

Response ID ANON-8EBD-41YZ-U

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:

[REDACTED]

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

No

Purpose of the Act

Question 1

No

If not, what changes should be made?:

Firstly title should be made clear and concise. It should reference conservation in addition to preservation. It should acknowledge Aboriginal people as having primary ownership of their heritage with the generally community as being of secondary importance.

Roles under the Act

Question 2

2 - who should be consulted?:

The ACMC only ensures consultation with select individuals who happen to live in Perth. Proper consultation regarding the protection or conservation of heritage places should be mandated within the AHA and should occur within individual communities.

This would ensure a more transparent process where communities are made aware of the relevant results of heritage surveys and developments occurring on their land.

It would also be more appropriate for any body making decisions regarding protection or conservation of sites/places to be separate from decisions pertaining to impacts to those places.

Appropriate mechanisms should also be implemented to allow for appeals to occur should there be any breakdowns to this process.

Question 3

Ineffective

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

This process should be integrated with ranger programs

Question 4

No

Role and functions - Minister:

There is no way for the Minister to be properly informed and independent with regards to every site, place, development or impact. He/she should not be involved in the process.

No

Role and functions - Registrar:

No

Role and functions - Committee:

The ACMC should be dissolved and be replaced with two separate committees. One to make decisions on what sites / places should be included on the register and another to determine acceptable impacts to sites/places and issue permits for development.

No

Role and functions - DPLH:

As listed above, conservation as well as protection should be considered important. Increased transparency in decision making is also imperative. The department currently appears reluctant to take on the role of a regulator. Staff are unsure and unable to give good advice regarding processes instead relying on the ACMC to make decisions and failing to give clear guidance as to why particular decisions were made. Department staff should become better informed about the industry they are supposed to regulate. Staff should be more highly trained and knowledgeable about any new or amended act.

What is Protected?**Question 5**

No

5. How can section 5 be improved?:

Section 5 is vague and is not backed up by a good set of clear guidelines as to what constitutes a site or place being recognised under these sections. Having to prove significance to the state overlooks other important sites which might be significant to a local Aboriginal group or on a local scale. It also fails to take into account important gains knowledge for Archaeology or Anthropology. Removing a whole class of site ensures that there will be a massive gap in our knowledge of sites of supposedly 'low significance'. This simply ensures that in the future these sites will be artificially elevated in importance.

The current criteria should be scrapped and should be redrafted to allow for more transparent and clear assessments to take place at each location.

A good starting place would be if assessments of significance were made to align more closely with the Burra Charter in terms of the type, degree and scale of significance.

More detailed and consistent collection of data at a range of different places will ensure more accurate assessments of significance.

Question 6

No

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

No opinion

Additional comments:

There needs to be a mechanism for long term protection of sites of outstanding importance. If this has not been used since the 1980s this is likely an implementation issue. Perhaps an independent body needs to be set up which can review places and make an unbiased assessment regarding places which fall into this category.

Question 8

Yes

8. what needs to be considered?:**Protection and Enforcement****Question 9****9. Activities that should require consent or authorisation:**

All activities should require some level of consent or authorisation. Every development should have an assessment made of the level of disturbance as well as the reasons for this disturbance. The type of site and the type and level of disturbance would then trigger the type of permit and controls required. Community support should also be taken into consideration. This is particularly important in the case of research projects where disturbance might be taking place outside the development sphere and with community support.

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

Type of disturbance is important to consider as well as the level of disturbance. This will help assess the overall degree of disturbance and the impacts on the

values of a place. This feeds back into the criteria for assessing the significance of a site or place. This process should be transparent and there should be a clear, independent and timely avenue for appeals.

Question 11

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

This is something that would need to be addressed on a site by site basis as it would depend on what the individual values of the specific site. Although intangible heritage can appear complex, thorough consultation with relevant knowledge holders by adequately trained consultant should be able sort out what levels/types of impact are acceptable and what are not.

Question 12

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

An independent body, similar to the ACMC but properly set up and funded with at least two trained experts with a background in Archaeology AND two trained experts with a background Anthropology. This body should also include a number of Aboriginal people from key regions around the state.

Question 13

Ineffective

13. How s18 can be improved?:

The process must include more experts in archaeology and anthropology. The process must be more adequately funded. The decision making committee must meet more regularly. The section 18 process must be divided from the site assessment process (ie what is a site). It should also be easier to appeal decisions something which should be dealt with in a timely manner.

Question 14

14. provisions for long-term protection of sites:

All material should be protected regardless of if it is on a register or not.

Question 15

No

15. How can enforcement provisions be improved?:

Increase penalties. Remove ability to claim lack of knowledge of a site.

Question 16

No

16. How can penalties be improved?:

Increase penalties, particularly for a Body Corporate. Remove the 12 month timeframe. Offences should be able to be prosecuted as soon as they are discovered regardless of how long it has been since they occurred.

Site Assessment and Registration

Question 17

Yes

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

This should always be up to Aboriginal People. However large companies should not hold details of hundreds of sites without reporting them to the Aboriginal groups. There needs to be a mechanism to deal with this issue better. If knowledge is held with the groups and proper procedures are put in place for assessment, survey and consultation ahead of development this will cease to be an issue.

This is also a trust issue. The department should not force people to report when they have not yet proven they can protect or conserve. Once trust is built up and the government database is shown as a useful resource for aboriginal people not just developers people may want to report more.

The government database would also need to be funded properly in order to deal with multiple levels of access to knowledge. Until such time as this occurs mandatory reporting will not work and will simply allow proponents to circumvent proper consultation processes.

Question 18

No

18. What should the criteria be?:

Please see previous comments on site registration and significance. As discussed previously the assessment criteria should follow the Burra Charter. This would also ensure that Aboriginal People were more aware of the criteria being used by archaeologists and anthropologists to assess significance and make the process more transparent for them as well.

Question 19

19. Steps to report place or object:

Places should be able to be easily reported through a form online and the Department should be adequately funded and resourced to assess each application thoroughly and consult with aboriginal people to address issues of cultural sensitivity.

The Register of Aboriginal Places and Objects is a great resource for highlighting to proponents where there are certain places which they might need to be aware of and should be maintained. It should not however take the place of proper site assessments or consultation with Aboriginal people.

19. Steps to nominate a place or object:

See above

19. Steps to assess a place or object:

This process should start with an adequately funded committee which is separate from the committee who makes decisions on impacts to sites. This committee should involve experts in archaeology and anthropology and decisions should take place with Traditional Owners/ Aboriginal People on the land where the sites are. I.e. the specialists should travel to the communities where the sites have been found and decisions on significance should be made in consultation with relevant knowledge holders. This would ensure that decisions are transparent and that the proponent does the survey with enough time to ensure adequate warning and proper management mechanisms can be put in place.

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

Places should be able to be easily reported online and the department should be adequately funded to assess each application thoroughly and consult with Aboriginal people to address issues of cultural sensitivity.

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

Amendments should also be able to be reported through an online form and again the Department should be adequately funded to assess each application thoroughly and consult with aboriginal people to address issues of cultural sensitivity.

19. Steps to remove place or object from Register:

If the research is properly undertaken before sites are placed on the register they should never need to be removed. If a place is destroyed/ impacted under the section 18 process then it should be easy enough to change the status of the place to reflect these changes.

Other Parts of the Act**Question 20****20. What's missing from the Act?:**

A requirement for proper assessment of the heritage values of a place. This includes requirements for ethnographic and archaeological surveys to occur in previously surveyed or greenfield areas. Better integration with other legislation such as the EPBC act and the Native Title Act.

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

Remove requirements for sites to be of significance and importance to the state

Any other comments**Any other comments:**

It is incredibly important to have a well funded regulator/department who employs Aboriginal people and people who are experts in the field of Aboriginal Heritage, Archaeology and Anthropology. This will ensure that better more consistent decisions are made which will benefit both the heritage and the stakeholders. Heritage needs to be assessed early on in the development process. This will help to make assessments better able to protect and conserve heritage as well as being more more cost effective for proponents.

More provisions need to be made to maintain sites (e.g. Ranger programs) and to prosecute those who damage sites. This includes individuals (e.g. graffiti) and companies (development).

Thank you for providing an avenue for comment on this review process. I look forward to seeing the next phase of this process and hope that it continues on this current, positive and inclusive trajectory.