

## Response ID ANON-8EBD-41MN-3

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

Submitted on **2018-04-13 15:39:06**

### 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:**

City of Canning

**Name of submitting officer and position.**

**Submitting officer and position:**

Graeme Bride

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

Yes

**In which field is your business?**

Government / Local Government

**If "other" please specify your field of business:**

### Purpose of the Act

#### Question 1

No

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

Opportunity to use plain English which has more meaning to users and administrators of the legislation. Aligning the language which has been endorsed by the Aboriginal peoples.

### Roles under the Act

#### Question 2

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

Best way is to ensure there is a provision of a resources which allows all people to access information on contact points, heritage places and other relevant information. Putting the heritage places or possible heritage sites on titles. Introduce a grading system of the importance of sites and a higher level of rigour / integrity around protecting the most significant sites.

#### Question 3

Ineffective

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

Include a mechanism to ensure that the person carrying out the assessments has had the knowledge passed onto them by traditional owners and through appropriate qualifications. From a policy perspective promoting an understanding of Aboriginal culture amongst non indigenous people.

#### Question 4

Yes

**Role and functions - Minister:**

The powers appear to be reasonable.

No

**Role and functions - Registrar:**

More clarity is required as to what the role is. There is a need for appropriate resources and more transparency and consistency.

No

**Role and functions - Committee:**

Clarity of the criteria on which those people are appointed.

No

**Role and functions - DPLH:**

Of the view that the Department is not providing sufficient advice on matters of Aboriginal Heritage. The City's recent experience of the Department is the officers are overly litigious and overly bureaucratic in their requirements for applications under the Act and it is unclear how this benefits the preservation of Aboriginal Heritage.

**What is Protected?****Question 5**

No

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

Within 5(b) the addition of 'spiritual' would be recommended. Within Section 5 there is no reference to contemporary or continuing use of these sights.

**Question 6**

Yes

**6. How can section 6 / Part VI be improved?:****Question 7**

Yes

**Additional comments:**

Please note previous suggestion that sites and areas are graded in terms of importance, to provide further clarity on how these sites can be protected and/or how land use might occur in conjunction with the sites in a respectful manner.

The use of the word outstanding may also set a standard which may be difficult to achieve.

**Question 8**

Yes

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

A clear process for discovery, confirmation of remains and future re-burial needs to be outlined such that all remains are handled appropriately. Also question whether re-burial sites then should become registered sites.

**Protection and Enforcement****Question 9****9. Activities that should require consent or authorisation:**

While it is acknowledged that all activities that may impact a site should require consent, there needs to be greater clarity around the way in which existing infrastructure is handled within sites i.e. the re-grading of a road, widening of roads in verge areas previously disturbed etc. Local Government should not be required to do extensive survey works where it is clear there is no impact on Aboriginal heritage values, regardless of the spatial area of a site. While it is understood that this is in fact how the current Act should be interpreted, it can be subjective amongst user groups and lead to conflict.

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

Please see comments above. Due Diligence Guidelines and the Act in general needs to have greater regard to the daily business of Local Government and servicing agencies generally, so as to assist with making that evaluation.

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

Must be assessed through collaboration and consultation with the relevant Aboriginal people. There is an opportunity to clarify how this consultation should occur to improve consistency amongst decision makers and between differing regions. Resourcing is also an issue.

**Question 12**

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

Dependent upon the extent of disturbance, though the current roles and responsibilities (Minister, ACMC, Registrar etc) may suffice. There may need to be greater transparency in these roles and a higher level of delegation to various bodies under this Ministerial area to improve timeframes for decision making.

Opportunity for appeal rights for Traditional Owners or relevant stakeholders through the State Administrative Tribunal should be introduced.

**Question 13**

Ineffective

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

Timeframes for decision making need to be made shorter. Timeframes should also be held to account (i.e. like the 90 day decision period for subdivision applications).

Rules around the extent of survey work relevant to the extent of the project are required i.e. some basic level upgrading works on roads, paths, drains etc have been delayed / cancelled because the cost of undertaking an Aboriginal Heritage Survey was too great relative to the cost of works.

Department staff to have more realistic ideas about the information required and rigid standards need to be addressed.

**Question 14**

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

The suggestion is that a grading system is introduced and this will then clarify levels of protection. The use of the timeframe of "long term" is not considered the relevant issue - if an area has significance, that is not related to a timeframe.

The important element is to consider the level of protection relative to the significance of the site, independent of a timeframe.

**Question 15**

Yes

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

**Question 16**

No

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

Standards for individuals are considered appropriate, however the penalties for body corporate should be greater. The fines are not considered a significant enough deterrent for corporations. There should also be the ability to levy fines that may take away commercial advantage for the breach of legislation.

**Site Assessment and Registration**

**Question 17**

Yes

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

Yes, but within reason. Identification of the area while withholding the knowledge about that area would be useful for landowners and decision makers, though understanding that this may also fall into the level of information that Aboriginal people may not wish to disclose. There may be an opportunity to highlight areas of risk without disclosing the information (i.e. a search mechanism that identifies where there may be areas of Aboriginal cultural heritage).

**Question 18**

Yes

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

Term index would be helpful i.e. what is a ritual, what is considered to be ceremonial usage etc

**Question 19**

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

This should be a simple form and/or checklist not requiring professional services, such that it could be undertaken by any person. It would then be the Department's responsibility for undertaking any professional archaeological or ethnographic research required.

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

As above.

There is currently a gap in site identification. Where required, the local government will commission a heritage survey to meet the requirements under the Act. The terms of this contract are usually restricted to the survey itself and the preparation / lodgment of a section 18 application. However, it is through this process that new sites can be identified. This then becomes the responsibility of the consultant to lodge the site nomination form, yet they are often not paid for this work. The Department needs to consider how this is being resourced in the future and not place the onus on local government to meet this need.

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

To be determined by the Department in consultation with relevant stakeholder groups, as it should be the Department's responsibility.

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

As above and noting the decision making requirements of the ACMC / Minister.

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

Application to the ACMC / Minister.

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

Application to the ACMC / Minister.

**Other Parts of the Act**

**Question 20**

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

Grading system for significance of Aboriginal sites.

Clarity on roles and function of Department.

Department to be given greater authority to give advice and make decisions.

Integration of cultural law perspectives so that it also has more relevance to Aboriginal people.

Opportunity for recognition of past sites requirements.

Option to lodge notification or memorial on title for Aboriginal sites.

**Question 21**

No opinion

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

**Any other comments**

**Any other comments:**