

Tuesday, 17 June 2014

1254. Hon Robin Chapple to the Minister for Aboriginal Affairs.

I refer to the Minister's media response to ABC Kimberley journalist, Erin Parke on 31 March 2014 and to an academic paper by lawyer, David Ritter titled 'Trashing Heritage' and published in *Studies in Western Australian History* in 2003 regarding proposed amendments to the *Aboriginal Heritage Act 1972 (AHA)*, and I ask:

(a) is the Minister aware of the legal opinion that asserts that the *AHA* is inconsistent with the *Federal Native Title Act 1993 (NTA)* and the *Federal Racial Discrimination Act 1975 (RDA)*:

(i) if no to (a), why not; and

(ii) if yes to (a), how does the Minister intend to address the situation;

(b) has the State Solicitor's office provided the Minister with advice on the matter:

(i) if no to (b), why not; and

(ii) if yes to (b), what was that advice;

(c) if yes to (b), will the Minister table the advice:

(i) if no to (c), why not;

(d) do the current provisions of section 18 of the *AHA* breach the *RDA* by permitting a developer the right of appeal but not the Aboriginal custodian of the site in question:

(i) if no to (d), why not;

(e) has the Minister sought legal advice on this matter:

(i) if no to (e), why not;

(ii) if no to (e), will the Minister now do so:

(A) if no to (e)(ii), why not;

(iii) if yes to (e), what was that legal advice and will the Minister table it:

(A) if no to (e)(iii), why not;

(f) will the Minister introduce amendments to section 18 of the *AHA* allowing Aboriginal parties the same rights of appeal as those enjoyed by developers:

(i) if no to (f), why not; and

(ii) if yes to (f), when will this occur; and

(g) will the Minister introduce amendments to the *AHA* to make it consistent with the *NTA*:

(i) if no to (g), why not; and

(ii) if yes to (g), when will this occur?

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a) The Honourable Member does not make it clear which legal opinion he is referring to. Mr David Ritter's 2003 article, to which the Honourable Member refers, does not appear to offer an opinion on whether the Act is invalid by being inconsistent with Commonwealth legislation.

(i) Not applicable.

(ii) Not applicable.

(b) I have not been provided with any advice from the State Solicitor's Office on this matter.

(i) Legal advice has not been sought on the issue as no aggrieved party has ever raised this issue in a legal challenge.

(ii) Not applicable.

(c) Not applicable.

(i) Not applicable.

(d) – (e) Legal advice has not been sought on this issue as no aggrieved party has ever raised this issue in a legal challenge.

(f)- (g) The proposed amendments to the *Aboriginal Heritage Act 1972* are contained in the *Aboriginal Heritage Amendment Bill 2014* which is currently available for public comment.

