

AACAI

AUSTRALIAN ASSOCIATION OF CONSULTING ARCHAEOLOGISTS INC

Ms Jo Thomson
Chairperson
AACAI WA Chapter
c/- PO Box 224
Floreat WA 6014

thomsonheritage@bigpond.com
www.aacai.com.au

Hon. Ben Wyatt MLA
Treasurer; Minister for Finance; Energy; Aboriginal Affairs
11th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005
Minister.Wyatt@dpc.wa.gov.au

17 June 2020

Dear Minister Wyatt,

RE: Destruction of the Juukan Gorge Rockshelters in PKKP country

The Australian Association of Consulting Archaeologists Inc. (AACAI), as the peak body representing professional and consulting archaeologists in Western Australia, has expressed outrage over Rio Tinto's recent destruction of the highly significant Juukan Gorge rockshelters in Puutu Kuntj Kurrama and Pinikura (PKKP) country in the Pilbara region. Our statement can be found here: <https://www.aacai.com.au/2020/05/29/aacai-statement-on-the-destruction-of-the-juukan-gorge-rockshelters/>. The irreversible destruction of the Juukan Gorge rockshelters by Rio Tinto represents an inconsolable loss to the PKKP people. Given the places major importance to the human past, it also represents a massive loss to the State of Western Australia and the wider Australian community.

This incident highlights the major flaws and inequities inherent in the current *Aboriginal Heritage Act 1972*, and in particular, in the way the Act has been administered. We are concerned that in this instance it appears that the section 18 consent was granted before the cultural significance of the Juukan Gorge rockshelters was comprehensively investigated and understood. This is in direct contradiction of best practice heritage management principles and the Burra Charter Process which stipulates that a place and its significance must be understood and assessed before any decisions are made about its use, management or destruction (see Article 6 of the *Australia ICOMOS Charter for Places of Cultural Significance*, 2013 and Figure 1 below). We are also concerned that the Act's administrative processes do not allow for consideration of new information or the reassessment of significance once section 18 consent has been granted; and that the PKKP Traditional Owners had no recourse to appeal.

AACAI therefore welcomes the Minister's comments in *The Australian* (9 June 2020) that the Western Australian Government plans to address these problems and enact provisions in the new draft Aboriginal Cultural Heritage Act and its Regulations to ensure that this does not happen again.

Since the review of the current Act was initiated in 2018, AACAI have consistently called for changes to the Act that would enable more stringent protections. We have outlined a series

of core principles and standards that must underpin the new Act and its administration. This unfortunate incident highlights the particular importance of the following principles:

- Aboriginal heritage, including aspects relating to archaeology, should be recognised as an important asset to the State, and to the extent that is appropriate for its Aboriginal custodians, be celebrated and promoted to the wider public.
- Any decision that allows an impact on Aboriginal heritage must: (a) have regard to the wishes of Aboriginal people and custodians, (b) be accountable to Aboriginal custodians and the wider community, and (c) be supported by compelling reasons of public interest that take into account any social and cultural effects.
- The management and mitigation of impacts to Aboriginal heritage values must be clearly defined in protocols and guidelines. Aboriginal bodies and groups, with the assistance of cultural heritage practitioners, should be empowered through Government grants and funding to maintain and manage Aboriginal landscapes, places and objects.
- A transparent and accessible appeals process should be established to facilitate and mediate cases where management decisions and impacts to Aboriginal heritage values require arbitration rather than judicial intervention. This appeals process must be open to Aboriginal people, not just proponents.

Furthermore, AACAI reiterates that the proposed new Act must:

- Recognise the mutable (changeable) nature of cultural significance.
- Recognise the plurality of knowledge, ways of knowing and values.
- Recognise archaeology as an integral and valued part of Aboriginal heritage.
- Recognise sense of place as an important aspect of Aboriginal heritage.
- Ensure that Aboriginal heritage and its significance is assessed early in the land use planning process.
- Ensure that those managing cultural heritage respond appropriately to the discovery of any new evidence for cultural, archaeological, scientific, national and other values and significance that may come to light at a later point.
- Ensure that cumulative impacts are considered as part of the assessment process, as cumulative impact can lead to changes in heritage value and significance. Tracking of cumulative impact needs to be comprehensive and transparent.
- Require heritage agreements between proponents and Aboriginal communities to be robust, equitable and transparent.

AACAI also urges the Government to return to their earlier plan to develop the appropriate Regulations side by side with the Act. This will provide important guidance and reassurance to all stakeholders that the administrative processes that are to support the new Aboriginal Cultural Heritage Act are robust, transparent and in line with best practice heritage management.

The issue of archaeological significance in the new Act

The recent events at Juukan Gorge highlight the importance of archaeological methods and techniques in the heritage identification and assessment processes. Without archaeological methods, the presence of the ancient campfires and other deposits at Juukan, their age, the unique items of material culture, and the DNA connection between the archaeological remains and the contemporary community would not be known.

AACAI is deeply concerned that the new Act may exclude or devalue archaeological values and significance. During recent consultation with DPLH staff we were advised that 'significance will only be defined in terms of significance to Aboriginal people'. Whilst we fully acknowledge and respect that Aboriginal heritage is, first and foremost, owned by Aboriginal people, we also believe that Aboriginal heritage – which needs to be documented by communities for mining compliance and other development impacts – requires input from heritage professionals. The reforms to the Act require better accreditation of those heritage professionals, as well as processes of making that component of the assessment process more practicable (see above).

We whole-heartedly agree with Indigenous leaders such as the Hon Linda Burney MP that sites such as Juukan are significant to all Australians, as well as their Aboriginal custodians. These sites are rare and precious sources of knowledge about some of the earliest achievements in human history. There are many other types of values and significance that need to be considered and included in heritage assessments (i.e. see the Burra Charter for example).

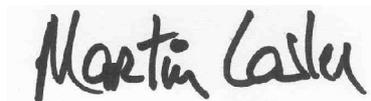
It is our view that archaeological significance should be included and specifically acknowledged in the new legislation, so that Aboriginal people are enabled to access archaeological, scientific, legal and anthropological advice, in order to make informed decisions about their heritage places. The new Act should allow Aboriginal custodians to exercise their rights to fully explore and protect their places of archaeological significance and to access scientific tools and understandings to do so. We are concerned that if archaeology is excluded from the new Act, Aboriginal heritage places with archaeological components will be devalued by developers, and that Aboriginal communities will not be able to resource the necessary work to identify and research this component of their deeper past. This will lead to a situation like that under the *Heritage Act 2018*, where archaeological places are ignored and ill-protected, by dint of ignorance and lack of an appropriate compliance framework.

AACAI acknowledges and appreciates the current Government's thorough and broadly consultative approach to developing a new Aboriginal Cultural Heritage Act. We call on you to utilise this momentum to ensure that the new Act is structured to properly protect sites of major significance like those in Juukan Gorge.

Yours sincerely,



Jo Thomson
Chairperson
AACAI, WA Chapter



Martin Lawler
President
AACAI

Figure 1. The Burra Charter Process

The Burra Charter Process

Steps in planning for and managing a place of cultural significance

The Burra Charter should be read as a whole.

Key articles relevant to each step are shown in the boxes. Article 6 summarises the Burra Charter Process.

