Gavin Jackson
Cultural Resource Management

31 May, 2012

Hon Brian Ellis MLC
Chair
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Sir,

RE: Review of the *Aboriginal Heritage Act 1972* – Submission in support of Petition No 162

I refer to your letter dated 24 May in relation to the above matter. As requested, I am providing this written submission regarding the issues raised in Petition No 162 in order to assist the committee in its preliminary investigations. I have not referred this complaint to the Ombudsman.

A discussion paper, entitled "Seven proposals to regulate and amend the *Aboriginal Heritage Act 1972* for improved clarity, compliance, effectiveness, efficiency and certainty" was issued by the Department of Indigenous Affairs in April 2012. The discussion paper is the result of a review of the *Aboriginal Heritage Act 1972* (the AHA) that has been undertaken over the last 18 months by Dr John Avery on behalf of the State Government.

Dr Avery's review has mainly taken place behind closed doors, with little communication with Native Title Representative Bodies, Aboriginal organisations or Aboriginal people. Despite a claim to have consulted with these groups in the discussion paper, it is my understanding that communication with Aboriginal people was minimal at best. On the other hand there does appear to have been considerable liaison between Dr Avery and industry (for example the CME; see information circular May 1st 2012). In the discussion paper I note that the Inter-Agency Working Group on Aboriginal Heritage Reform includes the Department of Mines and Petroleum and the Department of Regional Development and Lands (among others).

I also note that the April 2009 report on approval processes prepared by the "Industry Working Group" (IWG) for the Minister for Mines and Petroleum. That report recommended that "the complete approval system be reviewed, and structural as well as administrative changes, be implemented" in order to support "the State's existing industries, together with attracting further investment". It is noted that the IWG report contains the blueprint for practically all of the 'proposals for reform' contained in Dr Avery's discussion paper, some of which are virtually fully formed in section 5 of the IWG report.

All of this would suggest that the proposed reform of the AHA is purely intended to conform to Industry requirements and are designed to streamline and expedite land access approvals. It also confirms the contention that the proposals run counter to the intention of the AHA which is "to make provision for the preservation on behalf of the community of places and objects customarily used by or traditional to the original inhabitants of Australia or their descendants".

Furthermore, the fact that the blueprint for this reform was proposed by Industry three years ago and has been adopted largely unchanged, suggests that the 'extensive' consultation process that

Minister Collier asserts has been ongoing for the past 12 months has not altered the outcome of the review process in any way. In particular it is contended that not all stakeholders have been afforded equal consideration in the review. Aboriginal groups and representative bodies have been largely excluded from the process. Most disturbing of all is the five-week timeframe allowed for comment. This is unnecessarily prescriptive when applied to Aboriginal people living in remote communities and shows a complete lack of understanding about how these groups function. Indeed there appears to be no mechanism to engage with remote communities at all. In this regard it is contended that the review process and the intended effect of the proposals are in breach of the Racial Discrimination Act 1975, in so far as they single out the Aboriginal peoples of Western Australia and will result in them being dispossessed of their rights and interests in their unique heritage and culture.

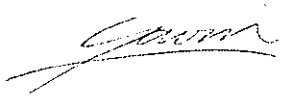
The proposals as a whole will result in the diminution of legislative protection for sites of Aboriginal Heritage under the AHA. In addition, Proposal 7 suggests the removal of protection for sites of Aboriginal cultural heritage which from the Environmental Protection Act (EP Act). This this removes another check on developers to take cognizance of Aboriginal heritage concerns, and is inconsistent with the terms of the Racial Discrimination Act. The proposals, in conjunction with the newly issues Aboriginal Heritage Due Diligence Guidelines also generally sideline consultation with Aboriginal Legal Representative Bodies, signalling a possible further disempowerment of Aboriginal people.

The review of the AHA, as set out in the proposals outlined in the discussion paper and associated Due Diligence Guidelines has not been fair or transparent. The language in the discussion paper is designed to obfuscate the true intention of the proposed changes which is to remove consideration of Aboriginal sites to remove a perceived impediment to development. If the proposals are accepted, this will further remove control of their cultural heritage from Aboriginal people and ultimately lead to the wholesale destruction of Aboriginal sites.

GJCRM would therefore like to refer this issue to the Standing Committee on Environment and Public Affairs for consideration with the following terms of reference:

- Who was consulted about the proposed changes to the Act and what was the balance between different stakeholders?
- What exactly are the internal guidelines issued to DIA?
- Will relevant Aboriginal people have input into what sites are removed from or excluded from the Register if the proposals are accepted?
- How can the issuing of site impact avoidance certificates be justified over areas that have not been surveyed for Aboriginal sites? How is this fair or just?
- The further disempowerment of Aboriginal people is yet another act of colonisation and an abuse of human rights.

Regards,



Archaeologist