



Environment Institute
of Australia and
New Zealand Inc.

Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
PO Box 7479 Cloisters Square
PO WA 6850

Via email: AHAreview@dplh.wa.gov.au

Dear Sir / Madam

Re: Feedback from EIANZ members on Aboriginal Heritage Act 1972 Consultation Paper.

The Environment Institute of Australia and New Zealand (EIANZ) (the Institute) Western Australia (WA) Division (the Division) is pleased to have this opportunity to provide comments on the consultation paper related to the review of the Aboriginal Heritage Act 1972.

The Institute is the leading professional body in Australia and New Zealand for environmental practitioners, and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

We forward this submission on behalf of the WA EIANZ members. The Division currently has approximately 140 members while the Institute has over 1400 members across Australia in a range of technical disciplines including certified environmental practitioners (CEnVP), ecological consultants, environmental advocates and environmental impact specialists working in government, industry and the community.

Again, we thank the Department of Planning, Lands and Heritage for the opportunity to be engaged in its review of the Aboriginal Heritage Act 1972.

Yours sincerely

Belinda Bastow
President, EIANZ (WA Division)
on behalf of the WA Division Committee and WA Members

31st May 2018

1 Introduction

1.1 Background

The EIANZ WA Division is pleased to make comments on the consultation paper related to the review of the Aboriginal Heritage Act 1972. EIANZ considers that the review of the Aboriginal Heritage Act 1972 (the AH Act) is timely, to promote feedback on the effectiveness of the current legislation, to identify any gaps, and encourage ideas on how the AH Act can be improved. Widespread consultation is imperative to ensure the reformed legislation provides clarity and certainty for all users of the AH Act.

EIANZ have engaged practitioners and spoken with traditional owners to provide valuable feedback on the consultation paper on the review of the AH Act in Western Australia. EIANZ's submission provides direct responses to two of the questions in the consultation paper and raises functional changes which could be made to improve the operation of the legislation. EIANZ is hopeful these recommendations are included in Stage 2 of the public consultation phase, to ensure reformed legislation captures an understanding of the critical link between aboriginal heritage values and the surrounding environment.

1.2 Role of the EIANZ

The EIANZ, as the leading membership based professional organisation for environmental practitioners in Australia and New Zealand, is an advocate for good practice environmental management. The Institute supports environmental practitioners and promotes independent and interdisciplinary discussion on environmental issues. The Institute also advocates environmental knowledge and awareness, advancing ethical and competent good practice environmental management.

A Certified Environmental Practitioner Scheme (www.cenvp.org) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Impact Assessment, Ecology and Contaminated Lands.

The EIANZ is an advocate for environmental assessment, management and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registerable Australian body under the Corporation Act 2001 (Cwth), allowing it to operate in all Australian jurisdictions.

General Observations

Interaction with the EPBC Act

Aboriginal Heritage protection in Western Australia is currently assessed using two different processes under the Aboriginal Heritage (AH) Act 1972 and the Environment Protection and Biodiversity Conservation (EPBC) Act 1999. The focus of the AH Act is the protection of sites with social and heritage significance. Under the EPBC Act there are penalties for anyone who takes an action that has or will have a significant impact on the Indigenous heritage values of a place that is recognised in the National Heritage List. In addition, the protection extends not only to individual sites but to an area as a whole, recognising that the integrity of landscapes in their totality are of value to Aboriginal peoples. The EIANZ recommend the government sought to dissolve the current patchwork protection of Aboriginal cultural heritage by considering heritage and the wider

environment, or landscape, together, rather than separating ‘pieces’ of heritage from their country. Managing compliance with two separate legislations, with different heritage assessment processes is problematic.

Central database

The EIANZ note the central index of Aboriginal Heritage Places and Aboriginal Heritage Surveys datasets exists for spatial information only. This is limited to ArcGIS File Geodatabase, shapefiles, MapInfo files and Place attribute information (only available for Heritage Places). A web-based (i.e. electronic) data management platform, where heritage information is made openly accessible, and available to be used for multiple applications would avoid duplication in collection of data and support better planning and decision-making processes leading to enhanced heritage management and conservation outcomes.

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?

The EIANZ notes present wording of Section 5 – application to places is clear in its intent, however, does not provide adequate protection for rivers and associated significant sites (i.e. permanent pools and springs). Rivers and associated significant sites in Western Australia, particularly in arid landscapes, are of high cultural significance to the Aboriginal people due to historical permanence of water (i.e. reliable freshwater sources) and associated traditional beliefs (i.e. mythology) and ceremonial / ritual practice (i.e. birthing sites). A river is more than a landscape feature or natural resource to traditional land owners, it is part of their ‘body and soul’ and reflects the land in which they were born. The formation, or story, of this land is in the minds and spirits of the people who belong to it. Of special significance is the significance of the story of the serpent-like creature who created rivers and wetlands, leaving a path of water and giving life as it journeyed across the land in the Dreamtime. In addition, archaeological evidence (i.e. paintings, engravings, artefacts) are often abundant and widespread at significant sites (i.e. gorges and pools), which further proclaim their validity for increased protection under reformed legislation. Rivers and associated significant sites which are regionally, or nationally significant (i.e. of outstanding importance) should also warrant greater protection under the AH Act through declaration as a Protected Area (Section 19).

What sort of activities that may affect an Aboriginal site should require consent or authorisation?

The consent for activities (or development) associated with rivers and associated significant sites requires further consideration under section 16 and 18 of the AH Act. Activities which impact or have potential to impact water are not currently captured as a ‘ground disturbing activity’. Traditional owners of Western Australia are concerned by the extensive development proposals facing significant rivers and catchments (i.e. Fitzroy River) and the potential for cumulative impacts on their unique cultural and environmental values. The Aboriginal Heritage Due Diligence Guidelines offer five categories (negligible, minimal, moderate, significant, major) for assessing certain types of impact (or disturbance). The scope of activities under these categories could be broadened in consultation with relevant Aboriginal people (i.e. native title holders, claimants) and industry to include clearer definitions of particular activity types associated with rivers and associated significant sites. For example, activities for consideration may include water abstraction, water diversion (or dams), riverine discharge etc.

In general, greater transparency is required around survey requirements (i.e. methodology, design), when they are required (i.e. trigger activities), and what supporting information needs to be lodged with the section 18 application. A clear set of survey standards for each model (i.e. appropriate type of survey) would be of use to ensure data of an appropriate standard (i.e. high quality) are used in independent consultant reports. This is

imperative to ensure best practice management and conservation of Aboriginal Heritage, while at the same time providing the necessary approval process to allow development. It is important survey requirements are not too onerous for what may be a simple activity that does not impact upon heritage values.

Conclusion

The EIANZ WA Division is pleased to make comments on the consultation paper related to the review of the Aboriginal Heritage Act 1972. EIANZ is focused on amendments which provide greater clarity and connectivity between Aboriginal heritage and the surrounding environment. EIANZ will continue to undertake consultation across our membership in order to provide targeted input in future stages of the consultation phase.

If you have any further queries regarding the above matters, please contact Belinda Bastow, President EIANZ WA Division, on wa@eianz.org

