



Hon Brian Ellis MLC
Chair, Standing Committee on Environment
and Public Affairs
Parliament House
WEST PERTH WA 6005

Dear Mr Ellis,

**Re: PETITION NO 162 – REVIEW OF THE ABORIGINAL HERITAGE ACT
1972**

Thank you for this opportunity to provide a written submission regarding the matters put forward in Petition No. 162, which I tabled on behalf of the Petitioners.

The matter has not been taken to the Parliamentary Commissioner for Administrative Investigations (Ombudsman).

This petition was promoted by Mr Gavin Jackson, who is extremely concerned about the negative impacts of the Minister for Indigenous Affairs' proposed amendments to the *Aboriginal Heritage Act 1972* (AHA; the Act).

I support the Petitioners concern that the proposals expedite access to land at the expense of Aboriginal interests.

The amendments to the Act as proposed will have the effect of forcing Aboriginal people to choose between revealing sensitive information about sites (against their cultural beliefs) so that they can be placed on the Register and thus receive some level of protection, or risking having the site effectively excluded from even the meagre protection the Act currently offers. This treatment contrasts starkly with the protection offered to the commercially sensitive information of industry proponents.

Also, the current levels penalties for damage of heritage are inadequate as a deterrent to industry.

Proposal 6 will expedite the Section 18 process regardless of any negative impacts on heritage sites, again favouring mining claims over heritage values and Aboriginal interests.

I support the Petitioners concern that the proposals will lead to Aboriginal peoples of Western Australia being dispossessed of their rights and interests in their unique heritage and culture.

Proposal 1 has the effect of reducing the protection offered under the AHA due to its effective stripping away of the protection provided in the Act for non-registered sites.

The proposals can lead to a situation whereby a significant number of sites may be removed from the Register, due to technicalities such as "insufficient information".

PORTFOLIO AREAS:

ENERGY & CLIMATE CHANGE; MINES AND PETROLEUM; STATE DEVELOPMENT & INDUSTRY; NUCLEAR ENERGY; LOCAL GOVERNMENT;
WASTE MANAGEMENT; PORTS; PASTORAL ISSUES; ABORIGINAL ISSUES; RACING AND GAMING; AND REGIONAL SUSTAINABILITY.

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I assert that wording used such as 'benefit current and future generations' is 'interpretable' or 'negotiable' and will result in weakening protection for culturally significant sites, and should be either removed or better defined.

I consider that the proposal to prescribe matters that the Aboriginal Cultural Materials Committee (ACMC) can have regard to in relation to recommending places to be preserved (under section 39(2) of the Act), further narrows a discretion which was already limited in its ability to protect sites of significance.

I support the Petitioners concern that the proposals need to be reviewed with reference to sections 9 and 10 of the Racial Discrimination Act.

My view, supported by senior counsel, is that these proposals fail to bring the Act into line with the Commonwealth Racial Discrimination Act 1975. For example, the inequitable nature of the appeals process under the current Act whereby the applicant can appeal any decision by the Minister, whereas Aboriginal custodians cannot.

I support the Petitioners call for a review of all of the consultations undertaken and advice received by Government in the review of the AHA, to ascertain whether natural justice and procedural fairness has been extended to Aboriginal stakeholders.

I am disappointed that the consultation process has been lacking to the extent that the Petitioners have been left feeling disempowered with respect to their only legal avenue for protection of cultural heritage. This is an unacceptable situation and one that I expect to see rectified with a full and lengthy consultation process undertaken on a broad scale with Aboriginal stakeholders around the state, having regards to the access difficulties presented by the vast distances involved, and the varying levels of access to appropriate means of information gathering (technological or otherwise).

I request that the Committee consider advising the government to withdraw the proposals and consider a proper full review of the existing Act, in full consultation with the Aboriginal people. This would be, as far as I can see, the only way in which to restore the faith of the First Australians in this government.

I therefore join the petitioners in requesting that the Legislative Council undertake a review of the consultation process, and the adequacy of reports and information being made available to the public throughout the development of this project.

Thank you for taking these comments into account in your deliberations. Please don't hesitate to contact me should you require further information or clarification of any points.

Yours sincerely



The Hon Robin Chapple MLC

Member for the Mining and Pastoral Region

20 June 2012

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