



Kimberley Land Council

Standing Committee on Environment and Public Affairs

Kimberley Land Council submission

April 24, 2015

Proposed legislative changes to the WA Aboriginal Heritage Act are discriminatory and erode the rights of Indigenous people to protect their cultural heritage.

It is for this reason the Kimberley Land Council has lodged a petition with Members of the Legislative Council and requested an investigation and review of our concerns.

The WA Aboriginal Heritage Act should protect and preserve cultural heritage for Aboriginal people. Instead, the proposed amendments deny Aboriginal people of any meaningful involvement in heritage protection and give supreme decision-making power to government bureaucracy.

The WA Aboriginal Heritage Act in both its current state and proposed amended form is primarily directed at processes that allow lawful damage to, and destruction of, Aboriginal heritage places and objects. It provides limited mechanisms for Indigenous people to participate in decisions about the management, control, or protection of cultural heritage and provides even greater control to government and industry. Mining companies and developers have more control over Indigenous heritage than Indigenous people themselves.

The WA Aboriginal Heritage Act fails to adhere to principles relating to respect for the property and cultural heritage of Indigenous people and their internationally-recognised human right to provide free, prior and informed consent before measures are adopted that may affect them. It also creates a legal fiction that Indigenous people have no rights of ownership over, or interest in, their cultural heritage. These proposed laws therefore amount to a forced taking of Aboriginal heritage so it can be destroyed, damaged or compromised by the State in accordance with its own laws for the benefit of mining companies and other developers.

Kimberley Traditional Owners have not been properly consulted about the proposed amendments and do not support them. Our main concerns include:

- The ultimate decision-making powers of the Department of Aboriginal Affairs CEO in regard to the importance and protection of Aboriginal cultural heritage, subject only to regulations which are being kept secret;
- No formal engagement or consultation of Aboriginal people about their own cultural heritage, and no process independent from Government;
- Inadequate and biased appeals processes that enable mining companies to seek a review of decisions but not Aboriginal people;
- Forcing Traditional Owners to publicly list all cultural heritage sites on the Aboriginal Sites and Objects Register, under the threat of lesser protection and enforcement.

The Kimberley Land Council and its petitioners request the Standing Committee on Environment and Public Affairs inquire into the matters raised in our petition to:

- Investigate whether the protections afforded to Aboriginal heritage in Western Australia are at the same level as provided in other States and Territories, and/or consistent with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards.

Standards and processes of heritage protection are significantly higher in other Australian jurisdictions. The Western Australian Aboriginal Heritage Act amendments fail to draw on any of the lessons learned and better practices developed in Australia over the past forty years.

*Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous peoples have the right to **maintain, protect and have access in privacy to their religious and cultural sites.***

- Propose a consultation framework for the development of a complete replacement for the Act.

Consultation should take account of the unique circumstances of Aboriginal people in Western Australia. It should respect their diversity, location, culture, limited access to written and electronic media, and their right to have properly resourced representation.

- Review the extent of consultation with Aboriginal people, and report on what steps were taken by the Department of Aboriginal Affairs (DAA) to ensure that Traditional Owners had meaningful opportunities to understand and give feedback on the proposed amendments, including a report on the level of support for the proposed amendments from Traditional Owners.

Consultation in the Kimberley region was rushed, flawed and deeply inadequate. Aboriginal people were not informed, and were not listened to. The proposed amendments reflect the interests of Government and development and show no respect for the issues that are important to Aboriginal people.

The near-universal condemnation of the proposed changes by Traditional Owners has been well-documented in the media.

- Review the proposed changes and report on whether Aboriginal involvement in the administration of the Act will be strengthened or weakened by the proposed amendments.

The KLC's submission about the proposed amendments to the Act is one of many which draws attention to the negative impact on Aboriginal involvement. The disparity between the procedural rights afforded to development proponents and Aboriginal people is particularly inappropriate in the context of an Act for the preservation of irreplaceable heritage.

- Investigate whether DAA has:
 - a. removed records from the Register of Aboriginal sites, on what basis it has done so, and what consultation there was with affected Traditional Owners before removal;
 - b. provided information about site registration or site removal to development proponents; and whether it has provided an equal level of information to affected Traditional Owners; and
 - c. changed its interpretation of section 5 of the Act, and if so, the basis for its changed view.

DAA has been found to have behaved not in accordance with the law in relation to all of these matters: Robinson v Fielding [2015] WASC 108. The full extent of DAA's misadministration of the Aboriginal Heritage Act is not known, and the Committee's investigation of this question would be welcomed.

Aboriginal people from across the state have been strong and united in their objection to the proposed amendments which was introduced as the Aboriginal Heritage Amendment Bill into Parliament on 27 November 2014.

More than 400 people rejected the proposed amendments at a Kimberley protest in September last year, while a bush meeting at Yule River and a Traditional Owner march to the steps of Parliament both denounced the changes.

West Australian Aboriginal people urge the State Government to take the necessary steps needed to abandon the amendments. The KLC strongly supports reform of the Aboriginal Heritage Act but we need to start with a clean state to produce legislation that meaningfully includes Aboriginal people and values our cultural heritage. The KLC has not otherwise taken this complaint to the Parliamentary Commissioner for Administrative Investigations.