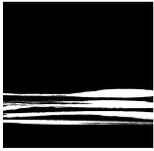


Submission no. 62

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AUSTRALIAN ASSOCIATION OF CONSULTING ARCHAEOLOGISTS INC

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29 May 2012

**Re: Submission to the Parliamentary Inquiry into the Establishment of Registered Aboriginal Parties (RAPs)**

Dear Sir/Madam,

This submission to the Parliamentary Inquiry into the establishment of the RAPs is made on behalf of the Australian Association of Consulting Archaeologists Incorporated (AACAI) through its Victorian Chapter on behalf of its members.

AACAI is the only professional association for consulting archaeologists in Australia. Many of our members have a direct interaction with the RAPs and RAP Applicants on a daily basis as part of their work associated with the *Aboriginal Heritage Act 2006*. AACAI is pleased to have this opportunity to provide feedback from our members.

AACAI (Vic) is forwarding this submission on behalf of its full, associate and affiliate members who are engaged within the State of Victoria either as Cultural Heritage Advisors (CHAs) or in a capacity within the heritage industry.

AACAI members who work as cultural heritage advisors consult with clients and RAPs and various Traditional Owners to prepare Cultural Heritage Management Plans (CHMPs) in accordance with the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2007*.

The 'Act' refers to the *Aboriginal Heritage Act 2006*. VAHC refers to the Victorian Aboriginal Heritage Council.

The Terms of Reference in regard to the Inquiry are as follows:

*There are three considerations that make up the terms of reference for the Parliamentary Inquiry into the establishment and effectiveness of RAPs:*

- *Victorian Aboriginal Heritage Council policies in relation to the appointment of RAPs, including the factors that should be taken into account by the Council in making decisions such as:*

*(i) the degree to which traditional ownership is contested in the area of the subject of an application;*

*(ii) the impact that decisions may have on the community;*

*(iii) the capacity of the applicant to fulfil legislative responsibilities if appointed; and*

*(iv) the process used to determine and identify the successful RAP.*

- *The support available to the Council in making decisions about the appointment of RAPs, including:*

*(i) membership and structure of the Council; and*

*(ii) Council's capacity to inquire into matters relevant to applications, including supporting applicants to provide information needed to fully assess applications.*

- *The effectiveness of the established RAPs to perform their duties under the Act*

It is the overall view of AACAI that the RAPs and the VAHC have been effective and successful in promoting good Aboriginal heritage protection and management in the State of Victoria. The establishment of the RAPs has provided certainty in regard to the consultation process for Aboriginal heritage matters. Ultimately protection of Aboriginal heritage is the focus of the Act and AACAI members feel strongly that Aboriginal heritage is better protected and managed under the Act and when a RAP is in place.

More generally, AACAI is also strongly supportive of the Act and the significant improvements in the management, assessment and protection of Aboriginal heritage since 2007 that are a direct result of the introduction of the Act. We also note that the *Aboriginal Heritage Act 2006* has established a much higher level of certainty for landowners and development proponents by establishing an orderly and efficient system of heritage assessment and management integrated with the planning system. For these reasons, most of the development proponents our members represent are generally supportive of the Aboriginal Heritage Act 2006 and the role of appointed RAPs in evaluating Cultural Heritage Management Plans (CHMPs).

The principles of Aboriginal self determination are certainly able to be applied under the Act. The RAPs that have been established have been able to manage heritage in an effective manner and in most cases been able to create new jobs and employ many Aboriginal people.

It was agreed by AACAI that it was not able to specifically comment on the level of funding for RAPs and the level of support provided by AAV. However AACAI supports any initiative or funding that supports RAPs and particularly outlying rural RAPs that do not have income streams derived from a high volume of CHMP work and that builds their capacity to fulfill their role and responsibilities under the Act. AACAI would support some further resourcing for the RAPs, especially for those in regional areas that may not have the opportunity to be as self supporting as the metropolitan RAPs. AACAI suggests that perhaps a levee on every evaluation of a CHMP (whether Evaluated by a RAP or by the Department of Planning and Community Development) be used and this pool of funds be distributed by the VAHC according to need.

AACAI suggests that the VAHC should provide more certainty around fee structure of the RAPs as there is inconsistency in fees and charges for the same services across the state. It is suggested that a guideline fee schedule should be set by the VAHC to provide more

certainty and consistency. In addition, as the RAPs are effectively monopoly groups, a potential capping of fees and yearly review should also be set out by the VAHC.

Some members have noted the general lack of information provided by some RAPs/RAP applicants regarding cultural heritage significance of places subject to investigation and assessment by our members. It would be beneficial and improve cultural heritage assessments if RAPs, as part of their role in the CHMP assessment process, provided formal cultural significance statements or established criteria that would assist in gauging cultural values. However, other AACAI members feel the best guarantor that cultural values are adequately considered and assessed is that RAPs should be appointed who represent traditional owners and knowledge holders and therefore understand cultural values within their traditional lands. Where RAPs have been appointed, our experience is the traditional owners who constitute the RAP group have a direct say over management of cultural values within their traditional lands.

Where the VAHC has been unable to appoint a RAP, it is understood that this may be due to long running disputes in some cases. However, our members have found that it is certainly more difficult to prepare a Cultural Heritage Management Plan and consult effectively where there is no RAP in place. AACAI acknowledges the hard work of the VAHC in appointing RAPs and is aware that such an appointment is not made lightly. Any initiative that would facilitate further appointments of RAPs in areas where RAPs have not been appointed would be supported because we have seen the real benefits that have flowed when RAPs have been appointed.

There was general agreement among AACAI members that the Victorian Aboriginal Heritage Council should be given a role to specifically advise which Aboriginal representative groups should be consulted and invited to participate in fieldwork when there is no RAP appointed. This would remove any ambiguity that currently exists.

AACAI also recommends that the VAHC consider increasing their own resourcing via the appointment of a technical advisory panel that reports to the VAHC. This subcommittee would focus on additional 'technical' expertise such as legal, archaeological and anthropological expertise. It could also provide another avenue to hear disputes directly from particular stakeholder groups such as developers, RAPs and Cultural Heritage Advisors, prior to matters being elevated to VCAT.

AACAI suggests that providing an avenue for the VAHC to review RAP decisions and other related disputes (prior to escalation to VCAT) is consistent with the principle of Aboriginal self determination in that it keeps decisions within the heritage community for longer before they are taken to third parties for review.

We would be pleased to meet with you to discuss this submission in greater detail as part of the inquiry process.

Sincerely,



Oona Nicolson MAACAI  
Chairperson Victorian Chapter