

**Submission
No 228**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Organisation: Virtus Heritage

Date Received: 4 July 2021



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Standing Committee on Social Issues inquire into and report on the Heritage Act 1977

Dear Committee Members,

Re: Standing Committee on Social Issues inquire into and report on the Heritage Act 1977

We are writing to provide a submission on the inquiry into and report on the Heritage Act 1977 (NSW) (the Act). I have over 20 years professional experience as a heritage consultant and archaeologist working within the Heritage Act, 1977 and managing cultural heritage sites and landscapes. I have over 11 years' experience, managing and directing a heritage consultancy with fourteen team members including heritage professionals based in Northern NSW, Sydney, Newcastle, Sunshine Coast Queensland, working throughout NSW and other parts of Australia.

We would like to make the following points from our team's experience in relation to the Heritage Act and for better heritage management in NSW.

Firstly, there is an absence of adequate funding in the regulation of the Heritage Act from our experience as well as compliance and prosecution of proponents who breach the Heritage Act, as well as the National Parks and Wildlife Act, 1974. From our experiences, we have interactions with Heritage NSW where staff tell us they are under resourced, under funded and unable to delivery heritage protection due to a lack of resourcing and support within their own agency. There is also a notable number of Heritage NSW archaeologists who have little consulting or professional heritage experience and whom are not knowledgeable of the application of the Heritage Act and NSW National Parks and Wildlife Act in NSW, and their own agencies internal charters and policies. For example, we have by more than one Heritage NSW archaeologist, been told that Aboriginal communities are not the primary determinants of the significance of their cultural heritage, in direct contradiction to the many policies of Heritage NSW on their own website. Managers appear to often have little heritage experience often within the regulation of the NSW National Parks and Wildlife Act, 1974 (for example, some are ecologists or general environmental scientists). There are also numerous examples of projects where consents are processed far exceeding the statutory processing time due to poor resourcing.

Secondly, proponents are discouraged to follow Heritage Act provisions, as they often frustrated with the lack of timeliness, consistency, and transparency in advice. The two-permit system for sites that contain Aboriginal heritage and historical (non-Aboriginal heritage) and the two different pieces of legislation, leads to different costs and time delays, rather than one holistic piece of legislation that effectively manages all heritage within NSW. This two-permit under two separate Acts (NPW and NSW Heritage Act) approach is also detrimental to the effective management and protection of heritage within NSW, as there is inconsistency in assessment approaches, in the requirements for heritage practitioners' professional accreditations and experience to obtain a consent and in the regulation and resourcing of heritage. Aboriginal places under the National Parks and Wildlife Act should be considered immediately for listing as State Heritage Register (SHR) items, as the scrutiny of Aboriginal place nominations is similar to SHR items.

Thirdly, the Section 60 consent Excavation Director application process is also onerous and inconsistently applied. We are aware of colleagues with decades of experience and Section 60 status being rejected for applications, dependent on the Heritage NSW representative reviewing the application

and their personal bias. Heritage is a small industry and the selection of Section 60 Director status from archaeologists and heritage consultants by Heritage NSW is not transparent and heavily skewed, particularly in areas such as Parramatta. We see little progress in how younger generations of archaeologists and heritage professionals, can be considered by Section 60 applications for Excavation Director status, when consents are still only being given out to predominantly the same archaeologists working in localities over at least the last two to three decades.

In relation to the same issue, we would draw your attention that we are aware of Aboriginal people employed by the State within Heritage NSW not being allowed to rebury Aboriginal human remains on country on their own missions because they are State Heritage registered sites. We are aware of Aboriginal traditional owners who cannot rebury skeletal remains repatriated from overseas because they wish to rebury in State Heritage Register listed sites, despite unlikely impact to historical heritage, unless they pay the services of an archaeologist for a Section 60 permit and all the investigations and assessments with it. From our perspective, there is limited transparency or accountability in this process, and little common sense or equity for Aboriginal people and it needs more rigorous scrutiny and consistent application.

The Aboriginal Heritage Impact Permit (AHIP) process is far less regulated but more consistent, however, there are applicants still receiving permits despite being prosecuted for breaches of AHIPs and fines. We often have Local Aboriginal Land Councils and Traditional Owners complain of the frustration of reporting archaeologists and heritage consultants as well as proponents breaching the NSW National Parks and Wildlife Act, 1974 with no fine or prosecution except occasionally a warning letter, as compliance has made an investigation and been concerned they do not have funding for a prosecution. Compliance and regulation needs far more attention and scrutiny to protect cultural sites and landscapes.

From our experience, Local Aboriginal Land Councils need far more capacity building funding and resourcing for the changes in the Aboriginal cultural heritage reform process for NSW Heritage. LALCs are doing their best to manage and protect their cultural sites, despite poor resourcing and a multitude of responsibilities to look over their communities in their roles, where cultural heritage is only one part of that role. LALCs need more funding from Heritage NSW particularly in relation to the cultural mapping many local Councils are undertaking with LALCs and expecting them to provide their cultural knowledge and their services to manage under the Aboriginal cultural heritage reform process. Funding could be obtained through the consent system by proponents or regulated by the State similar to the United Kingdom (which is through the National Lottery). Incentives for heritage contributions could also be made through programs and partnerships through the local business chambers.

Aboriginal heritage is the oldest living culture in the world, we hope that the SHR database will include many more important Aboriginal sites and landscapes in the future (initiatives such as regional histories for Aboriginal women and Heritage NSW grants programs are important projects that have protected Aboriginal cultural heritage in NSW). We hope that future changes to heritage legislation and regulation will look at stronger regulation and protection for present and future generations.

Please do not hesitate to contact me if you would like to discuss any aspect of this submission further on (02) 6676 4354 or

Dr Mary-Jean Sutton
Principal Archaeologist

