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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?

Individual

Individual details

Are you of Aboriginal or Torres Strait Islander descent?

No

What is your name?

Optional:

JJ McDermott

Do you give permission for your name to be published with your feedback?

Yes

Purpose of the Act

Question 1

No

If not, what changes should be made?:

A completely new Act should be formed and the following fundamental principles needs to be at its core:

All Aboriginal heritage must be afforded instant blanket protection.

Aboriginal people with specific cultural authority to a place or region within WA should have primacy in making decisions about Aboriginal heritage from there.

Aboriginal heritage values, including aspects relating to archaeology, should be celebrated and promoted to the wider public.

Roles under the Act

Question 2

2 - who should be consulted?:

A new Act needs to state specifically that Aboriginal people are to be consulted with when determining outcomes related to Aboriginal heritage.

Independent regionally-based Aboriginal heritage committees, made up of Aboriginal cultural knowledge holders, archaeologists and anthropologists (with regional and specialist expertise) should meet up monthly and determine the values and significance of Aboriginal heritage newly identified in these areas and they should make recommendations to DPLH as necessary.

These independent committees should report to, and be assisted by, an overarching and fully remunerated Council (similar to the current ACMC) under the Department of Planning, Lands and Heritage, whose ultimate job is to advise the Minister on decisions related to Aboriginal heritage as per recommendations given by regional committees.

Question 3

Ineffective

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

The idea around honorary wardens has to be clearer and enforced.

Perhaps this role could be aligned more with the Aboriginal Ranger programs, which has thus far proven to be very successful in other aspects of Aboriginal culture.

A new Act or guidelines stemming from it can make provisions for enabling Aboriginal people with local and regional knowledge to be more involved in managing and up-keeping Aboriginal heritage landscapes and places.

Question 4

No

Role and functions - Minister:

A new Act should be clearer about a Minister's role and function. One change I would suggest is that new legislation clearly states that a Minister's role is never to undermine or diminish the traditional knowledge of Aboriginal people. His/her main role in relation to the Act should always be in the interests of the Aboriginal

groups of WA and this should be clearly outlined.

No

Role and functions - Registrar:

Like with the Minister, the Registrar's role should never over-step or disregard the traditional knowledge of Aboriginal people. It should be made clear that their role under the Act should relate only to the administration of the Act and never beyond it. A Registrar should at all times be transparent and answerable to the state of WA. In undertaking the role, a Registrar needs to have a substantial background of experience with the protection and preservation of Aboriginal heritage (and not to the contrary).

No

Role and functions - Committee:

As stated above, the ACMC needs to be abolished under the new Act. Its functions under the current Act have never been explicit and this has led to it being ineffective, inconsistent and ultimately detrimental to the protection and preservation of Aboriginal heritage. The committee has completely, and without explanation, overlooked the significance of archaeological places and objects in recent years. It has also not considered the appropriate views and voices of those who genuinely seek the protection and preservation of Aboriginal heritage.

A new Council needs to be set up under a clearly defined set of guidelines in the new Act, which should extend to making management conditions and restrictions for Aboriginal heritage places to be impacted by development. Its members should have the appropriate skills and expertise, have no conflicts of interest, and should be paid full-time for conducting their roles. The council should be made up of Aboriginal people with a respected cultural background in WA, and heritage practitioners with a similar respected professional background and extensive experience in WA cultural heritage management.

As stated above, this council should liaise with specific independent regional committees in making decisions about Aboriginal heritage in those regions, and also liaise closely with staff at the Department.

The Council's decisions should be transparent to the public and be open to appeal.

No

Role and functions - DPLH:

It should be clear in any new Act that the Department be effectively utilised to manage and administer the functions of this Act.

This should prompt the requirement for Heritage Officers within the Department to be employed from backgrounds with extensive experience in cultural heritage management and the identification of Aboriginal heritage places. Some of these officers should be regionally-based and should liaise closely with the other councils and committees envisioned above.

The Department needs to be more engaged with Aboriginal groups, the heritage industry and the wider public. It should have a dedicated and engaged team that cares for the protections and preservations of Aboriginal heritage.

Along with the Registrar, Heritage Officers at DPLH should be able to enforce a suite of standards and quality control when it comes to Aboriginal heritage management (this should be enabled through a new Act). Guidelines and principles relating to these standards should be drafted and maintained with the help of experienced heritage professionals. I would suggest that such standards reflect those of professional organisations such as the Australian Association of Consulting Archaeologists Inc., the Anthropological Society of Western Australia and the Australian ICOMOS.

DPLH staff functions should be primarily set in promoting and celebrating the Aboriginal heritage of WA. I would see these functions leading to increased publications on Aboriginal heritage, in the form of newsletters, booklets and monographs that should call on the collaboration with Traditional Owners and cultural heritage practitioners alike.

What is Protected?

Question 5

No

5. How can section 5 be improved?:

Like much of the current Act, Section 5 uses conflicting and outdated terms. Use of phrases like 'in the opinion of the committee' are highly divisive.

A new Act should incorporate a clearer and more coherent use of terms. Sections like this need to be less cumbersome.

The role of a new Act should be to recognise and afford blanket protection for Aboriginal heritage. Aboriginal heritage therefore needs to be defined clearly in a specific section, with no contradictions given elsewhere.

I suggest that its definition be much broader than the current Act and incorporate all forms of relevant significance (as outlined in the Burra Charter). Aboriginal heritage should not only be tied to places of ethnographic significance, it should incorporate archaeological and memory landscapes as well as all historic and archaeological places, structures and objects with connections to Aboriginal people.

Question 6

No

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

All Aboriginal objects should come under the term Aboriginal heritage and should therefore be afforded protection in a new Act.

A new Act should outline clear management protocols for identified objects and this should include provisions to work closely with local and regional groups in the process.

When a development threatens to disturb an Aboriginal object, in my opinion it should be recorded, reported to the relevant Council and managed to a level that is satisfactory to the local Traditional Owners.

Question 7

No

Additional comments:

I think a new Act should deal with scales of significance, which could likely lead to areas being declared as more important than others. But it shouldn't be so complex so as to render the definition of Aboriginal heritage contradictory.

Protected Areas should be more about cultural significance than about boundaries and sites. There should be a straight-forward pathway for areas of immense significance to Aboriginal people becoming a Protected Area, with clearly defined guidelines around land management and development. The Department should take a more active role in managing areas like this and should promote it and present it appropriately to the public.

Question 8

Yes

8. what needs to be considered?:

Any sections about Aboriginal ancestral remains should clearly include the provisions for involving relevant Aboriginal groups and people with relevant expertise (osteo-archaeologists, forensic archaeologists etc.) in this area during the required management processes.

Protection and Enforcement

Question 9

9. Activities that should require consent or authorisation:

All Aboriginal heritage should be afforded the same protections and therefore consent to impact, however minor, should be compulsory.

However, a new Act needs to be more explicit in its terms around levels of 'ground disturbance' and types of activities that may impact Aboriginal heritage. It should be broken down into categories, and there should also be a breakdown of criteria in regards to significance and values of certain places and landscapes.

When measured against each other, there should be a simple and clear outcome about whether the activity should go ahead or not. After considering views from Aboriginal groups through the regional committees, the Council should advise the Minister on what appropriate restrictions and conditions should be implemented to mitigate the impacts during the activities.

Question 10

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

All proposed impacts to Aboriginal heritage should have regard to the views of relevant Aboriginal people, be supported by compelling reasons of public interest and be subject to transparency and accountability. However, as alluded to above, there needs to be a separate process for accessing significance and values of Aboriginal heritage (and this should not just stop at boundaries and sites), and ideally this should help determine the outcomes of proposals to impact or disturb when they arise.

Question 11

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

As above, there needs to be mandatory consultation processes with the relevant Aboriginal groups and expert anthropologists to determine whether or not the intangible values of a place or landscape will be affected by a certain proposal. The focus on these consultations should be on management and mitigation and the views expressed by Aboriginal people with customary and traditional knowledge for that area need not only be considered by a relevant committee, council or the Minister, they should be explicitly adhered to.

Question 12

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

Any consent or authorisation should come from the Minister, upon direct advice from the appropriate council and committees. However, the processes that form out of a new Act should not just lead to the Minister approving impacts to Aboriginal heritage. The Minister's role should always be focused on protecting and preserving Aboriginal heritage and he/she should fully act in that capacity. Consents and authorisations should form only a small part of letters to proponents or bodies proposing to impact Aboriginal heritage. Management conditions and restrictions should have a primary focus.

Question 13

Effective

13. How s18 can be improved?:

The Section 18 process should be completely revised in a new Act. It has been very effective in the past in providing a process for destruction of Aboriginal heritage. A new Act should not provide a process that makes it easier for Aboriginal heritage to be destroyed. It should primarily focus on its protection and preservation, as well as conservation and curation.

However, there should be a process leading out of the Act that prompts the requirement for close consultation with appropriate Aboriginal groups, expert heritage professionals, and the WA Museum if required, when the values of Aboriginal heritage will be impacted in any way.

As above, management and mitigation conditions should be the primary outcome of any process that leads to consent in impacting Aboriginal heritage.

Question 14

14. provisions for long-term protection of sites:

As above - provisions relating to the long term protections of Aboriginal heritage needs to follow on from a strong statement in the purpose of the Act. A new Act needs to have a clear message that Aboriginal heritage, first and foremost, will be protected.

Aboriginal people with local or regional knowledge, along with the assistance of heritage professionals, should be enabled to help ensure this long-term protection - through Ranger/Warden programs, which could include provisions of cultural training for people who will work in the vicinity of Aboriginal heritage, educational engagement with Aboriginal objects and places, or site recording projects with an aim to publish the findings to the public.

Question 15

No

15. How can enforcement provisions be improved?:

The statements around unauthorised damage to Aboriginal heritage need to be stricter. The damage and destruction to Aboriginal heritage around WA has been happening for years and in the majority of cases there have been little or no consequences to the guilty party. This has to stop. A new Act and its guidelines has to be firm on the types of impact that can and cannot be allowed in relation to the values of Aboriginal heritage (not just within a site). The concept of 'Ignorance as a defence' needs to be taken out of any new legislation. Developers have to be clear that unauthorised impact to Aboriginal heritage is not to be tolerated, and this should extend to the adherence of management conditions and restrictions too.

Guidelines could also be established making it clearer for developers to work within Aboriginal heritage without causing adverse impacts - expert heritage practitioners in collaboration with relevant Traditional Owners can be utilised in providing training and education in this process.

Question 16

No

16. How can penalties be improved?:

This should be updated upwards to reflect current times and other legislation.

Site Assessment and Registration

Question 17

Yes

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

Question 18

No

18. What should the criteria be?:

As mentioned above, a new Act must be based on modern cultural heritage management principles and it should be aligned with contemporary practice, such as that encapsulated by the 2013 Australian ICOMOS Burra Charter.

While each of the criteria in this section is highly important and should be maintained, it should be added to and updated for clarity and consistency. It should also be consistent with the rest of the Act.

Question 19

19. Steps to report place or object:

New records of Aboriginal heritage should be reported to DPLH in all cases - places, landscapes, objects - even if they have been previously recorded, and even if it is identified outside of a development process.

There should be guidelines breaking down this process clearly.

A relevant cultural heritage practitioner (an archaeologist, an anthropologist or a specialist where required) should be employed to liaise with the Aboriginal groups and then make a report to a relevant regional committee (as addressed above). Alternatively, DPLH can advise that this should happen after the report has been made.

The heritage office of DPLH, under the leadership of the Registrar should maintain a Registrar of cultural heritage practitioners, who have been approved by various professional bodies (AACAI, ASWA, AAA and ICOMOS) and are acceptable and trustworthy to relevant Traditional Owner groups and families.

19. Steps to nominate a place or object:

As above, under consultation and agreement with relevant Aboriginal groups, and under advice from DPLH, a cultural heritage practitioner should then be obligated to nominate a place, landscape and object to the relevant regional committee, who then advises the Registrar to add the records to the Register of Aboriginal Places and Objects.

If the committees or Registrar requires further information, it should be requested immediately.

19. Steps to assess a place or object:

A place, landscape or object need not be fully recorded to be maintained on the Register but primary information should include cultural naming, agreed restrictions on access, contacts for further information and general spatial data.

Recommendations on further assessment should also be given at the time of initial reporting and nomination, and this should be agreed upon by the local Traditional Owners.

This will allow for clearer steps to be taken when the need arises, such as when a development threatens the Aboriginal heritage values.

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

As above, it should be the Registrar's responsibility to adhere to the advice of the regional committees to enter a place on the Register and to have those records maintained and updated as necessary.

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

see below

19. Steps to remove place or object from Register:

This should only be undertaken under request from the Registrar. There should be a very detailed and clearly outlined process for amending or removing records of Aboriginal heritage from the Register. Relevant Aboriginal groups, and where necessary, the original recorders, should be consulted with directly and be outlined clearly as to the reasons why the Registrar is requesting this to happen.

Provisions, however, should be made when an older Aboriginal heritage record is just being amended with an updated location or a description of its subsequent disturbance since initial recording.

All records, old and new, should be maintained on the Register at all costs. A record should never be fully removed (as it has been in the past), unless there is a truly good reason for it and is agreed by the relevant Aboriginal group.

Other Parts of the Act

Question 20

No opinion

20. What's missing from the Act?:

Question 21

21. Sections to be removed from Act?:

As indicated, I think it should be a completely new Act rather than an amended one.

The new Act should be concise, coherent, consistent and not contradictory.

Any other comments

Any other comments: