



## Yamatji Marlpa ABORIGINAL CORPORATION

### **Proposed changes to Aboriginal heritage laws: information for Traditional Owners**

The WA State Government has released proposed changes to the *Aboriginal Heritage Act 1972* (the AHA). The changes are mostly aimed at speeding up approvals processes for industry, and do not tackle a fundamental problem with the Aboriginal Heritage Act: economic interests almost always override Aboriginal peoples' cultural responsibilities to protect their heritage.

The Government has missed an important opportunity to address the inequality in the law and give Traditional Owners a real say over the protection of their heritage. Heritage laws should be built around the concept of Traditional Ownership, which communities fight so hard for in their native title claims.

Just like State laws protecting non-Aboriginal heritage, the Aboriginal Heritage Act should provide for preservation and enhancement of sites, and public education about Aboriginal heritage. The current Act does not do any of these things, and the changes do not address these deficiencies at all.

#### ***What are the main issues?***

- Traditional Owners are not given the power to make decisions about their heritage sites. The CEO of the Department of Aboriginal Affairs (DAA) and the Minister will have the final say over whether or not an area has any sites, whether or not a development activity will harm a heritage site and whether sites can be lawfully destroyed. We don't have certainty that Traditional Owners will be involved in these important decisions.
- The DAA claims that Traditional Owners will be consulted in decision-making processes. However, these processes, which will be in the Regulations, have not been written yet. We will not see them until after the law is passed. The DAA is asking Traditional Owners to just trust them that the Regulations will ensure transparency and consultation with Traditional Owners.
- Even if they are consulted along the way, Aboriginal people are still left out of the equation when it comes to decisions about their heritage sites. Mining companies and other developers have the right to appeal a decision by the CEO or Minister, but Traditional Owners do not.
- The DAA claims that the changes will result in greater protection for sensitive information kept in the Register. However, there is still no guarantee for long term protection of sites even if they are registered (which is now more unlikely). Improvements to the Register may improve administrative processes but YMAC is not confident that there will be improvements to how those sites are actually protected.

### *What is changing?*

Current Act	Proposed changes
<b>Section 18 Process</b>	
<p>A land developer (e.g. mining company) can apply under section 18 for approval to carry out an activity that could damage or destroy a site.</p> <p>Under the current Act, s.18 applications <i>must</i> be considered by the Aboriginal Cultural Materials Committee (ACMC). The ACMC makes recommendations to the Minister on whether to grant approval.</p>	<p>A land developer can apply under section 18 for approval to carry out an activity that could damage or destroy a site.</p> <p>This application now goes to the CEO of DAA who has three options.</p> <ol style="list-style-type: none"> <li><b>If the CEO thinks there isn't a site</b>, he or she can issue a declaration that no sites exist (see below);</li> <li><b>If the CEO thinks the activity wouldn't significantly damage or alter a site</b>, he or she can issue a permit to carry out the activity</li> <li><b>If the CEO thinks there is a site that could be damaged</b>, he or she <i>may</i> refer the application to the ACMC. The ACMC must then make recommendations to the Minister, who makes the final decision on whether to grant the permit.</li> </ol> <p>The changes do not require the CEO or Minister to consult Traditional Owners when making these decisions.</p>
<b>Declarations that there are <i>no</i> sites</b>	
<p>Declarations do not exist under the current Act.</p>	<p>The CEO may issue a declaration if he or she is of the opinion that <b>there are no Aboriginal sites</b> on the land in question. Declarations can be issued as part of the s18 permit application process, or whenever the CEO chooses.</p> <p>All declarations and permits will be placed on a public register. Once a declaration has been made, developers looking to carry out activities on that land in the future will not need to apply for a s.18 permit.</p> <p>This will stand even if there are places important to the Traditional Owners that the CEO did not consider met the strict guidelines for what counts as a site.</p>
<b>Appeal rights</b>	
<p>If the applicant (company or developer) is unhappy with the Minister's decision not to grant permission to damage or destroy a site, they may appeal the decision at the State Administrative Tribunal.</p> <p>Traditional Owners who are not happy with a decision granting permission to destroy or damage a site <i>do not</i> have power to appeal or review the decision.</p>	<p>This unfair provision remains unchanged. Aboriginal people that do not agree with the CEO or Minister's decision will not be able to appeal.</p>

Current Act	Proposed changes
<b>The Aboriginal Cultural Materials Committee (ACMC)</b>	
<p>The ACMC must include at least one qualified anthropologist, appointed by the Minister, and the other members must have relevant “special knowledge, experience or responsibility”. There is no requirement for any Aboriginal people to be appointed to the ACMC.</p>	<p>The ACMC no longer needs to have a specialist anthropologist appointed by the Minister. There is still no requirement for any Aboriginal people to be appointed to the ACMC.</p>
<b>Register of Aboriginal Sites</b>	
<p>The Registrar keeps a Register of Aboriginal Sites, including information submitted along with site applications. Much of the information currently on the Register has not been evaluated by the Department. Currently all Aboriginal heritage sites are protected in the same way whether or not they are on the Register.</p>	<p>The CEO has the power to enter <i>or remove</i> any information on the Register of Aboriginal Sites and Objects. The new Act does not say how the CEO will make a decision to remove a site, or whether the Traditional Owners will have any role in that decision.</p>
<b>Penalties</b>	
<p>Penalties for damaging or destroying a site:</p> <ul style="list-style-type: none"> <li>➤ Individual- first offence: \$20,000 and 9 months imprisonment</li> <li>➤ Individual- subsequent offence: \$40,000 and 2 years imprisonment</li> <li>➤ Body corporate- first offence: \$50,000</li> <li>➤ Body corporate- subsequent offence: \$100,000</li> </ul>	<p>The new Act includes higher penalties for damaging or destroying a site:</p> <ul style="list-style-type: none"> <li>➤ Individual- first offence: \$100,000 and 12 months imprisonment</li> <li>➤ Individual- subsequent offence: \$200,000 and 2 years imprisonment</li> <li>➤ Body corporate- first offence: \$500,000</li> <li>➤ Body corporate- subsequent offence: \$1,000,000</li> </ul>

### ***For more information***

Visit the DAA’s website [www.daa.wa.gov.au](http://www.daa.wa.gov.au) to read the amendments and all of the submissions received from the public, including YMAC. If you want to discuss any of this before the meeting at Yule River, contact Silas Piotrowski in YMAC’s Perth office on (08) 9268 7000.