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Key findings

- The Aboriginal Sites Register contains over 23 000 sites. There are also many sites that are not recorded.
- Nearly all development applications likely to impact on Aboriginal heritage places were approved between 2001 and 2006.
- The Dampier Archipelago has the world's largest collection of petroglyphs (numbering about 250 000 individual rock carvings) but is under significant development pressure.

8.2 Loss or degradation of Aboriginal heritage



Description

Aboriginal heritage places include landscapes, sites and areas that are particularly important to Aboriginal people as part of their customary law, developing traditions, history and current practices. Aboriginal heritage is therefore an integral part of Aboriginal culture, and central to the spiritual wellbeing of Aboriginal people. It is embedded in the natural landscape and keeps the connection to ancestors, land and country alive. For thousands of years Aboriginal people have woven their intricate knowledge of Australia's natural landscape into a life guide. Consequently, Aboriginal heritage values are present in the land, air, waterways, animals, and plants, making the natural landscape fundamental to Aboriginal heritage. Not surprisingly, there is considerable overlap between natural heritage and Aboriginal heritage in WA.

Encompassed in Aboriginal heritage values are intangible expressions of culture and spirituality. Places may be of particular spiritual value to Aboriginal people for a number of reasons: because of the mythological lore connected to these places; because of past use as meeting places for special ceremonies and as places for mythological depiction through rock art; as burial grounds for ancestors; or as places of the Dreaming's spiritual beings. Traditional Aboriginal knowledge is shared by telling stories, through art, dance and songs. These cultural expressions connect generations over time and must be sustained. Aboriginal heritage is a central element of Aboriginal spirituality and customary law. Its conservation ensures continued respect for Aboriginal ancestors and ancestral beings that shaped the land and waterways.

The Dreaming

Aboriginal people attribute their origins and occupation of Australia to the Dreaming, the time of Creation when ancestral spirits

came to Earth to create landforms, plants and animals. As these Creator beings moved through the land they created waterways and mountains. These journeys left very long Dreaming tracks that twisted their way through many Aboriginal clan groups. Aboriginals can see the events of the Dreaming recorded in the surrounding countryside and they can find ancestral beings living in waterholes, rock formations, animals and plant life. The ancestral beings created rules and laws to govern the land and its inhabitants. The Dreaming did not end with the arrival of Europeans, but evolved into a new era and continues as a powerful living force that must be looked after and maintained.

Objectives

- Protect, conserve and manage the State's Aboriginal heritage.
- Ensure that new development is sympathetic to the significance of Aboriginal heritage.

Condition

Indicator H8: Number of Aboriginal heritage listings.

As of 30 June 2006, the Aboriginal Sites Register contained 23 205 sites (Table H2.1). There are currently 80 protected areas that include multiple sites. Approximately 90% of sites are reported through heritage survey reports submitted to the register (Table H2.1). Since 2000-01 an average of three Aboriginal sites has been reported in each heritage survey submitted.

Table H2.1: Number of Aboriginal heritage listings and site survey reports submitted.

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Aboriginal Sites Register	18 437	18 973	20 212	21 362	22 134	23 205
Site survey reports submitted	—	273	404	331	395	289

Data source: Department of Indigenous Affairs - Aboriginal Sites Register. **Note: The figures include the total number of sites and objects reported to the registrar. There are currently over 2000 sites reported to the registrar that do not meet the terms of section 5 of the Aboriginal Heritage Act 1972 and are considered not to be sites until sufficient information is presented to determine their status.**

The geographical spread of places in the Aboriginal Sites Register largely reflects where Aboriginal heritage surveys have been conducted. Large areas of the State have not been surveyed as heritage surveys are normally only undertaken in response to development proposals. This has resulted in a bias of site identification primarily in areas subject to recent development (Figure H2.1). The low density of sites in the South West reflect the fact that a significant area of land has been historically developed for agriculture, and there are less mining developments and fewer Aboriginal communities than elsewhere in the State.



Figure H2.1: Number of Aboriginal heritage places by local government area, as at 2005.

Data source: Department of Indigenous Affairs - Indigenous Heritage Sites [ver. 2005]; Analysis: EPA; Presentation: EPA.

Knowledge of the presence of Aboriginal heritage places may also be withheld. The *Aboriginal Heritage Act 1972* obliges any person who has knowledge of the existence of an Aboriginal site to report the site to the registrar or a police officer. However, many Aboriginal sites are not recorded on the Aboriginal Sites Register either because they have not been reported to the registrar or because Aboriginal people have decided to keep information about sites confidential. The Act provides Aboriginal people the right to withhold reporting of sites if it conflicts with relevant Aboriginal customary law or tradition. This is an integral component of the *Aboriginal Heritage Act 1972*, which provides blanket protection for Aboriginal sites whether or not they appear on the Aboriginal Sites Register.

Indicator H9: Condition and integrity of Aboriginal heritage listings.

Our knowledge of the overall condition and integrity of Aboriginal heritage places is inadequate. However, anecdotal evidence suggests that many places are deteriorating or are at risk. An example is the Dampier Rock Art Precinct, located in the Dampier Archipelago, which contains the largest collection of petroglyphs (rock carvings) in the world. Over 250 000 individual rock carvings are estimated to be in this region with some dating back as far back as 10 000 years (National Trust of Australia, 2005). Since the 1960s, the rock art complex on the Burrup Peninsula (part of the Archipelago) has been physically disturbed and some of the area's rock art has since been destroyed. While a number of actions are being taken to protect the majority of rock art on the Burrup Peninsula, approval has been given for some sites to be disturbed to enable further development in the area. Emergency listing of the Burrup petroglyphs on the National Heritage Register was rejected by the Federal Minister in December 2006.

Monitoring and maintenance of Aboriginal heritage places has been limited by a lack of value placed on Aboriginal heritage. The *Aboriginal Heritage Act 1972* creates offences for disturbing Aboriginal sites without Ministerial consent. However there is inadequate monitoring and reporting to determine the level of compliance with the Act. Under existing laws, developers (or proponents of projects impacting heritage) are required to undertake heritage surveys. Although this normally results in intensive studies, this information is not often released publicly and therefore the value of the site is not well understood by the broader community.

Pressures

Development is the major pressure on Aboriginal heritage. However deficiencies in heritage legislation and inadequate protection and management also contribute to a decline in Aboriginal heritage in WA. The *Aboriginal Heritage Act 1972* is arguably one of the most comprehensive pieces of Aboriginal cultural heritage legislation in Australia. However, since its enactment there have been considerable changes in the legal, economic and social factors affecting the preservation and protection of Aboriginal heritage. As a result, many of the provisions now appear outdated and some sections of the Act have not kept pace with the changing environment. The resource and development industry has continually raised its concerns about difficulties associated with the land use approvals process under the *Aboriginal Heritage Act 1972*.

Indicator H10: Level of development pressures on Aboriginal heritage.

Aboriginal heritage places face pressure from all forms of development but most notably industrial and urban development.

Among other things the *Aboriginal Heritage Act 1972* makes it an offence to excavate, destroy or damage an Aboriginal site. Landowners may apply to the Minister for Indigenous Affairs for consent to use land in a way that would be likely to impact a site. The number of applications to impact a site considered by the Aboriginal Cultural Material Committee and the number of consents granted by the Minister infers the level of development pressure on Aboriginal heritage. On average about 25% of heritage survey reports submitted to the Aboriginal Sites Register result in an application to disturb a site. The number of applications increased steadily between 2001 and 2004 then declined marginally in 2005 and 2006 (Table H2.2). Of the 487 applications determined over this period, only one was declined. Nearly 85% were given approval (including those with conditions) and 13% were referred back to the proponent.

Aboriginal communities often face difficult management decisions in relation to Aboriginal heritage places because of conflict between traditional obligations and the flow on benefits to the communities from development. However, the increasing involvement of Aboriginal people in developing Indigenous land use agreements, heritage protection agreements and consultations about Ministerial conditions indicates a growing willingness of Aboriginal people to participate in the ongoing management and protection of sites when confronted with development pressures.

Table H2.2: Number of applications to impact Aboriginal Heritage sites and approvals by the Aboriginal Cultural Material Committee and Minister for Indigenous Affairs.

Year	No. of section 18 applications	Referred back to proponent	Approval (includes conditional consent)	Declined
2001	57	14	44	0
2002	73	12	61	0
2003	91	17	75	0
2004	99	7	89	1
2005	86	4	76	0
2006	81	10	62	0

Data source: Department of Indigenous Affairs. Note: "section 18 applications" refers to applications to the Minister for Indigenous Affairs for consent to use land in a way that would impact an Aboriginal site.

Indicator H11: Level of objections to sites placed on the Aboriginal Sites Register.

There is much debate about the advantages and disadvantages of recording Aboriginal sites on the Aboriginal Sites Register. Aboriginal communities have concerns about how the registered information might be used, particularly where native title is yet to be determined and there are concerns about whether information submitted is exempted from requests under the *Freedom of Information Act 1992*. Additionally, the failure of the *Aboriginal Heritage Act 1972* to adequately protect some sites has led to scepticism about the capacity of registration to provide better protection than withholding knowledge about sites. Aboriginal communities who have good relationships with developers often believe that the best means of protecting sites is to be actively involved in their day-to-day care and management rather than having sites recorded on the register.

The concerns over listing of Aboriginal heritage sites on the register often confounds traditional European-style planning and development processes and complicates heritage protection and management. However, it is clear that a standard approach to heritage management, via registration does not necessarily work in all situations.

Current responses

Legislation and policy: The Department of Indigenous Affairs is implementing new administrative processes, information standards and guidelines, establishing time limits for assessment processes and increasing the level of compliance monitoring to improve the effectiveness of the *Aboriginal Heritage Act 1972*. The Aboriginal Lands Trust established a land use and development policy in 2004 that provides a framework for assessment, referral and approval of all developments on the Aboriginal Lands Trust estate. The policy seeks to protect the natural and cultural values of these lands while allowing for development that is of economic and social benefit to Aboriginal communities.

Native Title: is a recognition under the *Native Title Act 1993* that allows Aboriginal people who have maintained links to their country, laws and customs, to hold rights to their land and waters. This may include the right to protect important places of heritage value. As of 2006, there are about 620 000 square kilometres of native title area (including both consent and litigation claims) in WA, but there are about 120 outstanding native title claim applications.

Land acquisition: The Indigenous Land Corporation, a Commonwealth statutory authority, acquires land for grants to Indigenous people. There are four land acquisition programs, including one specifically for land of cultural significance. This program is aimed at ensuring that land purchased will remain Indigenous-held to provide future generations with cultural, social and environmental benefits. Through the cultural program, a total of 11 properties in WA have been granted to Indigenous corporations.

Land agreements: Mining companies typically enter into agreements or partnerships with traditional owners that facilitate greater benefits for both parties from mining operations and include provisions for greater protection and management of Aboriginal heritage places. For example, Indigenous land use agreements are a voluntary agreement between native title claimant groups and other parties that allow agreements to be made about how land is used without entering into the usual native title process. Argyle Diamonds and the Mirriuwung and Kija people of the East Kimberley have entered into an agreement which establishes management plans for Aboriginal heritage sites, among other initiatives (Office of Native Title, 2005).

Grants: Grants are available to Aboriginal communities for heritage conservation through the Department of Indigenous Affairs and Lotterywest. In 2002, the Department of Indigenous Affairs established the Aboriginal Heritage Grants Program. An annual budget of \$100 000 is allocated for the overall program with grants up to \$5000 available for local, community-based projects that assist in promoting, protecting and recording Aboriginal heritage and culture (Department of Indigenous Affairs, 2005). A total of 15 grants worth \$66 018 was given to Aboriginal communities for the protection, management and recording of sites and objects from 2002-03 to the beginning of the 2004-05 financial year.

Management: The Aboriginal Lands Trust and the Indigenous Land Corporation have established a partnership to provide funding to Aboriginal land managers for Caring for Country activities aimed at restoring and protecting the natural and cultural values of lands of interest to the Aboriginal community. The Aboriginal Lands Trust is undertaking a systematic inventory of the natural and cultural values of the lands held by them in partnership with resident Aboriginal communities, including an assessment of the condition of the land. This information will be a valuable source for determining pressures and risks and will assist in prioritising and developing appropriate responses to these pressures.

Implications

The destruction of Aboriginal heritage sites adversely impacts on Aboriginal culture, spirituality and their connection with country and their ancestral history. Differences between Aboriginal and European-based cultures often result in inadequate

understanding, valuing and protection of Aboriginal heritage. There is a need to bridge the cultural divide and a better understanding of the values of Aboriginal heritage by the broader community will be critical to address this.

Suggested responses

8.6 Increase the involvement of the Aboriginal community in heritage management and decision-making.

8.7 Review the *Aboriginal Heritage Act 1972* to improve the effectiveness of protecting and conserving Aboriginal heritage sites by reviewing Ministerial powers to make decisions on protected sites and on consents to damage sites, and providing greater decision making powers to custodians of heritage sites.