



THE UNIVERSITY OF
**WESTERN
AUSTRALIA**

Associate Professor Martin Porr
Discipline Chair Archaeology
Archaeology/Centre for Rock-Art Research and Management
M257
Faculty of Arts, Business, Law and Education
School of Social Sciences
The University of Western Australia
Crawley WA 6009
Australia

<https://research-repository.uwa.edu.au/en/persons/martin-porr>
<http://orcid.org/0000-0002-6556-1007>

Assistant Director General
Heritage Services
Department of Planning,
Lands and Heritage
Locked bag 2506
Perth WA 6001

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Re.: Aboriginal Heritage Act 1972 Review

Dear Assistant Director general,

please find below the submission from the Discipline of Archaeology regarding the Aboriginal Heritage Act 1972 review process.

The Discipline of Archaeology at the University of Western Australia welcomes the initiative of the Western Australian State Government in instituting a broad-ranging consultative process to inform the proposed amendments to the *WA Aboriginal Heritage Act 1972-1980*. The proposed amendments have the potential for bringing the current outdated Act into line with significant national developments – notably the recognition of Native Title and sovereignty – and international best practice.

In particular, we welcome the initiative to allow Aboriginal people a greater role in the new heritage legislation framework. In this spirit, a key element of the proposals is the introduction of a revised assessment process and the decentralisation of decision-making involving new Local Aboriginal Heritage Services (LAHS) that must be 100% Aboriginal-owned. LAHS will have the statutory responsibility to ensure that the right people speak for Country, that consultation processes are properly conducted and that agreements are facilitated. These processes should involve Native Title holders as well as traditional knowledge holders. It is envisaged that LAHS will initially be established by existing Aboriginal organisations such as Prescribed Body Corporates (PBCs). It is our understanding that LAHS will operate at both a place and landscape level and provide significant and informed cultural heritage advice to an Aboriginal Heritage Council (AHC). This AHC will be staffed by nine Indigenous people with expertise (wherever possible) in anthropology, archaeology, governance, heritage, history, management and planning. However, we do want to raise five key issues that we believe require further consideration as we feel these may impede the otherwise positive intent of having Aboriginal the greater and even determining say in how their heritage should best be managed:

- Most Aboriginal Corporations are currently already under increasing pressure to engage rapidly with complex heritage compliance frameworks linked to industry production cycles. One can expect that newly established LAHS will not be adequately resourced to consistently succeed within this space in the light of asymmetries in resourcing and capacities. The new responsibilities of LAHS will include substantial Register legacy issues, the challenge of preparing registration information (according to standards that have not yet been specified) and constant industry requests. As PBC or representative groups managing the LAHS will already be addressing a host of other matters such as cultural activities, community development, governance, and land access, this aspect of the reform requires careful consideration. Although there is certainly significant capacity in industry-intensive agreement areas (such as the Pilbara), the majority of PBCs do not have sufficient income or staff resources to set up and maintain a LAHS. Even in regions with established and operating PBCs, structures and processes are sometimes still in development. The LAHS system will therefore require long-term government support and sustainable funding models to ensure ongoing capacity and success. Assurances to support the establishment of LAHS alone are not enough to secure the long-term operation of the proposed framework.
- We welcome that the proposals include a focus on the improvement of professional standards. The discussion paper makes explicit reference to the Burra Charter, which is an important set of principles that outline a nationally accepted best practice standard for cultural heritage management. The Charter has already been adopted by the Heritage Councils of Queensland, NSW, Victoria and Tasmania. We believe that such an orientation will allow heritage practitioners to better coordinate their assessments; it will support the adherence to professional codes of ethics and the primary status of Indigenous custodians. This will improve the quality and reliability of heritage information and the sustainability and accountability of the framework. Overall, the guidelines for the Register should be made as clear as possible and their development should consider the input of relevant professional bodies in the State. A code of ethics, such as those recognised by AIATSIS, AACAI, ICOMOS and AAA should be a major consideration.
- We welcome the proposal that the intended AHC will be staffed by nine Indigenous people with expertise (wherever possible) that includes anthropology, archaeology, governance, heritage, history, management and planning. We note, however, that cultural competency has not been explicitly identified as an essential requirement. This should occur with the preference for Aboriginal members and the listing of anthropological skills.
- During the 2018 public review of the AHA, the establishment of an Aboriginal Heritage Tribunal was suggested, which would be able to hear appeals on the values and significance of heritage sites and places before a magistrate and senior heritage specialists. We believe that it is problematic that such a body that can arbitrate cases of contested heritage values is apparently lacking in the current proposals. Akin to the NSW Land and Environment Court such a dedicated Tribunal could hear detailed submissions from Traditional Owners and land users, and it would be better suited to such a task than the State Administrative Tribunal.

- We support the retention of the Aboriginal Heritage Register as an information repository, rather than solely as a list of registered places. The accuracy and reliability of the Register has long been a source of problems and has caused a lot of friction and dissatisfaction. Sufficient resourcing must be provided to upgrade and improve the Register and address the backlog of site assessments.

With a new *WA Aboriginal Heritage Act* all stakeholders – and all Australians – will be able to better appreciate the heritage of some of the longest continuous cultures in the world and meet the challenges of the future that will include navigating a complex landscape of legacies, interests, values and opportunities. The initiative is vitally important and is a historic opportunity to improve the recognition and management of Aboriginal cultural heritage in Western Australia.

Kind regards,

A handwritten signature in black ink, appearing to read 'Martin Porr', written in a cursive style.

Associate Professor Martin Porr

for the Discipline of Archaeology at the University of Western Australia