WA State Heritage & History Conference

The Aboriginal Heritage Act 1972 & the Role of the Aboriginal Community in Aboriginal Heritage Assessment & Management

Ms Tiffany Vale
Menang Woman, Registrar of Aboriginal Sites, Executive Director – Heritage, Department of Aboriginal Affairs

Cesar Rodriguez
Manager Heritage Projects, Department of Aboriginal Affairs
Key Functions of the Heritage Directorate

- Administration of the *Aboriginal Heritage Act 1972* (the Act).

- Assisting and supporting the Aboriginal community with the management of Aboriginal sites.

- Providing advice on Aboriginal heritage management and compliance.

- Managing compliance with the Act.
The Aboriginal Heritage Act 1972

An Act to make provision for the preservation on behalf of the community of places and objects customarily used by or traditional to the original inhabitants of Australia or their descendants, or associated therewith, and for other purposes incidental thereto.
Key Sections of the Act

s5 – describes the types of Aboriginal heritage places to which the AHA applies.

s15 – any person with knowledge of a site obliged to report it.

s16 – approval to excavate a site (usually for research purposes).

s17 – A person may not excavate, destroy, damage, conceal or alter a site without prior consent under the legislation.

s18 – consent to use land where a site exists.

s19 – Protected Areas (sites of outstanding significance).

s39 – Functions of the Aboriginal Cultural Material Committee.
Section 5 of the Act

5 (a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present;

5 (b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;

5 (c) any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State;

5 (d) any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed
Section 39 (2) & (3) of the Act

(2) In evaluating the importance of places and objects the Committee shall have regard to:
   (a) any existing use or significance attributed under relevant Aboriginal custom;
   (b) any former or reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment;
   (c) any potential anthropological, archaeological or ethnographical interest; and
   (d) aesthetic values.

(3) Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the evaluation of any place or object for the purposes of this Act.
DAA holds information on its database for over 37,000 Aboriginal heritage places:

- **14,135 Registered Sites**;

- **15,009 Lodged Places**;

- **6,500 Stored Data**.

80 Protected Areas (section 19 of the Act);

Of the **14,135 Registered Sites**:

- 7,690 - have artefact scatters as a component; and

- 3,591 – are art sites (engravings or Paintings).
Common site types:

- 6,538 – multi component sites;
- 12,216 – are sites under section 5 (a);
- 2,576 – are sites under section 5 (b);
- 815 – are sites under section 5 (c);
- 113 – are sites under section 5 (d);
- 1427 – sites under more than one of the sub-sections of section 5.
Examples of Site Types

Include excavated shelter in here
Examples of Site Types
The Role of the Aboriginal Community

- Statutory Assessment Process
- Proactive Heritage Management

Robinson v Fielding [2015] WASC 108

- Effective operation of the AHA requires input from Aboriginal People, as they are the principal source of information as to the existence of sites and as to the importance and significance of those sites.

- The ACMC is obliged, as a matter of procedural fairness, to ensure it has sufficient information from the Aboriginal Persons who might be affected by a decision as to the existence, significance and importance of sites, which might be affected by a proposal under section 18.
The Role of the Aboriginal Community

- Majority of statutory submissions and **Heritage Information Submission Forms** (HISF) received include the views of the Aboriginal community.

- HISFs have been developed to encourage the Aboriginal community to directly lodge information about places that may be Aboriginal sites under the Act.

- Developers conduct Aboriginal heritage surveys with representatives from the Aboriginal Community in most instances prior to lodging a section 18 notice.

- In many instances Aboriginal Heritage Agreements and Indigenous Land Use Agreements exist that bind developers into completing Aboriginal heritage surveys.
The Role of the Aboriginal Community

- The Department of Aboriginal Affairs (DAA) and the Aboriginal Cultural Material Committee (ACMC) recommend broad consultation with Aboriginal People:
  * Native Title Holders and Claimants;
  * Known Informants for Aboriginal Sites and Other Aboriginal Heritage Places; and
  * Members of the Aboriginal community known to have an interest in or cultural Cultural knowledge for a particular area.

- The DAA administers a Procedural Fairness process prior to the ACMC undertaking any statutory assessment.

- In instances where the ACMC is of the view that insufficient consultation has occurred regarding a matter subject of a statutory assessment, it will recommend the matter be referred back for further consultation.
DAA Engagement with Aboriginal Community

- Preserving Our Aboriginal Sites Grants Program
- Forums, Meetings, Workshops
- Capacity building through training – Ranger training, site recording training,
- Site Auditing and Site Recording
- Facilitating access to Aboriginal heritage information
- Major Heritage Management Projects
  - Example: Pioneer Cemetery, Fitzroy Crossing
‘Preserving Our Aboriginal Sites’ Grants Program

- Activities that promote and/or Protect Aboriginal sites
- Needs to be associated with registered sites
- Non for Profit Aboriginal organizations
- Maximum grant $50 000
- $250,000 annually available across all projects
Pioneer Cemetery Fitzroy Crossing

- Ancestral remains exposed as a result of recent flooding.

- DAA staff have attended the site and met with community members and are attending a community meeting tomorrow in Fitzroy Crossing.

- Exposed remains have now been removed and are being stored at KALACC.

- DAA will support the Community to recover the remains and have them stored in a culturally appropriate manner until a permanent reburial location is agreed.

- DAA will assist the community in developing a longer term strategy to protect other ancestral remains at this location,
  - establishing what other remains are still in situ (probably through the use of ground penetrating radar – GPR)
  - assisting in their removal if required
  - determining a suitable location for re-internment
  - arranging a memorial at the site.