

South Australian State Government Review of the *Aboriginal Heritage Act 1988*

January, 09

The review of the South Australian *Aboriginal Heritage Act 1988 (AHA)* has major implications for the Resources Industry and Local Government in particular and developers generally.

The “Scoping Paper”

The State Government has decided there is now a need to review the AHA, to take account of changes in other legislation and policies, and changing community attitudes and expectations, “so that new legislation can be fully effective to protect Aboriginal heritage”.

The Government has issued a Scoping Paper outlining the proposed review process, which is available on the website of the Aboriginal Affairs and Reconciliation Division of the Department of Premier and Cabinet (**AARD**) at http://www.premcab.sa.gov.au/pdf/aha_review_scoping_paper.pdf.

The final form of new heritage legislation will be decided following “extensive consultation, robust debate and careful analysis”.

Reforming the Heritage Act

The proposal to review the AHA will be underpinned by the following 7 Guiding Principles, which are intended to shape the development of a range of possible legislative options:

- recognising Aboriginal custodianship of cultural heritage;
- creating a strong framework for long term protection and management of Aboriginal heritage;
- enabling Aboriginal negotiation of agreements about heritage;
- embedding Aboriginal heritage considerations into the development and land management process;

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- creating timely and efficient processes;
- creating certainty for all parties;
- complementing the Native Title Act 1993 (Cth) (*NTA*).

The Guiding principles are broadly in line with the objectives of new legislation in Queensland and Victoria which:

- specifically recognises Aboriginal ownership of remains and sacred items and more broadly, custodianship of and responsibility for all cultural heritage;
- includes processes for review and/or arbitration if the parties fail to agree on the identification, protection and management of (and in some cases, damage to) Aboriginal heritage and if agreements are not carried out, ending with Ministerial intervention (often following an intervening court or other arbitration process);
- places a duty of care on landholders and developers to take all practicable measures to ensure that an activity does not harm Aboriginal heritage with penalties for non-compliance. Because of these provisions, successful prosecution is much easier than is currently the case in South Australia;
- enables the integration of Aboriginal heritage into other land management and planning legislation by suspending other statutory approvals until the relevant processes under the heritage legislation have been complied with;
- recognises the interests of native title parties and includes them in the group of Aboriginal people that are to be parties to any negotiations. The legislation includes provision for the recognition and support of local Aboriginal heritage organisations and their accountability to the community.

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Conclusion

Given the importance of this review to many South Australians, AARD has extended the closing date for submissions until the end of June 2009.

AARD anticipates that community consultations will commence in February/March.

Should you wish to make submissions or be involved in consultations, we would be pleased to speak with you about suitable arrangements.

Contacts

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