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Dear Sir

REVIEW OF THE ABORIGINAL HERITAGE ACT 1972 – PERTH AIRPORT SUBMISSION

Perth Airport is Australia's Western Hub and plays a major role in connecting businesses, communities and our people to the world. In doing so it makes a major contribution to Western Australia's economic, social and cultural activities.

The land on which Perth Airport is located forms part of the traditional network of communication routes, meeting places and camping sites of the Nyungah people. The Aboriginal heritage values on the Perth Airport estate comprise both archaeological and ethnographic sites indicative of prior occupation.

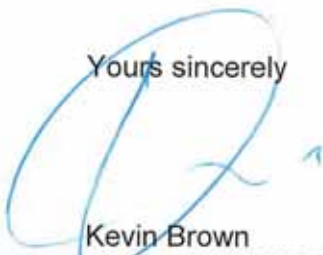
As the traditional custodians, the Nyungah people maintain a strong interest in the airport land and its operations. Perth Airport remains committed to ongoing engagement with the Traditional Custodians under the guidance of Perth Airport's Heritage Management Framework in a manner that recognizes the significance of the area to the Nyungah community and acknowledges the strong link that exists between them and the land on which Perth Airport is situated.

For these reasons, Perth Airport welcomes the release of the consultation paper for the Review of the Aboriginal Heritage Act 1972 and appreciates the opportunity to provide comments on questions posed in the consultation paper.

Our comments are attached to this cover letter. Please note that responses have been provided only to those questions which are assessed as having specific or material relevance to Perth Airport.

For further information on this submission please contact our Chief Corporate Services Officer, Ms Debra Blaskett on 0438 957 653 or at debra.blaskett@perthairport.com.au

Yours sincerely



Kevin Brown
CHIEF EXECUTIVE OFFICER

Question	PAPL Response
<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, defined and enforceable timeframes would provide clarity of the process and ensure appropriate people are consulted. Both the industry and the Aboriginal community would benefit from the increased transparency and certainty that such timeframes would offer.</p> <p>The cost associated with the consultation process is problematic. Perth Airport suggests that two representatives from each relevant group should be consulted to improve efficiency and keep the cost of the consultations economically viable. It would be useful for the Department to maintain a database of appropriate representative contacts for consultation.</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>There are no defined timeframes for the Aboriginal Cultural Heritage Committee (ACMC) to consider assessments and approvals. This can lead to delays for businesses and time and cost burdens for projects.</p> <p>Consideration needs to be given to ensuring that the ACMC has appropriate resourcing to fulfil its role and function within appropriate timeframes.</p> <p>Potential roles for consideration under a reformed Act would be:</p> <ul style="list-style-type: none"> • Greater effort to have local Aboriginal representation, including specific representatives who have a cultural authority for the area and heritage professionals. • Registration and approval functions are dispersed and administered at a Departmental level. • An increase of resources to the ACMC, to make adequate provision for regular and ongoing ACMC meetings. Importantly the ability to bring in archaeologists and/or anthropologists who have specialised in the region and/or field for particular matters. • Transparency throughout the approvals process

	<ul style="list-style-type: none"> • Determined timeframes for decisions and recommendations from the APMC to the Minister and Registrar. The determined timeframes are imperative to minimise impact and delay on business. <p>If the Act applies to heritage on the Perth Airport estate, Perth Airport supports a committee, in a revised form, to be retained to advise the Minister on matters of high heritage significance to provide a State-level perspective.</p> <p>Perth Airport is regulated by a range of legislation. It is for this reason that determined timeframes for decisions from the Minister are imperative for efficient planning. The Airports Act, for example, has clear and defined timeframes with the option for the Minister to 'stop the clock' should additional information be required. Perth Airport recommends the Act implement timeframe structures in line with the Airports Act.</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>As an administrative change to avoid confusion, the Department should specify industry obligations regarding Other Heritage Places classified as Lodged / Insufficient Data.</p>
<p>8. Should the Act provide for the management of Aboriginal Ancestral (Skeletal) Remains? If so, what needs to be considered?</p>	<p>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.</p>
<p>9. What sort of activities that may affect an Aboriginal site should require consent or authorisation?</p>	<p>The consent for activities under sections 16 and 18 are sufficient.</p> <p>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, the Guidelines do 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</p>

	<p>within OHP with a status of Lodged / Insufficient Data areas which have been the subject of a section 18, but have not been formally assessed by the ACMC as a result of a backlog of assessments and approvals.</p> <p>As a precautionary nature, Perth Airport applies for Regulation 10 authorisation for low impact activities contributing to the backlog of assessments and approvals awaiting consideration by the ACMC.</p>
<p>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)?</p>	<p>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 and commonwealth land, which is legislated under the current AHA. As discussed in the response to Question 9, there is not sufficient certainty that following the <i>Aboriginal Heritage Due Diligence Guidelines</i> would provide a defence under the Act if required. Perth Airport recommends defensible certainty and clear acknowledgement of the <i>Aboriginal Heritage Due Diligence Guidelines</i> in the legislation by inclusion as Regulations.</p>
<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>Perth Airport strongly recommends imposing determined timeframes and that the process of these decisions is transparent.</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>The section 18 application should be reviewed to enable corrections on the application form without the need to repeat the entire application process as this is tedious, time consuming and costly.</p>

	<p>Additionally, there are administrative problems with the section 18 consent approval process:</p> <ul style="list-style-type: none"> • The APMC, is a relatively small committee that meets infrequently, therefore it does not have the capacity to review and approve the volume of applications received. Section 18 applications in the first instance should be handled by the Department and referred to the APMC for review only in the case of impact to highly significant heritage places. In order to support this proposed model, staffing, resources and professional heritage knowledge of staff would need to be commensurate with the volume and nature of section 18 applications submitted. • Certainty must be provided by the Department regarding exactly what information needs to be lodged with the s18 application. Subsequent requests by the Department for supporting information, which could have been supplied in the first instance had there been improved certainty, results in lengthy approval time delays. • 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. • Determined timeframes must be imposed at all levels of the process. • The section 18 assessment should be a transparent process
<p>17. Should a defence continue to be provided where the disclosure of information (section 15) is against customary laws/protocols?</p>	<p>Section 15 of the Act requires any person to report knowledge of objects/places and sites to the Registrar. Perth Airport does not support this. There should be no need for Aboriginal people to disclose customary information or knowledge. However, if there is a potential to impact the heritage value of the area, people who have a right to speak for the area, should disclose enough culturally appropriate information during the assessment process to afford protection to the heritage value, while having confidence that that information will not be disclosed to third parties.</p> <p>If developers/mineral extraction operators conduct thorough heritage assessment procedures prior to any ground disturbance activities, they should not inadvertently impact a heritage site, as a result of following the adequate guidelines as set by the AHA.</p>

20. What do you think is missing from the Act?

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.

The language should also be reflective of a modern society, for a start it ought to be gender neutral.

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 resourcing (with the necessary skills and expertise), strategy, consistency and communication regarding the administration of the Act.