance.

Question 19

19. Steps to report place or object:

Unless the custodians request places not to be reported then the recorder needs to provide DPLH with minimum information. The current HISF is an appalling document and requires a major overhaul to simplify the required information.

19. Steps to nominate a place or object:

Unless the custodians request places not to be reported then the recorder needs to provide DPLH with minimum information.

A simple online submission form needs to be developed.

19. Steps to assess a place or object:

Experienced DPLH heritage officers with relevant experience and qualifications should briefly assess the submissions and seek additional data directly from the recorders.

If the assessment criteria are well defined then this assessment process should not be difficult.

They should then be registered with a right of response if they are not registered by the Aboriginal custodians and the recorders

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

Any submission should be placed on the Register.

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

The Register needs to have increased information with the changing status of places documented but they should all stay on the register as a record of identified Aboriginal heritage.

19. Steps to remove place or object from Register:

The do not need to be removed only their status would change.

Other Parts of the Act

Question 20

20. What's missing from the Act?:

One of the key issues with the current AHA is that Aboriginal people do not have a direct role in decision-making, nor is there any mandate to consult or involve Aboriginal custodians in heritage protection. As the AHA pre-dates values-based and stakeholder-led heritage management paradigms, it does not provide for Aboriginal-led or holistic management of heritage nor a right of appeal for decisions.

Legally defined intersection with the Native Title Act is lacking and needs adding.

There is no process to revoke a section 18 if conditions are not met or projects alter.

The lack of mechanisms to ensure that sub-surface archaeological deposits are adequately investigated prior to impact is a glaring omission of the AHA which is currently leading to the mass loss of this States deep time history. We recommend that places with the potential for sub-surface deposits must have that potential determined before applications are made to impact sites under section 18 of the AHA. The Victorian Aboriginal Heritage legislation has such a process in place as an example.

Question 21

No opinion

21. Sections to be removed from Act?:**Any other comments****Any other comments:**

We are of the opinion that the current AHA cannot be amended sufficiently to ensure better Aboriginal heritage protection and management in this State.

We therefore state that a new Act be drafted in line with the comment above regarding changes to the current Act.

We request that professional organisations and Aboriginal custodians are included in the drafting of this new Act as part of working groups.