

THE ABORIGINAL HERITAGE ACT 1972

On 1 August 2001 Kevin Shaw and Amanda Cattermole, both from the Western Australian Department of Indigenous Affairs (DIA), spoke on the topic 'Application of the Aboriginal Heritage Act 1972 in the Kimberley'. Kevin is an anthropologist. Amanda is a lawyer.

The Act was developed as part of a worldwide movement to protect Indigenous Heritage. Attitudes to the management of Indigenous affairs were undergoing major change at the time. It is an offence punishable under the Act to knowingly damage an Aboriginal site. There is also a requirement, under Section 15, for any person who becomes aware of an unrecorded site to report the existence of that site to the Registrar of Aboriginal Sites at DIA.

The Act is administered on behalf of the community (both Aboriginal and non-Aboriginal). Its purpose is to protect and preserve Aboriginal heritage, including any site or object which is of significance to Aboriginal people. The significance can be sacred, ritual or ceremonial, and it can be either traditional or current. Sites and objects can include burial grounds, symbols, paintings and engravings (in caves or on rock faces), stone structures or arrangements, carved trees and specific tracts of country and/or water.

Responsibility for administration of the Act rests with the Minister for Indigenous Affairs who is assisted by both the Aboriginal Cultural Material Committee (ACMC) and the Registrar of Aboriginal Sites. The ACMC exists to provide informed advice to the Minister regarding any project, which involves possible disturbance of an Aboriginal site. The Registrar is responsible for maintaining the Register of Aboriginal Sites. He/she also attends ACMC meetings.

The Register, which contains information on some 17,000 Aboriginal sites throughout Western Australia, is maintained under Section 38 of the Act. It can be accessed through the site <http://www.aad.wa.gov.au/index.html> on the Internet. Appointments are necessary to view actual files. The DIA holds a range of information about recorded sites. It has a strict policy about access because some of the information may have high cultural sensitivity. Unrestricted access would breach the confidence of the people who gave the information. Unregulated access has the potential to interfere with longstanding cultural practices and beliefs.

The key sections of the Act that affect the management of Aboriginal sites are Sections 16, 17 and 18. Under section 17, it is an offence to disturb any Aboriginal site. There are, however, two ways in which, given appropriate circumstances, people can obtain permission to disturb sites.

Under Section 16 the Registrar can authorise excavation and removal of anything from an Aboriginal site or of an Aboriginal site. Section 16 is generally used for research purposes after consultation with Indigenous people. Section 16 applications often relate to proposed archaeological work. All such applications go before the APMC.

Under Section 18 the Minister can consent to disturbance if development is likely to impact a site. Before granting consent, the Minister receives a recommendation from the APMC. The recommendation can be accompanied by suggested conditions for the consent. The Minister considers the APMC recommendation and the general interests of the community when making a decision.

When the APMC is making its decisions, the Committee members determine whether the place in question is a site under Sections 5 and 39 of the Act. In doing so they generally draw on heritage assessments prepared by or with substantial input from relevant Aboriginal individuals and communities. The members ensure that the input is from appropriate people and, further, that the level of consultation and the submission of data are adequate.

DIA Regional Offices can assist development proponents by offering advice and consultation, organising register searches and helping to contact the relevant Aboriginal individuals and communities. Kevin Shaw fulfils this role, and others, in the DIA office in Derby. He pointed out that, in the Kimberley region, Aboriginal attachments to land have generally been continual, making it comparatively simple to identify the people who have a right to speak for certain country.

Some of Kevin's recent work has involved looking at the extent of surface skeletal remains in one Kimberley area. Such remains are protected by the Act. Forensic anthropologists are looking at the material with the aim of determining its ethnic origin. With skeletal material, it is necessary to determine whether the Act applies, ie whether the skeletal material is of Aboriginal origin. If the material is Aboriginal in origin, it is an offence under the Act to disturb it without the consent under the *Aboriginal Heritage Act 1972*. In one recent case where skeletal material had been disturbed in the Kimberley a Section 16 approach was implemented so that the site could be managed in accordance with *Aboriginal Heritage Act 1972*. DIA prefers where possible to negotiate rehabilitation of unauthorised disturbance to sites where appropriate. Litigation is usually the line of last resort.

In discussing Aboriginal sites more generally, Kevin noted that song lines, art and stories about country, when taken together, form the equivalent, for Aboriginal people, of the Certificates of Title that spell out ownership in European society. Religious significance of sites is often difficult for non-Aboriginal people to grasp and/or accept because some places of religious significance look very ordinary.

Kevin also noted that a very experienced eye is usually required to see the more subtle sites, eg stone arrangements.

There was some discussion of how the Aboriginal Heritage Act, the Native Title Act and the Heritage Act of Western Australia (for the built environment) relate to one another and, in places, overlap. The presence of Aboriginal heritage sites, for example, can be evidence for native title. It was also acknowledged that some sites have dual heritage significance. The Boab Prison Tree outside Derby is one such site. It has longstanding mythological significance as well as being of interest to tourists because it is said to have held Aboriginal prisoners who were on their way to Derby.

Dual significance can cause problems if action that one interest group desires is not acceptable to another. The huge controversy over the redevelopment of the Old Swan Brewery in Perth illustrates this area of conflict. A much smaller controversy arose over development at the Boab Prison Tree. Shire staff installed a metal walkway to protect the roots of the tree from compaction and, whilst trying to do the right thing in environmental terms, caused great offence to the local Aboriginal people. Parts of the metal decking touched the tree and, after much discussion, it was removed. A compromise achieved through consultation subsequently resulted in a bush timber fence being built to enclose the tree, at a distance, with a sign that requests visitors to respect the cultural significance of the tree and to avoid walking up to it and climbing on or into it. Both the cultural and environmental aspects have now been catered for, and information panels in a nearby shelter provide information about the tree from both an Aboriginal and a non-Aboriginal perspective.

Animated discussion followed the talk, indicating that both the subject and its ramifications were of considerable interest to quite a few people in the audience.

Cathie Clement