



Review of the Aboriginal Heritage Act 2006

Aboriginal Affairs Victoria

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Australia ICOMOS welcomes the opportunity to provide feedback on members' experiences and comments in working with the Aboriginal Heritage Act (AHA) of 2006. Australia ICOMOS notes that the underlying basis of the Aboriginal Heritage Act is to move to a values-based heritage management approach, and at the philosophical level, this is strongly supported.

Our comments therefore focus on aspects of the implementation and operation of the Aboriginal Heritage Act since its commencement, with a view to identifying ways to enhance its effectiveness. In doing so, Australia ICOMOS also refers to its Cultural Heritage Places Policy (especially in relation to the sections that apply specifically to heritage legislation), and the experience of its members in Victoria.

Overall, Australia ICOMOS considers that the introduction of the Aboriginal Heritage Act has enhanced the protection of the tangible aspects of Aboriginal cultural heritage, and has enabled Traditional Owners to take a more proactive role in safeguarding their own heritage. Importantly, the Aboriginal Heritage Act has provided stronger certainty for development, and has placed the consideration of the impacts on Aboriginal cultural heritage at an early stage of the development planning and approvals sequence. Australia ICOMOS also notes that the development of the ACHRIS on-line data system has allowed many improvements in the accuracy of Aboriginal heritage management, and given powerful new tools to Aboriginal people.

Furthermore, Australia ICOMOS notes that one of the positive outcomes of the legislation has been that heritage consultants are generally better placed to provide advice to developers with a degree of confidence not possible under the previous legislation. Heritage management under the AHA has become a quantifiable process, meaning that the protection of heritage can be more easily justified and explained within the wider community. These are obviously positive achievements which can provide the basis for further enhancement.

Australia ICOMOS also recognises that bringing an entirely new legislative mechanism into effective operation is a substantial practical challenge, and

relies on a mutually respectful dialogue between the experiences of the State agency and its users. It is essential to stop and ask – Is the Act working the ways that were expected? Are there unforeseen outcomes? Are there ways to streamline its implementation? In this light, Australia ICOMOS members have identified several areas of concern that require continued work. Many of these concerns relate to the application and interpretation of the legislation by the regulators (i.e Aboriginal Affairs Victoria and Local Government).

Specific concerns are that the Act:

- has yet to effectively provide a clearly understood and accepted standard for investigations and the determination of heritage significance;
- adds an additional bureaucratic onus on proponents negotiating the planning process for development;
- does not necessarily ensure an adequate assessment of all cultural heritage values;
- does not necessarily protect and manage Aboriginal heritage places based on a sound understanding and assessment of significance;
- does not adequately protect Indigenous heritage places where the primary significance relates to intangible values.

Australia ICOMOS urges the Victorian Government to invest in the training and support of planning regulators in the implementation of the AHA. While there have been some programs aimed at this objective (such as through the Planet program), the experience of the interchange between heritage practitioners and planners and decision makers suggests that the process must be augmented. Two scenarios that demonstrate this need - first, inner-city planning departments are at times distrustful of the recommendations of archaeological consultants, leading to over-policing of the legislation and its application; and second, rural councils are often uninformed of the statutory triggers leading to heritage management plans.

The application of the legislation would be enhanced by:

- The adoption of consistent standards for heritage assessments. Currently it is noted that there is a huge disparity in the standards of heritage assessments adopted by the AHA;
- Increased transparency in relation to the evaluation and feedback relating to heritage assessments and assessors.
- Greater emphasis and dissemination of best practice principles and case studies by AAV to practitioners.
- Specific reference in the legislation and or the regulations to national and international standards for Heritage Conservation such as The Australia ICOMOS Burra Charter; Charter for the Protection and Management of the Archaeological Heritage (1990) and the principles established by the UN Declaration of the Rights of Indigenous People.
- Increased engagement of the public by AAV in providing education and exemplars relating intangible cultural heritage places and values to foster community understanding of such places.

Overall, Australia ICOMOS notes that while the legislation purports to protect Aboriginal cultural heritage, so far the mechanisms are of limited effectiveness in protecting this heritage. In effect, there are too many cases where destruction of significant archaeological sites and Aboriginal heritage places occurs. The Act needs to do more to achieve a heritage management approach (rather than an impact assessment/mitigation approach). Finding innovative mechanisms of collaboration for the protection, management, interpretation and celebration of Aboriginal cultural heritage is necessary.

In closing, Australia ICOMOS offers its continuing involvement in the evolution of this important piece of heritage legislation, noting that other States/Territories are also reviewing legislation for heritage protection and will benefit from the experiences in Victoria. Ultimately, the test of the success of the Act will depend on its ability to amplify the visibility and presence of Aboriginal cultural heritage in Victoria, support the rights of Traditional Owners to care for and enjoy their heritage, and ensure the recognition of its value for all Victorians.

Please do not hesitate to contact me via our secretariat austicomos@deakin.edu.au should you require further clarification of any of the issues raised in this submission. Our members appreciate the opportunity to be kept informed of the outcomes of your review.

Jane Harrington

President, Australia ICOMOS

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