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SUBMISSION – REVIEW OF WA ABORIGINAL HERITAGE ACT

State Government proposes beneficial reforms of *Aboriginal Heritage Act*

The media release in May 2012 by the Minister for Indigenous Affairs Mr Peter Collier states that the WA Government proposes beneficial reforms of the Aboriginal Heritage Act. What does this mean? Beneficial to whom? From our reading of the Discussion Paper we cannot see any benefits to Aboriginal people in protecting their heritage sites. In fact the Discussion Paper is too short on detail to enable any “informed” professional comment. Where is anthropologist Dr John Avery’s report (presumably he wrote one) on which this Discussion Paper is said to be based? If Avery has completed his so-called comprehensive review based on a 12 month consultation period with various groups, why hasn’t his expert advice been made publicly available on the Department of Indigenous Affairs (DIA) website along with this Discussion Paper? Otherwise, how do we know that this Discussion Paper reflects his findings and conclusions? In fact, how do we know that these proposals weren’t formulated prior to Avery’s appointment? Why the secrecy? If Avery’s position was funded by the Western Australian taxpayers to the tune of \$260,000, then shouldn’t his professional report and recommendations be open to scrutiny instead of a vaguely presented DIA version of his so-called advice? If his report was openly accessible this would enable properly informed debate and discussion to take place among interested parties using web streaming and social media so that the full implications of these proposed changes to the Aboriginal Heritage Act and its administration can be considered before it is too late to change things. Or is it already a fait accompli, as we ourselves fear?

This Discussion Paper reads like a government whitewash of indigenous heritage in this State. It looks to further devalue indigenous heritage through a clever attempt to rationalise Aboriginal sites out of existence for the convenience of developers and miners. In an attempt to streamline and expedite the approvals process and to take pressure off the already over-burdened Section 18 process, it is proposed that DIA will be responsible for issuing Site Impact Avoidance Certificates. On p. 5 (Q & A) it states: ‘The proposed certificate will be issued when it appears that specified activities proposed to be carried out on an area will not cause a significant impact on the values of any Aboriginal site.’ What is meant here by “*significant impact*”? Surely any impact can be detrimental to the integrity of an indigenous site and should be avoided? Isn’t this the reason for protective site boundaries being established around sites or will these no longer apply? Who defines what constitutes ‘*significant impact*’ and according to what criteria? Is this an independent body or is it DIA? Who can the traditional owners and custodians appeal to should they dispute DIA’s assessment of what constitutes ‘significant impact’ on their cultural heritage sites? On p. 2 it states ‘The use of certificates will encourage parties to avoid impacts on sites, where possible...’ and on p. 6 it says:

‘The Department would use its best endeavours to issue a certificate, including on conditions, if necessary, to avoid adverse impacts. This could provide a more flexible and cost effective alternative to the section 18 consent.’

What does ‘best endeavours’ mean here? If the issuing of certificates is seen as a cost-cutting measure, does this suggest that risk-assessment predictive desktop studies will take over from on-the-ground heritage surveys? Desktop studies are no substitute for the real thing, especially if the area subject to disturbance has not been previously comprehensively surveyed. Under the new proposals will DIA be carrying out these surveys in-house (as we are informed by our colleagues) in return for ‘fees and charges’ and if so, couldn’t this be viewed as a conflict of interest if DIA is also responsible for administering the Act?

It will be interesting to see whether Aboriginal heritage surveys especially on government-related projects will continue to be carried out or whether risk-assessment predictive desktop studies will predominate. If there had already been a complete and comprehensive ethnographic and archaeological survey of the whole of the State with the result being an authoritative site database, some of the proposals mentioned in this Discussion Paper may work. However, to our knowledge such a broad-based survey has never been carried out and the amount of survey information contained in the DIA would hardly constitute the basis for a reliable risk-management heritage database.

We agree entirely with Robin Stevens’ views expressed on aasnet (AAS intranet) about the Discussion Paper but one must ask why is he the only anthropologist with the courage to come out publicly and tell things as they are? Could it be the constant fear which we know anthropologists suffer from, that if they speak out, they may be disadvantaged, or to put it bluntly, will be out of a job, especially if they speak out against the DIA who according to this paper are going to be in complete charge of Aboriginal heritage management (especially when it involves government-related heritage site clearances). One would not want to jeopardise one’s future dealings with DIA. We are told that all submissions and responses to the Discussion Paper will be selectively (?) published on the DIA website on a space created especially for the review. This would be a deterrent to even the most courageous of us.

If we understand these proposals correctly, it would appear that if anything the proposed administrative and legislative changes work against the interests of those indigenous custodians and traditional owners who are trying to protect their fast disappearing sites. The current AHA and its administration may have its faults but the proposed changes will further erode the protection of indigenous heritage sites and is yet another step in the disempowerment of indigenous people. It is our view that anthropological organizations such as the Australian Anthropological Society (AAS) and the Anthropological Society of Western Australia (ASWA) who have invited anthropological input into their response submission papers to the DIA, should express a vote of no confidence in what we would suggest is a Clayton’s Discussion Paper.

This submission was prepared by:

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