



WA ALLIANCE OF REPRESENTATIVE BODIES AND SERVICE PROVIDERS

JOINT MEDIA STATEMENT – MAY 2018

ABORIGINAL HERITAGE ACT REFORM

The WA Alliance of Representative Bodies and Service Providers ('Alliance') put their Joint Statement on Aboriginal Heritage Act Reform to Minister for Aboriginal Affairs, Hon Ben Wyatt MLA when they met recently in Perth.

The Joint Statement sets out the views of the Alliance as follows:

1. A review of the *Aboriginal Heritage Act 1972 (WA)* ('AHA') has been announced by the Minister. The Alliance hold the view that the AHA should be repealed and replaced by a statute which is consistent with the United Nations Declaration on the Rights of Indigenous Peoples, the NTA, and the *Racial Discrimination Act 1975 (Cth)*, all of which post-date the AHA.
2. The Alliance recognizes precedents in other states such as Victoria, South Australia and Queensland in relation to modernizing their Heritage Acts through broad repeals. The Alliance also endorses total repeal of the current AHA.
3. The Alliance and respective Rep Bodies and Service Providers have in the past made various comments and submissions in relation to other reviews of the AHA by previous governments. Submissions have consistently called for traditional owners to be front and centre in the decision-making process as part of best practice; which is currently not being achieved to date.
4. Some of the comments and submissions from the Alliance and respective Rep Bodies and Service Providers have previously made in relation to past reviews of the AHA include that:
 - (a) The AHA, being from a pre-native title and pre-racial discrimination legislation era, is fundamentally flawed and should be repealed and replaced, rather than amended piecemeal.

- (b) The overriding purpose of the legislation should be the protection of Aboriginal sites for the benefit of Aboriginal people, rather than the community at large. Currently, the AHA is primarily directed at processes that provide lawful damage to and destruction of Aboriginal sites.
- (c) Any new legislation should be consistent with other relevant statutes (e.g., *Native Title Act 1993 (Cth)* and *Racial Discrimination Act 1975 (Cth)*).
- (d) Any new legislation should incorporate the following principles in the United Nations Declaration on the Rights of Indigenous Peoples:
 - i. Article 11, which provides that Indigenous peoples have the right to practice and revitalise their cultural traditions and customs, including the right to maintain and protect archaeological and historical sites and artefacts;
 - ii. Article 12, which provides that Indigenous peoples have the right to maintain, protect, and have access in privacy to their religious and cultural sites, and the right to use and control their ceremonial objects;
 - iii. Article 19, which provides that States should consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them; and
 - iv. Article 31, which provides that Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions. This article also provides that States should, in conjunction with Indigenous people, take effective measures to recognise and protect the exercise of these rights.
- (e) All traditional owners (those who can show a connection to country) that may be affected should be guaranteed rigorous consultation, and a formal, if not a determinative decision making role in the process of determining any Aboriginal sites, protected areas and whether consent to affect those sites (e.g., damage, destroy, conceal or alter) should be recommended.
- (f) Applications to alter Aboriginal sites (e.g., destroy, damage, alter or conceal) are never or rarely rejected. For example, since June 2017, 35 applications have been decided and all have been consented to with or without conditions by the Minister. This, together with the lack of requirements concerning consultation, is the reason for the “no means no rule” in some of the Heritage Protection Agreements negotiated between traditional owner groups and other parties.
- (g) The AHA provides an inadequate and biased appeals process that enables mining companies to seek a review of decisions but arguably not Aboriginal people.

- (h) Enforcement of the provisions of the AHA and prosecution of offences is inadequate.
5. Some proposals to address these ongoing issues may include:
- (a) The AHA should be repealed and replaced, rather than amended piecemeal.
 - (b) The overriding purpose of the new legislation should be the protection of Aboriginal sites on behalf of traditional owners, rather than the community at large.
 - (c) Any new legislation should require, in determining the existence of any Aboriginal sites, protected areas and whether consent to affect those sites should be granted, rigorous consultation with, and the consent of, all affected native title holders. This would be consistent with consultation requirements under the *Native Title Act 1993* (Cth). At a minimum, consultation should require meetings with affected native title holders and heritage surveys.
 - (d) Any new legislation should incorporate the principles of the United Nations Declaration on the Rights of Indigenous Peoples outlined at 4 (d).
 - (e) Any new legislation should not permit holders of mining tenements to make applications to alter (damage, destroy, conceal or alter) Aboriginal sites. This should be a matter for resolution with the relevant miner and native title holding group or alternative recognized traditional owner groups where native title does not exist.
 - (f) Any new legislation should make clear that all affected native title holders have the ability to seek a review of decisions under the AHA.
 - (g) More funding should be committed by the government to enforcement of provisions under the AHA and prosecution of offences.

Media Contact: Mr Hans Bokelund – (08) 90 911 661