



# Yamatji Marlpa Aboriginal Corporation heritage services

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## Executive summary

The Yamatji Marlpa Aboriginal Corporation (YMAC) provides a suite of heritage services to the native title groups we represent and via service agreements with groups post determination. YMAC's heritage services are tailored to the individual needs of the group with YMAC collaborating with native title parties to handle part or all of the heritage process.

Our team is comprised of a heritage manager, three heritage officers (two of who are archaeologists), two field archaeologists, and a senior field anthropologist. We have a broad range of experience in the commercial and not-for-profit cultural resource management (CRM) sectors.

We are committed to using our experience to building internal capacity within groups and their prescribed body corporates (PBC) to place Aboriginal people front and centre of decision making and management of their heritage.

The following sections introduce our team (section 1) and describe the heritage process. We are committed to working with our native title partners to develop fit for purpose heritage solutions and are able to undertake part or all of the processes outlined below in section 2.

# 1 The YMAC heritage team

## 1.1 *Kirsty Anderson – Heritage Manager*

I joined the YMAC team in February 2017 first as a heritage officer and as the Heritage Manager since March 2018. I hold an Honours degree in Australian archaeology and began my career in a commercial cultural resource management consultancy. I am experienced in planning and conducting field work and have worked extensively with a range of native title groups in the Pilbara, Yamatji, Mid-West and Goldfields regions. At YMAC I supervise the heritage unit and provide professional heritage advice for our groups at meetings, section 16 and section 18 consultation, review heritage agreements and a range of other services.

## 1.2 *Stephen Morgan – Senior Field Anthropologist*

Stephen Morgan – Bachelor of Arts (Anthropology major) UWA 1985 to 1991 Master of Arts (Applied Anthropology) Macquarie University 1993

Steve has worked as an anthropologist throughout the South West of WA, Geraldton, Murchison and the Pilbara since 2005 with a leading heritage consultancy and the representative body YMAC from 2009. Prior to 2005 Steve was employed by a number of Federal government departments in WA and Canberra including a 12 month out-posting with a postgraduate team at the ANU while with the ATO.

Steve has experience in conducting ethnographic heritage surveys and anthropological research and keeps up to date with current developments. He has worked with Aboriginal traditional owners across the Pilbara and Murchison area to identify, maintain and protect Aboriginal heritage while achieving excellent outcomes under the legislative framework of WA. Stephen is widely known throughout the Pilbara, Gascoyne and Murchison regions gaining the respect of traditional owners, government employees and clients such as mining company representatives through hard work, diligence, competence and reliability.

Steve maintains a large network of colleagues across the multi-disciplinary field of Aboriginal Australia through informal and formal contacts including professional associations, conferences, seminars and workshops.

Steve also trains heritage anthropologists and heritage coordinators in all aspects of ethnographic research within a heritage context including survey methodology and practice, report-writing, agreement heritage protocols and cultural heritage management.

## 1.3 *Callum Forsey – Heritage Officer (Archaeologist)*

Callum joined the YMAC team in January 2015 working in the heritage and spatial departments. Since completing his Honours degree in archaeology in 2016, he has undertaken field archaeology and heritage coordination duties at YMAC. Callum has a range of experience working with groups from the Pilbara, Yamatji and Western Desert regions, as well as in GIS and database management.

## 1.4 *Rebecca Stewart – Heritage Officer (Archaeologist)*

Rebecca has been working with YMAC since May 2018 as a heritage officer. She holds an Honours degree in Australian archaeology specialising in rock art, has worked in multiple commercial resource management consultancies and has over five years' worth of experience

as a firefighter. She has experience coordinating and conducting heritage surveys and archaeological excavation, arranging fieldwork logistics and liaising with stakeholders. Rebecca has participated in and coordinated heritage surveys with a range of native title groups from the Pilbara, Yamatji and Western Desert regions.

### **1.5 Lawrence Hillary – Heritage Officer**

Lawrence has worked at YMAC since November 2015, he has also worked previously with YMAC as a community liaison officer from 2010-2012.

Lawrence has extensive knowledge of the claim groups in the Yamatji region and has established community relationships both professionally and personally being part of the Nanda claim group and having spent most of his life growing up in the region. His primary role is coordinating surveys and providing heritage support for most of the claim groups in the Yamatji region as well as the Kariyarra group in the Pilbara region.

Lawrence also provides on the ground logistical support for the various on country events that YMAC facilitates and providing media services.

## 2 Heritage processes and responsibilities

### 2.1 Future acts and agreements

The future acts and agreement process usually precedes any heritage surveys or associated work. These may be undertaken in house or YMAC can also provide these services.

A summary of the process is provided below:

- Proponent requests tenement from the Department of Mines, Industry Regulation and Safety (DMIRS).
- As part of a proponent's application for tenements under the expedited procedure the proponent is required to offer the Regional Standard Heritage Agreement (RSHA).
- The RSHA is over 10 years old and has low fees and outdated basic heritage protocols.
- YMAC developed an Alternative Heritage Agreement (ALTHA).
- We have standing instructions from the groups we represent to object to the expedited procedure and the RSHA and to offer the ALTHA.
- OR if groups run their own heritage they may have devised their own in house alternative agreement.
- If the proponent agrees both parties sign the ALTHA and YMAC withdraws the objection (there are usually some negotiated changes to the agreement before it is signed).
- If the proponent rejects the ALTHA the objection can remain in place for up to three months.
- During which time the proponent may agree to the ALTHA, the group might agree to the RSHA (if they think it is better than nothing) or at the end of the objection period YMAC puts them on notice under the act, this is intended to provide a counter to any section 62 defence (this is the ignorance defence, we didn't know there was a site there so we haven't deliberately impacted the site).
- Ideally, an agreement of some form should be signed as this is a better guarantee of surveys occurring.
- Surveys aren't mandated in the *Aboriginal Heritage Act 1972* (the Act) they mostly occur because of heritage agreements.
- The penalties for disturbing sites are currently very low and there have only be six successful prosecutions under the AHA since 1972 suggesting. This makes prosecution an ineffective deterrent.
- There is a risk that smaller prospecting outfits and junior explorers will go ahead without an agreement as the risk of being caught is minimal and if they find anything they usually sell the tenement so the long term relationship with NTG is less of a lever for them.
- Once an agreement is in place then the heritage process outlined in below takes place.

## 2.2 Heritage survey requests

Heritage agreements outline the terms under which a heritage notice is issued. The heritage notice is provided to the native title group or their representative for consideration. This involves determining if a heritage survey is required and if so, what type of survey would be suitable for the proponent to undertake their proposed works.

A summary of the process is provided below:

- Heritage agreements usually spell out when and if a survey is required, if there is no agreement in place the proponent is likely to refer to the Department of Planning, Lands and Heritage's (DPLH) due diligence guidelines to perform a risk assessment and decide if a heritage survey is required.
- If a heritage survey is required the proponent will send through an heritage notice
- The heritage notice should outline the following:
  - The location and type of works to be undertaken (e.g. what is survey for? A drill program, tracks, haul road, infrastructure, mining pit etc.);
  - An appropriate spatial data file showing the proposed survey area/s and any existing access tracks to help aid in budgeting;
  - The tenement numbers the survey area/s are located on and who currently owns them;
  - The approximate size / length of the survey area/s;
  - A list of any previous surveys conducted in the area and provision of these reports if requested by the heritage provider;
  - The type of survey requested. Determining the right kind of survey is based on the type of proposed works, any prior surveys in the area, how disturbed the area is and the wishes / priorities of the native title group (NTG). The heritage provider may disagree with the method and propose their own. For example, YMAC also promotes an archaeologist and anthropologist on the same team and site avoidance as best practise to protect Aboriginal sites
  - Maps;
  - Distances and approximate travel times from the place the survey team will be staying;
  - Who will be organising / supplying: flights, travel allowance, accommodation, food, water, safety equipment and any other equipment (such as for camping trips); and
  - Reporting requirements for example preliminary advice and report, or straight to final report.
- Upon receiving the heritage notice the heritage provider must run the following compliance checks to ensure that the survey complies with legislation and any agreements in place:
  - **If there are multiple heritage service providers in the claim area a central, objective authority needs to map the location of the project to determine which heritage provider the heritage notice should be sent too.** (Proponents will not be willing to send heritage notices to multiple places and a single point of contact will be needed to then distribute to the correct heritage provider);
  - Map the surveys areas and check that the spatial data provided is correct;
  - Review the heritage agreement to ensure the request is in line with the provisions of the agreement;
  - Complete DPLH searches for registered sites, other heritage places (OHPs) and previous surveys in the area;

- Check the DMIRs online tenement register to ensure that the tenements are owned by the proponent or a subsidiary and to ensure the agreement covers the applicable tenements and that the proponent has permission to undertake activities on the tenement;
- Map the survey areas, DPLH sites and OHPs, and any exclusion areas or sites of special significance; and
- Based on the compliance checks and the review of the heritage notice the heritage provider will decide what kind of survey is appropriate and request a budget estimate.

### 2.3 Types of heritage surveys

#### *Work area clearance (WAC) and Work Program Clearance (WPC)*

Work area clearance (WAC) and work program clearance (WPC) heritage surveys are designed to tell proponents where they can and cannot undertake works within a survey area.

These types of survey usually occur in the very early stages of project planning and exploration. WAC surveys are undertaken when the proponent has not identified the precise location of proposed works. When heritage places are identified they are given a boundary and delineated as not clear. The proponent can then plan their work program to avoid heritage places, or, if avoidance is not possible then they can proceed to site identification recording of the effected heritage places. A site identification survey is the minimum standard required by YMAC to submit a site for consideration to the Department of Planning, Lands, and Heritage (DPLH) or to apply for a permit (s16 and s18) under the Act.

WPC surveys occur when the proponent has identified the preferred location of the work program, usually a drill program. When heritage places are identified they are given a boundary and delineated as not clear. The consultant will then endeavour to provide an appropriate deviation around the site to allow the work program to continue.

#### *Site avoidance*

Site avoidance surveys are designed to identify any archaeological and / or ethnographic heritage sites within the survey area. When a heritage place is identified it is recorded in as much detail as is necessary to define an accurate boundary and make recommendations to ensure the sites are not disturbed.

In general, any ground disturbing activities can proceed in the survey area or portions of the survey area where no Aboriginal sites have been identified.

Please note, site avoidance level recording is not sufficient to prepare a heritage information submission form (HISF) for consideration by the DPLH and the Aboriginal Cultural Materials Committee (ACMC). A site identification archaeological and ethnographic heritage survey is the minimum standard before a site is submitted to the DPLH for consideration.

#### *Site identification*

This is the highest level of recording undertaken on a heritage survey. In line with YMAC's heritage management principles this type of heritage survey should only occur as a last resort in areas where a proponent knows they will have to apply for s18 permit, or at sites that have been earmarked for further investigation under s16 of the AHA.

Site identification surveys record Aboriginal sites to a level sufficient to complete a HISF form for submission to the DPLH. Based on the HISF the ACMC will then make a judgement of whether or not they believe that the heritage places constitutes and Aboriginal site under s5, and s39 of the AHA.

### *Section 16 / section 18 consultations*

Section 16 (s16) consultations are undertaken when a proponent or researcher applies for an s16 permit to cause damage to a site as a result of investigating the site. This usually relates to excavations, the dismantling of walled features, or the collection of stone or ochre for analysis. As part of this process the party applying for the s16 will consult with the Native Title Group to get their input and consent for the permit and the proposed research agenda. YMAC supports the agency of Aboriginal people in the management and research of their heritage, research that actively involves or is driven by the Native Title Group's interests is encouraged.

Section 18 (s18) consultations are undertaken when a proponent or research applies for an s18 permit to impact a site. This permit provides the holder with indemnity against section 17 of the Act which sets out the penalties for disturbing Aboriginal sites. These usually occur as a result of development and happen during the final stages of the heritage process. These consultations usually occur because they are mandated in the heritage agreement, land access agreement (LAA), or Indigenous Land Use Agreement (ILUA) between the parties. The consultation occurs after the draft notice has been issued and it is the opportunity for the Traditional Owners to ask questions and request conditions before they consent or object to the application.

## **3 Budget estimates**

Once the heritage notice has been received and reviewed a budget estimate is prepared including any external consultant estimates. It's advisable to get the proponent to pay 50 % up front to cover the costs of the Aboriginal consultant fees so they can be paid immediately after the survey finishes. The remainder is usually paid when the proponent accepts the final report.

- The heritage provider provides the heritage notice, spatial data, and their recommendation to their preferred heritage consultancy.
- The heritage consultancy will provide a budget estimate for their services.
- This is sent to the heritage providers finance department along with a copy of the heritage agreement.
- A final budget estimate is produced including all the relevant admin fees, insurances, co-ordination costs etc. and sent to the proponent for approval.
- Proponent approval must be in writing.
- Most agreements require an upfront payment of 50% of the survey costs to allow Aboriginal consultants to be paid their fees immediately after the heritage survey.

## 4 Nominating survey participants

When YMAC manages a NTG's heritage this part of the process always is always under the control of the group. The nominators are usually determined and endorsed by the NT working group.

- The NTG needs to identify and endorse a survey nomination process that the heritage provider will follow.
- The heritage provider will then call the appropriate nominator to get the names and locations of the survey participants.
- It is important to consider the type of work when choosing attendees for occupational health and safety reasons. If there are specific needs or serious medical conditions these should be disclosed so that the Proponent can ensure that there are safety precautions in place so the right people can attend and be taken care of.

## 5 Logistics

Logistics are not usually booked until the proponent has accepted the budget estimate in writing. The proponent will sometimes book some part of the logistics for you.

- Once the heritage provider knows who will be going on the survey they need to organise the logistics, this can include but is not limited to:
  - Flights;
  - Accommodation;
  - Hire cars;
  - Meals; and
  - Travel allowance (if required).

## 6 Fieldwork

- This is usually undertaken by external heritage consultants, while they are in the field it's good to ask for regular updates throughout the heritage survey and to have a debrief phone call at the end of the survey.
- You should never give the proponent any data during the survey.
- Sometimes the proponent will want to vary the survey plan in the field (add new areas, change priorities, move areas etc.) it is advisable to tell them to wait a day so that you can run the required compliance checks on any changes.

## 7 Post survey responsibilities

Post survey responsibilities include but are not limited to reviewing and releasing the preliminary advice, reports and spatial data. The final invoice is released with the final report.

- Post survey briefing – discuss completion status, basic results, incidents, and problems / issues.
- Preliminary advice (PA) – these are usually due within seven days of the end of survey. The heritage provider need to review the PA to check the spatial data, results, and recommendations. Send back to the consultant to address any comments and when the NTG is happy with the PA they supply a PDF of the document and the spatial data to the proponent.
- Final report – as with the PA the NTG needs to review, and then check that any comments have been addressed before finalising and sending to the proponent. Some things to look for include:
  - Is any information being provided to the proponent that is in excess of the requirements of the heritage notice? It's a good idea to only tell proponents what you have too;
  - Are the recommendations reflective of the group? Is there anything missing or unclear?
  - Are the results correct? Check that the maps and written results match with the spatial data;
  - Is there anything additional that needs to be added to the site descriptions? and
  - If the claim is still active the report should also be provided to the RNTBC to ensure that there is no information that conflicts with or could damage the claim.
- If a site identification survey has been completed, review the heritage information submission forms.

- Send the report to the Proponent, they will then return it with their own comments and queries for the NTG to address.
- Once the report has been finalised and approved archivecopies of the final report and PA.

## 8 Section 16 / section 18 process

Heritage agreements generally contain detailed provisions regarding section 16 and section 18 applications. When a notice of intent is received the heritage agreement should be reviewed immediately.

### 8.1 Section 16

A section 16 permit under the AHA is a permit permitting the partial disturbance of a site for the purpose of research. These are most often applied for to conduct excavations at sites, or to remove samples for scientific testing.

### 8.2 Section 18

A section 18 permit gives a proponent permission from the ACMC or from the Minister for Aboriginal Affairs to wholly or partly disturb an Aboriginal site without breaching section 17 of the AHA. These permits often come with specific conditions.

Section 16 and section 18 applications usually only occur after SID surveys and in areas where a proponent cannot avoid Aboriginal sites such as in a mining pit. They involved extensive consultation. The time frames below are approximate guidelines only as it depends on the specifics of each individual agreement.

The steps are:

1. Notice of application for a section 18 or section 16 – this is the notice the proponent needs to provide the group to advise them that they are going to make an application. This notification should contain:
  - a. A list of all the impacted sites;
  - b. The extent of the land subject to the notice;
  - c. Spatial data for the sites and the land area;
  - d. Copies of the reports relating to all the sites; and
  - e. Copies of any HISFs for the sites.
2. The NTG reviews the contents of the notice and determines what mitigative strategies they wish to ask for, examples include but are not limited to:
  - a. Request a remodelling of the project to avoid particular sites;
  - b. Partial disturbance only if the site is not wholly contained in the land;
  - c. Archaeological or cultural salvage of the sites;

### 8.3 Procedural fairness

When the DPLH receives a section 16 / s18 application their internal site team reviews each HISF and creates a one page summary to assist the ACMC in their decision making. These summaries are sent to the Heritage Provider as part of a procedural fairness process the NTG has a chance to respond (usually within 10 days) with their own submission for the ACMC. This is important to help argue for the registration of sites and to suggest conditions for any section 18 applications.

## 9 Glossary

Acronym	Description
<b>ACMC</b>	Aboriginal Cultural Materials Committee
<b>AHA</b>	<i>The Aboriginal Heritage Act 1972</i>
<b>AHIS</b>	The Aboriginal Heritage Inquiry System maintained by the DPLH, accessible from: <a href="https://maps.daa.wa.gov.au/AHIS/">https://maps.daa.wa.gov.au/AHIS/</a>
<b>ALTHA</b>	The Alternative Standard Heritage Agreement
<b>DMIRS</b>	The Department of Mines, Industry, Regulation, and Safety
<b>DPLH</b>	The Department of Planning, Lands, and Heritage
<b>Heritage Consultancy</b>	An external heritage provider that is usually engaged by the Heritage Provider of the Proponent to undertake the fieldwork with the NTG representatives and to produce the report relating to the survey.
<b>Heritage Provider</b>	The heritage body responsible for the heritage process. Examples include family businesses, Aboriginal Corporations, Registered Native Title Representative Bodies, and external heritage consultancies.
<b>HISF</b>	Heritage Information Submission Form
<b>ILUA</b>	Indigenous Land Use Agreement
<b>LAA</b>	Land Access Agreement
<b>NTG</b>	Native Title Group
<b>OHPs</b>	Other heritage places.  There are two types of OHPs: <ul style="list-style-type: none"> <li>• Not a site – these are sites which have been submitted to the DPLH and assessed by the ACMC as not meeting the criteria of a site under section 5 of the AHA.</li> <li>• Lodged – these are sites which have been submitted to the DPLH but are pending assessment under section 5 of the AHA.</li> </ul>
<b>PA</b>	Preliminary advice
<b>Registered Aboriginal sites</b>	Sites that have been submitted to the DPLH and assessed by the ACMC as meeting the criteria of a site under section 5 of the

Acronym	Description
	AHA. These sites are then placed on the permanent register of sites maintained by the DPLH.
<b>RNTBC</b>	Registered Native Title Body Corporate
<b>RSHA</b>	Regional Standard Heritage Agreement
<b>SA</b>	Site avoidance
<b>Section 16 permit</b>	A section 16 permit is a permit under the AHA that allows the holder to partially impact a registered Aboriginal site for the purpose of collecting samples and undertaking scientific study. These are usually applied for in the context of excavations.
<b>Section 18 permit</b>	A section 18 permit is a permit under the AHA which allows the holder to partially or fully impact a registered Aboriginal site without breaching section 17 of the AHA which makes it unlawful to disturb a site. These permits are granted by the ACMC, if the ACMC chooses not to grant the permit this decision can be overturned by the Minister.
<b>SID</b>	Site identification
<b>WAC</b>	Work area clearance
<b>WPC</b>	Work program clearance
<b>YMAC</b>	Yamatji Marlpa Aboriginal Corporation