



SD07 A CLIMATE FOR CHANGE
Sustainable Development Conference



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**Indigenous Cultural Heritage:
Developments**





Introduction

- > Significance of Indigenous cultural heritage to mining projects
- > Relationship Approach v State Approval Approach
- > Increasing importance of Commonwealth Regime
- > Increasing role of Environmental Legislation
- > Integrated relationship based approach to Indigenous Cultural Heritage



Significance of indigenous cultural heritage to mining projects

- > Value: protection and management of impacts on indigenous cultural heritage
- > Stakeholder Relationships: with traditional owners, local community and interest groups – social licence to operate
- > Interaction of native title and indigenous cultural heritage
 - WA: requirement to sign standard regional heritage agreements to access the expedited procedure
 - Qld and Vic: claimant status under NTA affecting rights under Aboriginal heritage Acts
- > Compliance and project management:
 - Legislative requirements for approvals, need to avoid offences and penalties
 - The need to integrate approvals into overall project timeframes and infrastructure design
 - The need to coordinate timeframes & timing of indigenous cultural heritage approvals under:
 - State & Cth indigenous cultural heritage laws
 - State & Cth environmental laws



Relationship Approach v State Approval Approach

- > Very little consistency between the States in legislation governing indigenous cultural heritage
- > Transition from approach where Aboriginal cultural heritage is State property, and approvals are granted by the State
- > Transition to approach where Aboriginal people are the custodians of and decision makers for Aboriginal cultural heritage
- > Increasing consistency of approach at a practical level
- > Most states using CHMPs whether required by legislation or not



Aboriginal Heritage Act 1972 (WA)

- > Applies to all land in the State
- > Aboriginal Sites include archaeological, anthropological and historical
- > It is an offence to alter a site in any way without the consent of the Minister under s18.
- > Consultation with Aboriginal parties, and formation of CHMPs are not required by legislation
- > Practice requires consultation in the conduct of Aboriginal heritage surveys
- > S18 consents often include a condition requiring a CHMP



Aboriginal Heritage Act 2006 (Vic)

- > Replaces:
 - Archaeological and Aboriginal Relics Preservation Act 1972 (Vic); and
 - Part IIA of the Aboriginal & Torres Strait Islander Heritage Preservation Act 1984 (Cth).
- > Relates to Aboriginal Places and Aboriginal Objects of Cultural heritage significance
- > Offence to harm Aboriginal Cultural heritage: knowingly, recklessly, negligently or knowing it is a likely effect
- > Unless acting under a Cultural Heritage Management Plan (or in preparation of a CHMP), under a Permit, or in case of emergency
- > Aboriginal people as custodians of Aboriginal heritage
- > Primary role of the Registered Aboriginal Parties



Aboriginal Heritage Act (Vic) cont

- > Cultural Heritage Management Plans (CHMPs)
 - voluntary or mandatory
 - mandatory if required by regulation
 - mandatory if Environmental Effects Statement (EES) required
 - mandatory if Ministerial direction
 - purpose – assess, avoid, minimise impact, manage impact
- > Cultural Heritage Permits: relate to Aboriginal Objects, and scientific research
- > Cultural Heritage Agreements
- > **Aboriginal Heritage Act prevails:** If a CHMP is required – other statutory authorisations **may not be granted** until CHMP has been approved



Aboriginal Heritage Act (Vic) cont

- > Cultural Heritage Audits and Stop Orders
- > Interim and Permanent Declarations
- > Disputes may be resolved by VCAT



Increasing importance of Commonwealth Regimes

> Relevant Commonwealth Legislation:

- Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) – ATSIHP Act
- Environment Protection and Biodiversity Conservation Act 1999 (Cth) – **EPBC Act**

> ATSIHP Act:

- Section 9 Declarations: to protect a significant Aboriginal Area under serious and immediate threat of injury or desecration;
- Section 10 Declaration: to protect a significant Aboriginal Area under threat of injury or desecration
- Increasing number of applications under this Act, especially in WA



Increasing importance of Commonwealth Regimes (cont.)

- > EPBC Act:
- > **World Heritage Place:** Offence to take action which will (or is likely to) have a significant impact on World Heritage values of a declared World Heritage property
- > **National Heritage Place:** Offence to take action which will (or is likely to) have a significant impact on the indigenous heritage values of a National Heritage place.
- > Regular listing provisions, and emergency listing provisions where the property/place is under a likely and imminent threat of significant adverse impact.
- > Actions may be taken subject to an approval under Part 9 of the EPBC Act or if certain exemptions are in place.



Interaction with Environmental Legislation

- > EPBC Act – examined above.
- > Interaction with State environmental legislation, increasing consideration of indigenous cultural heritage matters in State environmental approvals.
- > Eg: WA, EPA Guideline for the Assessment of Environmental Factors: Assessment of Aboriginal Heritage
- > Often result in requirement to develop and implement CHMPs



Practical consequences

- > Integrated and relationship based approach to Aboriginal cultural heritage
- > Incorporating Aboriginal heritage considerations into whole of project considerations including:
 - induction programmes
 - design and location of project infrastructure
 - indigenous cultural heritage management as an ongoing life of project requirement
- > Identify and manage the interaction between:
 - overall value of protection and management
 - overall stakeholder engagement
 - different requirements and timeframes under State and Cth cultural heritage and environment legislation
 - interaction with negotiations about native title or Aboriginal land
 - interaction of these requirements & timeframes with project requirements



Questions