

Question	Response
<p>1. Is the long title an adequate description of what the amended Act should set out to do? If not, what changes should be made</p>	<p>The wording in its present form does not present any particular issues. However, it may be beneficial to add language reflective of terminology used in the Burra Charter since the Burra Charter is applicable to all types of places of cultural significance including natural, Aboriginal and historic places with cultural values. Furthermore, the principles of the Burra Charter are the foundations of not only the AHA, but the Western Australian Heritage Act.</p> <p>The term 'places of cultural significance' encompasses State and Commonwealth heritage legislation that, at times, intermittently uses: 'place', 'objects', 'areas' or 'sites' (NTA 1993, Heritage Act 1990, ATSIPA 1984).</p> <p>The Burra Charter defines:</p> <p><i>Place</i> means a geographically defined area. It may include elements, objects, spaces and views. Place may have tangible and intangible dimensions. Place has a broad scope and includes natural and cultural features. Place can be large or small: for example, a memorial, a tree, an individual building or group of buildings, the location of an historical event, an urban area or town, a cultural landscape, a garden, an industrial plant, a shipwreck, a site with in situ remains, a stone arrangement, a road or travel route, a community meeting place, a site with spiritual or religious connections.</p> <p><i>Cultural significance</i> means aesthetic, historic, scientific, social or spiritual value for past, present or future generations. Cultural significance is embodied in the <i>place</i> itself, its <i>fabric, setting, use, associations, meanings, records, related places</i> and <i>related objects</i>. Places may have a range of values for different individuals or groups. The term cultural significance is synonymous with cultural heritage significance and cultural heritage value. Cultural significance may change over time and with use. Understanding of cultural significance may change as a result of new information.</p> <p>Consideration should be given to the use of the word "object" considering there are no individual objects listed on the register at this point in time.</p> <p>Additionally, the title should include 'conserve', since in a modern context the aim of the act should be about on-going management and/or enhancement of heritage.</p>

	<p>The word ‘traditional’ may become problematic as we know that ‘traditions’ are not static. Aboriginal objects, particularly tools made from glass and other introduced items – post colonisation – are considered important because they show the adaptation of the Traditional Custodians. Perhaps reconsider the term ‘traditional’.</p> <p><i>An Act to make provision for the preservation and conservation on behalf of the community of places of cultural significance customarily to the Aboriginal people or their descendants, or associated therewith, and for other purposes incidental thereto.</i></p>
<p>2. What do you think are the best ways to ensure the appropriate people are consulted about what Aboriginal heritage places should be protected, and how a proposal may impact those places?</p>	<p>There is potential for the Act to provide clarity and certainty as to the role and function of the users of the Act, and how these people should be consulted.</p> <p>Aboriginal people with the right to speak for country should be consulted in a meaningful way regarding the management of places of cultural significance. A clear set of standards for consultation with exact, realistic and enforceable timeframes included in the Regulations would be of use. Both the industry and the Aboriginal community would benefit from the increased transparency and certainty that such timeframes would offer.</p>
<p>3. To what extent has the provision to appoint honorary wardens been effective and how can it be improved?</p>	
<p>4. Are the roles and functions assigned under the Act sufficiently clear and comprehensive to fulfil the objectives of the legislation to preserve Aboriginal heritage places and objects? If not, what changes in roles and functions would you suggest?</p>	<p>At present the Aboriginal Cultural Heritage Committee (ACMC) is not equipped to process the sizeable backlog of approvals and heritage assessments awaiting consideration, indicating the role and function of the ACMC to perform under the Act is insufficient. The backlog of assessments and approvals is causing delay for business, which results in time and cost burdens for projects.</p> <p>Furthermore, the cultural appropriateness of the ACMC’s membership structure should be reviewed to determine whether it is culturally appropriate to have Aboriginal stakeholders making decisions about Aboriginal heritage from a country for which they do not have the right to speak.</p> <p>Potential roles for consideration under a reformed Act would be:</p>

	<ul style="list-style-type: none"> • Greater effort to have Aboriginal representation, including specific representatives who have a cultural authority for the area and heritage professionals. • Regional Aboriginal heritage councils (newly established) with elected Aboriginal representatives with a right to speak for country make assessments in relation to heritage places. • Registration and approval functions are dispersed and administered at a Departmental level. • An increase of resources to the ACMC, and the ACMC meet on an ongoing basis, in a paid role, and possibly rotation personnel. Importantly the ability to bring in experts – anthropologists and/or anthropologists - with a specialisation in the field for particular matters <p>The name of the ACMC should be reviewed so the emphasis is not on ‘material’ culture.</p> <p>A committee in a revised form should be retained to advise to the Minister on matters of high heritage significance to provide a State-level perspective.</p> <p>A reasonable timeframe for a decision on a Section 18 from the Minister it is imperative to minimise impact and delay.</p>
<p>5. Does section 5 adequately describe the sorts of places or sites that should be protected under the amended Act? If not, how can it be improved?</p>	<p>At present, the wording of section 5 is clear in its intent, however the Department’s interpretation and application of section 5 has been inconsistent in the past. The Department’s scope for interpretation and application of the Act should be set out in the Guidelines.</p>
<p>6. Do section 6 and Part VI adequately describe the sorts of objects that should be protected under the amended Act? If not, how can they be improved?</p>	<p>Section 6 of Part VI adequately describes the sorts of objects that should be protected under the Act.</p>
<p>7. Is the declaration of a Protected Area under the Act the best way to deal with</p>	

Aboriginal sites of outstanding importance?	
8. Should the Act provide for the management of Aboriginal Ancestral (Skeletal) Remains? If so, what needs to be considered?	Skeletal ancestral remains are, in most cases, of extreme importance to Aboriginal stakeholders. Furthermore, management of skeletal remains typically has an interface with other agencies such as the Office of the State Coroner and the Western Australian Police Force. The Act should continue to provide for specific protection of skeletal remains, as distinct from other types of heritage material, to ensure its management in a consistent and culturally appropriate manner and allowing for the interaction with other agencies.
9. What sort of activities that may affect an Aboriginal site should require consent or authorisation?	The consent for activities under section 16 and 18 are sufficient. However, consideration should be given to developing a new type of consent for low impact activities. Following <i>Aboriginal Heritage Due Diligence Guidelines</i> in relation to low impact activities does not provide enough certainty for a defence under the Act. A set of regulations regarding low risk activities will avoid overly burdensome approval processes for what may be a simple activity that does not impact upon heritage values. This is particularly relevant within OHP with a status of Lodged / Insufficient Data areas which have been the subject of a section 18, but have not been formerly assessed by the ACMC as a result of a backlog of assessments and approvals.
10. What should be the criteria against which to evaluate an activity that may affect a site (e.g. a proposal to use or develop land)?	The <i>Aboriginal Heritage Due Diligence Guidelines</i> offer criteria for assessing certain types of impact. The scope of these criteria could be broadened to include clearer definitions of particular activity types. The Aboriginal Heritage Risk Matrix could be expanded, in particular the broadening of the previous land uses within the metropolitan areas, including reserves. As discussed in the response to Question 9, there is not sufficient certainty that following the due diligence guidelines would provide a defence under the Act if required. Perth
11. How can 'impact' arising from proposals for land use on sacred sites that do not have physical cultural heritage elements be assessed?	The comprehensive Burra Charter guidelines might be useful for reviewing the impact to landscapes with intangible heritage values.

<p>12. Who should provide consent or authorisation for proposals that will affect Aboriginal sites?</p>	<p>There is a clear need to separate consent and authorisation for proposals which will impact on Aboriginal heritage. Aboriginal community stakeholders who have a right to speak for the land are the correct people to make assessments in relation to heritage values. Authorisation and final decision on impact to Aboriginal sites need to rest with the Minister to avoid any conflicts of interest. Ultimately, land use and impact to land are a matter of state importance, and should be decided by the State.</p>
<p>13. To what extent is the current section 18 application process effective and how can it be improved?</p>	<p>The current wording under section 18 of the Act is adequate to meet the intent of the legislation, and the current approval process reflects this intent.</p> <p>However, there are administrative problems with the section 18 consent approval process:</p> <ul style="list-style-type: none"> • The ACMC, as a relatively small committee that meets infrequently, does not have the capacity to review and approve the volume of applications received. • Certainty must be provided by the Department regarding exactly what information needs to be lodged with the s18 application. • Once section 18 applications are submitted, the applicant should be able to view the progress of the application using a tracking mechanism. An online system for this would be ideal. • Time frames should be imposed to ensure the process is completed within a reasonable time • The section 18 assessment should be a transparent process
<p>14. What provisions could be included in an amended Act to ensure the long-term protection of Aboriginal sites where alternative statutory arrangements do not apply?</p>	<p>The Act should be aligned to the Western Australian Act and follow the principles of the Burra Charter.</p>
<p>15. Are the enforcement provisions under the Act adequate to protect sites? If not, how can they be improved?</p>	<p>The Act should align with the Western Australian Heritage Act.</p>

<p>16. Are the current penalties under the Act adequate? If not, how can they be improved?</p>	<p>No, the fines should align with the Western Australian Heritage Act.</p>
<p>17. Should a defence continue to be provided where the disclosure of information (section 15) is against customary laws/protocols?</p>	<p>Aboriginal people should not be burdened to disclose any information that is against customary law/protocols.</p>
<p>18. Are the criteria for assessing the significance of sites under section 39 (2) and (3) adequate to evaluate whether a site should be added to the Register? If not, what should the criteria be to assess the significance of a site?</p>	<p>Refer to responses to questions 4 and 13 regarding the ACMA.</p>
<p>19. What should be the steps to report, nominate, assess, enter, amend or remove an entry from the Register?</p>	<p>In its current form the steps to report, nominate or amend an entry to the Registrar operate relatively well.</p> <p>Refer to questions 4 and 13 regarding assessments by the ACMC. The entire process should be transparent.</p>
<p>20. What do you think is missing from the Act?</p>	<p>The Act is not missing any major legislative components. Although language and definitions should not be interchangeable, as in the case of significance and importance. A definition of each word in view of values may be revised.</p> <p>The language should also be reflective of a modern society, for a start it ought to be gender neutral.</p> <p>The accompanying factor which is missing from the Act is strong administration and functioning regulations. Present confusion over interpretation of the Act, its application, procedural fairness, time frames, and consultation procedures could be resolved through better Departmental</p>

	resourcing (with the necessary skills and expertise), strategy, consistency and communication regarding the administration of the Act.
21. What sections, if any, do you think should be removed from the amended Act, and why?	