



TEMPLATE FOR INPUT INTO THE  
AUSTRALIAN HERITAGE STRATEGY

**Overview**

This template should be used to provide comments on the content of the Australian Heritage Strategy.

**Contact Details**

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|------------------------------|---|
| <b>Name of Organisation:</b> | Friends of Australian Rock Art (Inc) - FARA       |
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| <b>Date:</b>                 | 9 June 2014                                       |

**Questions**

Please add your comments for some or all of the questions provided with the Strategy's three high level themes below. If you have other information you wish to provide, please add this in the "Other comments" field.

**1. Improve National Leadership**

What are the most important things the Australian Government should be doing to offer leadership in heritage?

How can the Australian Government provide guidance and support for our national heritage—while still empowering other government, industry and community members to take responsibility and get involved?

What priority areas are important to you, your organisation or group?

What practical actions would you suggest to improve national heritage leadership?

The most important thing the Australian Government should be doing to offer leadership in heritage is getting serious about Australia's Aboriginal Cultural Heritage. As long as government instrumentalities, policies and processes fail to properly acknowledge and protect Australia's unique indigenous history, the remainder of its heritage actions are hollow. In Western Australia, Aboriginal Heritage is so seriously compromised legislatively and administratively that it is ONLY leadership from the Australian Government that can provide reliable protection for this bedrock of our nation's past.

Within this broad concern for respect and honour to Australia's Aboriginal heritage, Friends of Australian Rock Art, or FARA, focuses its efforts on protection of rock art in Western Australia, in particular the petroglyphs of the Dampier Archipelago, often referred to as the Burrup Peninsula or Murujuga.



Practical actions that should be undertaken include:

1. Reviewing the benchmark Aboriginal heritage protection study undertaken in 1996 by the Hon Elizabeth Evatt AC and implementing its recommendations. This study still offers the most detailed and systematic review of Australian federal Aboriginal heritage protection law ever carried out.

The report contains highly detailed recommendations on how to improve federal protection of indigenous heritage, yet the Commonwealth Government has never implemented these recommendations, most significantly,

- 'The procedures under the Commonwealth act should ensure interim protection for areas which are threatened, basic principles of natural justice for those affected and effective timelines.'
- Evatt's report identified 'uncertainty and delays' in the operations of ATSIHP Act nearly 20 years ago, which in the light of recent experience (detailed below) still does not appear to have been addressed.
- Evatt advocated maintaining the scope of the Act, rather than any diminishing of responsibility.
- Evatt recommended development of a national Aboriginal heritage policy and national heritage coordinating body.
- Evatt defined the minimum standards and process under which State and Territory heritage protection regimes could be accredited (Chapter Six).

2. Strengthening the federal ATSIHP Act process, which according to public comments by Departmental spokesperson Dr John Avery at a 2008 DAA seminar, has an 83% failure rate. As highlighted in the case of s 9 and s 10 ATSHIP Act, applications by senior Burrup Aboriginal custodian Wilfred Hicks in 2007, Departmental assessment of such applications has often been unsatisfactory, and not proceeded in a timely manner (see below).

*How can the Australian Government provide guidance and support for our national heritage—while still empowering other government, industry and community members to take responsibility and get involved?*

It is highly alarming that this question and other sections of the draft strategy (especially references to 'one stop shop' etc) seem to imply that the Australian Government is actively seeking ways to divest itself of its responsibilities under ATSHIP Act, the EPBC Act and other Commonwealth legislation. This draft reads as if many vital deliberations and responsibilities may be outsourced to the States (or even, it would seem, to resource development companies). As highlighted by details of WA's dysfunctional Aboriginal heritage protection regime outlined below, this would have potentially disastrous impacts on Aboriginal heritage in Western Australia.

It is vital that the Commonwealth Government retains and acts on its legislative responsibilities for protecting Aboriginal cultural heritage rather than divesting these responsibilities to State Government, as is implied in this Draft Strategy. The track record of the Western Australia Government offers no confidence for the future protection of Aboriginal heritage in this state. Heritage legislation is intended for the protection of Australia's cultural heritage values, not to facilitate processes of its removal and destruction as we have evidenced in this state.



3. Increase funding to the Australian Heritage Council to allow it to more fulsomely pursue its remit. And then, to take account of its advice!

## 2. Pursue Innovative Partnerships

What partnerships are most needed within the heritage sector?

What heritage roles and responsibilities should be led by governments, peak heritage organisations or community groups in the 21<sup>st</sup> century?

How should resources be shared through heritage partnerships to ensure the greatest return on agreed priorities?

Can you provide examples of successful innovative partnerships you or your organisation have established?

Answers to these questions are given in light of the earlier concern that this line of questioning seems to imply a divesting of key responsibilities by the federal government. We do not support this in any way. However, there are partnerships that must be developed and maintained to ensure effective protection of Australia's unique indigenous heritage.

The Australian Government needs to be leading meaningful engagement with Aboriginal representative bodies such as Native Title Representative Bodies (NTRBs) and Land Councils. Also undertaking active research and learning from best practice indigenous heritage protection in Australia and globally.

Other key partners include:

- Australian Heritage Council
- Professional associations with expertise in heritage management such as the Australian Anthropological Society, Australian Archaeological Society, Australian Association of Consulting Anthropologists, Australian ICOMOS
- Academic authorities on Australian Aboriginal rock art; AIATSIS
- Heritage protection NGOs such as Friends of Australian Rock Art, the various state National Trusts etc.

*What heritage roles and responsibilities should be led by governments, peak heritage organisations or community groups in the 21<sup>st</sup> century?*

The Commonwealth Government must act in accordance with its legislative responsibility to protect Aboriginal cultural heritage, rather than seeking to outsource this responsibility to the State Governments.

*How should resources be shared through heritage partnerships to ensure the greatest return on agreed priorities?*

This question is too wide in scope and unspecified priorities to present a meaningful answer.



However, we note that 'resource sharing' must not be a euphemism for resource reduction. Effective resource sharing arises when strong and resilient partnerships are in place, allowing for genuine collaborative practice.

*Can you provide examples of successful innovative partnerships you or your organisation have established?*

Friends of Australian Rock Art has successfully collaborated with the Roebourne Aboriginal community and the Murujuga Aboriginal Corporation in relation to FARA's annual Burrup Rock Art tour, which has effectively pioneered heritage tourism to the Burrup Peninsula Rock Art. There are many possibilities for local Aboriginal people to develop tourism initiatives in relation to the Burrup Peninsula rock art. World Heritage listing of the Burrup Peninsula, as advocated by FARA, would generate greater tourism possibilities and opportunities for generating income in the area. The complete lack of signage, interpretive material, on-site facilities and staffing by the WA Government at Murujuga National Park means this is currently a lost opportunity.

FARA has worked hard to build relationships with all key stakeholders in the Burrup. Our aim has been to better understand the decision making processes that effect the protection of the rock art, and to ensure that all parties are well aware of the responsibility they carry for this world heritage. We meet regularly with government Ministers, senior Departmental staff, industry representatives and Aboriginal stakeholders to keep them abreast of our concerns and learn of theirs.

FARA has also pursued the impact of industrial emissions on the rock art through the efforts of its scientist member Dr John Black. The committee charged by the WA Department of Environment Regulation with research and monitoring of the emissions is the Burrup Rock Art Technical Working Group. John has developed a respectful professional relationship with the Chair, Associate Professor Frank Murray and peers within CSIRO as he has queried findings in the original 2007 research study. Last year they invited his comments on their latest report, *Burrup Peninsula Aboriginal Petroglyphs: Colour Change & Spectral Mineralogy 2004-2012*, prior to its publication. The parties have exchanged formal commentary on the report and continue to work through the criticisms in a methodical manner. This is indicative of the serious and respectful partnership approach FARA is pursuing.

### **3. Enable encourage communities to understand and care for their heritage**

What should the Australian heritage sector be doing to help the Australian community better engage in heritage activities?

How can a shared understanding of our national heritage be developed and best celebrated together?

Do you have any examples of activities that have been successful in promoting local heritage to a broader audience?

What is the role of technology and new media in providing greater community access to heritage?



To help the Australian community better engage in heritage activities, the heritage sector should be:

- Ensuring it projects a well-rounded idea of what heritage is – not just built heritage; not just heritage of Colonial and post-colonial Australia.
- Promoting the protection of heritage rather than expediting its destruction as we have experienced in WA; employment of heritage professionals in key roles rather than career public servants or non-heritage professionals.

*How can a shared understanding of our national heritage be developed and best celebrated together?*

- More public awareness programmes and engagement through production of Australia content heritage documentaries.

*Do you have any examples of activities that have been successful in promoting local heritage to a broader audience?*

- The annual Burrup/Murujuga Heritage Tour, which has been operating for the past 8 years attracts visitors to the Burrup Peninsula to view Aboriginal Rock Art each year. It not only raises awareness of this extraordinary world heritage, it motivates people to join the fight for its protection.
- FARA's organisation of public talks and presentations to community groups
- Encouraging visits to the rock art places of the Dampier Archipelago through the annual Tours and smaller guided tours.

*What is the role of technology and new media in providing greater community access to heritage?*

- In addition to its capacity to provide community access, technology and new media have a role in improved management of heritage places, but it remains reliant on the veracity of the information provided.

#### Other comments

#### General comments

FARA's main focus since its foundation in 2006 has been the protection of Aboriginal rock art in Western Australia, and especially the internationally significant rock art of the Dampier Archipelago (Murujuga/the Burrup Peninsula). It is the largest and oldest outdoor rock art gallery in the world, which provides a 30,000 year record of human history in stone, which is certainly Australia's most significant archaeological site. The global cultural importance of Murujuga was highlighted in the 2013 ABC TV series 'First Footprints'.<sup>1</sup>

<sup>1</sup> <http://www.abc.net.au/tv/firstfootprints/>



Despite former Minister for the Environment, Malcolm Turnbull's National Heritage Listing of the site in 2007, ongoing threats from industry have regularly led to it being listed on the World Monument Fund's list of 100 most endangered heritage sites in the world.

In 2006 and 2007, approximately 940<sup>2</sup> Aboriginal petroglyphs were cleared from Woodside's Burrup Peninsula Pluto leases to make way for the company's Pluto Liquid Natural Gas plant, against the explicit wishes of the local Aboriginal custodians, and after the WA Minister for Indigenous Affairs, Michelle Roberts had overruled the recommendations of her own expert advisory committee, the Aboriginal Cultural Materials Committee (ACMC).<sup>3</sup>

In 2013, the quarrying company Burrup Materials lodged prospecting and mining leases over part of the NHL area containing highly sensitive areas of rock art in the King Bay area,<sup>4</sup> the probable commencement point of the 1868 Flying Foam Massacres which largely wiped out the area's original Yaburara inhabitants.

FARA's activity since 2006 has highlighted the inadequacy of both State and Commonwealth heritage protection regimes to offer the level of protection appropriate to a site of such unique international significance. In FARA's view, the only way to protect the Burrup properly is for it to be accorded the World Heritage status which it merits. However, the State Government claims that the area's current NHL status gives sufficient protection, while Commonwealth Governments from both sides of politics have evaded the issue by holding to a 'gentleman's agreement' that they can only nominate the site for tentative World Heritage listing if first approached by WA's State Government. Therefore they argue, the Commonwealth Government can do nothing (a claim belied by the Franklin Dam case).

Given the refusal to pursue World Heritage listing of a site of such global significance as the Dampier Archipelago, it is ironic that the current Commonwealth Government is giving serious consideration to the World Heritage listing of sites of far lower significance, such as Royal National Park and Melbourne's Victoria Markets.

### **Specific responses to Draft Strategy**

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<sup>2</sup> Parliamentary Question on Notice to the Minister for Local Government representing the Minister for Indigenous Affairs, Question No: 4455. Question Date: 20/03/2007, Answer Date: 31/05/2007, asked by Hon Giz Watson

<sup>3</sup> The ACMC approved the Pluto A s18 proposal (though not the sensitive southern portion), but unanimously rejected the Pluto B proposal.

<sup>4</sup> Gunn, R & K Mulvaney (2008). 'Of Turtles in Particular: Distributional Study of an Archaeological Landscape in Southern Murujuga'. *Rock Art Research*, 25 (2) 147-64.



The credibility of the Draft Strategy is undermined by its tendency towards nebulous motherhood statements that do not do justice to the true urgency of the situation currently facing Australia's indigenous cultural heritage, particularly in Western Australia, where Aboriginal heritage is bearing the full brunt of Australia's reliance on mining. The Draft Strategy lacks concrete and detailed proposals to address this critical situation.

A greater sense of urgency is provided by recent attention to the developing national Aboriginal heritage crisis by Australia's peak Aboriginal Studies body, the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS):

<http://www.aiatsis.gov.au/research/seminarseries/SeminarSeries2013-2.html>

<http://www.aiatsis.gov.au/ntru/culturalheritage.html>

[http://50years.aiatsis.gov.au/files/docs/corporate/special\\_seminar\\_-\\_richard\\_mackay.pdf](http://50years.aiatsis.gov.au/files/docs/corporate/special_seminar_-_richard_mackay.pdf)

*'Australia has played a significant role in a range of international heritage matters, including: serving on the World Heritage Committee four times; playing a leadership role in strengthening the integrity of the World Heritage Convention; contributing expertise to improve the policies that conserve World Heritage'*

Despite these bold claims, it is well known to both FARA and the Commonwealth Government that UNESCO is in fact deeply frustrated by the Australian Government's reluctance to nominate for World Heritage listing, Aboriginal rock art sites including the Dampier Archipelago. Instead it is giving disproportionate attention to non-indigenous nineteenth century colonial sites of far lower international heritage significance such as Fremantle Prison or Port Arthur.

Woodside's 2006-7 Pluto rock art removals on the Burrup appear to have breached the *Burra Charter* which regulates all aspects of cultural heritage management in Australia, as well as the UNESCO *Declaration on the Intentional Destruction of Cultural Heritage*, which was enthusiastically promoted by the Australian Government in 2003, following the Taliban destruction of the Buddha statues of Bamiya in Afghanistan. The late Lord Alistair MacAlpine, former Treasurer of the British Conservative Party, commented at the time that 'for Australia, one of the first signatories to the UNESCO Declaration Concerning Intentional Destruction of Cultural Heritage, it is scandalous that they are now ignoring their own commitments and acting as cultural vandals on an international scale.'

*'We want our nation's heritage to be managed and protected according to world's best practice'*



If this is really the case, then why does the Draft Strategy contain no reference to Justice Evatt's landmark 1996 recommendations on Aboriginal heritage protection in her *Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984*? This work has always been recognised as providing world's best practice recommendations.

FARA would also like to hear whether the Commonwealth Government intends to take any concrete steps to strengthen Aboriginal heritage protection under Federal ATSHIP Act? FARA is familiar with the circumstances of urgent ATSHIP Act applications by Burrup custodians Wilfred Hicks and Tim Douglas, who in 2007 sought a s 9 ministerial injunction on Pluto B works, and the s 10 establishment of an inquiry into the area's heritage values. Their solicitor received the following brief reply to the s 9 application (by fax) three days after the pre-election dissolution of parliament in October 2007, not from Minister Turnbull, but from John Cobb, Assistant Minister for Environment and MP for Parkes:

I have carefully considered the evidence you and others have presented for my consideration and decision. Based on this evidence, I am not satisfied that Site B [sic] is a significant Aboriginal area within the meaning of the Act.

Apart from the obvious perversity of this conclusion, it is of concern that the Minister failed to respond in a timely manner to these two urgent applications: the s 10 inquiry into the area's obvious heritage values was never established.

The Draft Strategy states,

*In late 2013, the Australian and state governments began working in partnership to deliver 'one stop shops' by accrediting state planning systems to manage environmental assessment and approval processes for nationally protected matters under the EPBC Act. The goal of this approach is to simplify the approvals process for businesses, lead to swifter decisions and improve cooperation while maintaining high environmental standards.*

*One of the common criticisms of this system is that it results in much complexity, confusion and inconsistency. There is great potential for benefits to be experienced through similar government 'one stop shop' alignments across the heritage sector. On the other end of the spectrum, there is recognition that important heritage matters are not being appropriately considered in some government policies and decisions. Partnership led actions should aim to strike the right balance of recognising the benefits of heritage whilst minimising any unnecessary burden upon those who are responsible for managing heritage assets.*

**Commitment:**





*Develop one stop shop streamlining of processes to make it easier to navigate heritage regulations.*

Such passages in the Draft Strategy are of great concern to FARA because they seem to presage the Commonwealth Government's intention to outsource its responsibilities for the protection of Aboriginal heritage to State Governments. By further weakening already slender protection for Western Australian Aboriginal cultural heritage under State and Commonwealth legislation, there could be more potentially disastrous consequences than have already been the case.

### **The Western Australian Aboriginal heritage protection regime**

Before the Commonwealth considers divesting itself of its responsibilities for the protection of Aboriginal cultural heritage and leaving them to the Western Australian State Government, it should be fully cognisant of the actual dysfunctional nature of the Western Australian Aboriginal heritage protection regime, which has been the subject of wide negative public comment by heritage professionals and Aboriginal people. See especially:

- Submissions to WA's 2012 Review of the Aboriginal Heritage Act (<http://www.daa.wa.gov.au/en/Heritage-and-Culture/Aboriginal-heritage/Heritage-Act-Reform/Submissions/>), especially by the Australian Anthropological Society, Professor Sally Morgan, Professor Mick Dodson, Slim Parker, Goldfields Land and Sea Council, Australian Archaeological Consultants Association, UWA Archaeology, Kimberley Land Council, Anthropological Society of Western Australia, ICOMOS Australia, Southwest Aboriginal Land and Sea Council, National Trust (WA), Yamartji Malpa Aboriginal Corporation, Stephen Walker, National Native Title Council and Stephen Bennetts
- The 2014 Barnsby report<sup>5</sup>

In a devastating critique of WA's 1972 Aboriginal Heritage Act, native title lawyer David Ritter has argued that:

it is a myth, expressed by the objects of the Aboriginal Heritage Act, that the main purpose of the legislation is to protect Aboriginal heritage. It may be more accurate to describe the AHA as an act to regularize the obliteration of Aboriginal heritage...The result is that the

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<sup>5</sup> <http://www.robinchapple.com/effectiveness-aboriginal-heritage-act-1972-maddison-barsnsby>



colonizing power can continue to do with Aboriginal places and materials exactly as it wants.<sup>6</sup>

The current provisions for the legalised 'disturbance' of any Aboriginal site in WA under s 18 of Western Australia's Aboriginal Heritage Act were promulgated in 1972, before the Federal *Racial Discrimination Act 1975* (Cth), the *Native Title Act 1993* (Cth) and Justice Elizabeth Evatt's benchmark 1996 recommendations for reform of State and Commonwealth Aboriginal heritage regimes. The AHA is thus currently inconsistent with all three (Ritter op cit).

Under the AHA, 'a landowner' (including the mere holder of a mining lease) has the right to appeal a s 18 ministerial decision, whereas the traditional owner or native titleholder of the heritage site to be 'disturbed' does not. It is an open secret among many WA lawyers that s 18 in this way almost certainly breaches the Commonwealth *Racial Discrimination Act 1975* (and consequently may also breach s 109 of the Australian Constitution, thus potentially opening the way for future litigation about the constitutionality of s 18: Ritter, 2003, 204 fn 63).

The AHA and current DAA processes are similarly inconsistent with the *Native Title Act 1993*. For instance, there is no recognition of Aboriginal people's native title rights to protect their heritage, which as native title lawyer David Ritter has argued, are clearly an incident of native title (Ritter op cit). Despite recent statements by the current WA Government that it proposes to amend the AHA this year, there is no evidence that it intends to introduce amendments which would make it consistent with the RDA, or the NTA, or to implement the recommendations of the Evatt report.

Following the State Government's 2012 AHA review process, the Department of Aboriginal Affairs (DAA) has introduced a series of 'administrative changes' which have had the effect of further eroding protection for WA's Aboriginal cultural heritage. In recent attempts to 'clean up' the DAA site register, there is clear evidence of a wholesale (and legally dubious) process in which Aboriginal heritage sites are being downgraded to 'Other Heritage Places', and which are no longer considered to enjoy protection of WA's Aboriginal Heritage Act. See for instance UWA archaeologist Dr Vicki Winton's account on the ABC Science Show of how recent DAA 'administrative changes' have undermined heritage protection for the highly significant Wilgie Mia Ochre site in WA's Murchison region:

<http://www.abc.net.au/radionational/programs/scienceshow/wa-traditional-sites-lose-protection/4916150>

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<sup>6</sup> Ritter, D (2003) 'Trashing Heritage: Dilemmas of Rights and Power in the Operation of Western Australia's Heritage Legislation' in C. Choo and S. Hollbach (eds), *Studies in Western Australian History*, 23, 195-209. Available at: <http://www.dampierrockart.net/Studies.html>



Given the State Government's poor record on heritage protection and its apparent symbiotic unity at times with the WA mining industry, there is real doubt that DAA as it now stands can administer Aboriginal heritage processes independently and appropriately. Given the degree of political interference in heritage matters which the mining industry has been able to exercise under successive Liberal and Labor State Governments in Western Australia,<sup>7</sup> it would need to be demonstrated for instance that individual DAA sites could not be inappropriately deregistered in response to pressure by mining companies or the Department of State Development to do so. There is already some evidence that such processes of 'deregistration by stealth' are in fact taking place at the moment: (see for instance a recent Parliamentary Question on this issue).<sup>8</sup>

Within Aboriginal cultural tradition, some specific landforms such as hills, lakes and rivers are regarded as sacred sites, yet there is evidence that many such previously recorded sites are currently being systematically expunged from the DAA Register on the extraordinary basis that natural features cannot be classed as Aboriginal sites.

In a 2007 report on her review of DIA (now DAA), Dawn Casey noted that:

The DIA acknowledges that the result of their inability to effectively monitor or enforce the state's heritage protection regime has led to a distrust and lack of confidence by the Indigenous community in the DIA, and the state government generally. The DIA recognise that the agency is seen as facilitating the destruction of Aboriginal sites by developers [under s 18 of the AHA] and is incapable of monitoring their conduct.<sup>9</sup>

In another damning report on DIA in 2011, the WA Auditor General noted that:

DIA has not actively monitored if operators are meeting the conditions placed on them under the *Aboriginal Heritage Act 1972* (AH Act). This means that registered Aboriginal heritage sites could have been lost or destroyed without the State knowing or taking action.

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<sup>7</sup> For a detailed summary of the relevant case history, see: Chaloner, T 2004 *The Aboriginal Heritage Act 1972: a clash of two cultures; a conflict between two laws*. Available at:

<http://www.dampierrockart.net/Studies.html>

<sup>8</sup> <http://robinchapple.com/sites/default/files/2012-05-02%20QON%20DIA%20Site%20Deregistering.pdf>

<sup>9</sup> Casey, D 2007 *Report of the Review of the Department of Indigenous Affairs* p 82. Available at <http://www.dampierrockart.net/Aboriginal%20Department%20Review%20Report.pdf>



As part of gaining approval to mine, proponents must meet the requirements of Section 18 of the AH Act. This Act aims to ensure that Aboriginal cultural heritage in WA is identified, managed and preserved....

We found that DIA has only undertaken inspections of heritage sites when responding to complaints it received, but has taken no enforcement action when it has found non-compliance.

Because DIA has not been actively monitoring compliance with Aboriginal heritage conditions, it does not know the actual incidence of breaches of those conditions. In the last two years, it received 28 complaints related to the impact of mining on Aboriginal heritage. Of these, 21 are either still being investigated or awaiting investigation. Three have been closed with no further action taken and one referred to the State Administrative Tribunal. Three could not be investigated because they were more than 12 months old. The complaints involved alleged removal of rock art, mining within a significant site, building infrastructure on a significant site and failing to appropriately liaise with traditional owners.

Seven cases were self-reported by operators.

DIA did not review all compliance reports required from mine operators in a timely manner. Nor did it effectively follow up those who had not provided reports. Most reports were received late or not at all.

For instance, in 2009 the Minister approved (under Section 18 of the AH Act) 114 applications to develop land on which an Aboriginal heritage site existed. The proponents of 62 of these applications were required to report to DIA on progress and heritage issues but only 28 (45 per cent) have done so. This low level of reporting and the fact that DIA does not review all the reports it receives, reduces DIA's understanding of the levels of operator compliance with conditions.<sup>10</sup>

The wide scope given to ministerial discretion under the current AH Act regime has opened the door to frequent political interference by developers and their lobbyists in the WA heritage process, and has led to a large number of recent high profile cases which have undermined public confidence in the independence and impartiality of the State's heritage protection regime. Some recent examples are:

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<sup>10</sup> [http://www.audit.wa.gov.au/reports/pdfreports/report2011\\_08.pdf](http://www.audit.wa.gov.au/reports/pdfreports/report2011_08.pdf), p 23



- The lifting in 2006, of the heritage protected status of a sensitive rock art area in the Pilbara's Abydos/Woodstock region to allow FMG to construct a railway line through the area, following lobbying of the State (Labor) Government by FMG lobbyists Julian Grill and Brian Burke, in circumstances later investigated by WA's Corruption and Crime Commission;<sup>11</sup>
- The 2006-7 controversy over Woodside's clearance of rock art from the world's oldest and largest rock art gallery, the Burrup Peninsula in the Dampier Archipelago, to make way for its Pluto LNG plant;<sup>12</sup>
- FMG's successful 2011 lobbying of the Minister to lift conditions obliging FMG to avoid disturbing Yindjibarndi grave sites in the region of FMG's Solomon Hub project. The fact that the Minister had recently publicly stated his friendship for FMG Director Andrew Forrest led to widespread media commentary on the Minister's perceived lack of independence. As in the findings of the 2011 Auditor General's report, the State Government's prosecution of alleged serious breaches of the AHA by two of these companies since these events has been less than zealous.<sup>13</sup>
- Recent threats to Aboriginal burial sites, sacred sites and prehistoric dinosaur tracks posed by the James Price Point LNG development (still being promoted by the WA Government, although abandoned by the proponent Woodside).

A great deal of heritage work in WA, especially under s 18 of the AHA, is carried out by heritage professionals who are directly engaged by company proponents, and this has led at times to doubts about their professional independence.<sup>14</sup> One recent case suggests that the independence of these expert reports is easily subverted under the current system in WA. In a 2011 letter to the DIA Registrar, an archaeological consultant who had been engaged by a well-known mining company stated that the company had refused to pay her invoice for professional services until she

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<sup>11</sup> See the CCC's 2009 *Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons: Fortescue Metals Group*:

[http://www.ccc.wa.gov.au/Publications/Reports/Documents/Published%20Reports/2009/CCC%20-%20Activities%20of%20Lobbyists%20\(FMG\).pdf](http://www.ccc.wa.gov.au/Publications/Reports/Documents/Published%20Reports/2009/CCC%20-%20Activities%20of%20Lobbyists%20(FMG).pdf)

<sup>12</sup> Bennetts, S 2007 'The Burrup Gets Burked' in *Australian Anthropological Society Newsletter* 106 (June 2007) pp 1-3. Available at: <http://www.dampierrockart.net/Studies.html>.

<sup>13</sup> See the Minister's response at <http://robinchapple.com/sites/default/files/2012-05-02%20QON%20investigations%20DIA.pdf>

<sup>14</sup> See Dr Phillip Moore's classic paper on WA's 'heritage industry' in Moore, P 'Anthropological practice and Aboriginal heritage (a case study from WA)' in Toussaint, S. & Taylor, J (1999) (eds) *Applied anthropology in Australasia*, UWA Nedlands, 229-254. Available at: <http://www.dampierrockart.net/Studies.html>).



had removed certain passages from her supposedly independent heritage report.<sup>15</sup> Again, the State Government's conspicuous lack of zeal in pursuing the mining company concerned over this issue is obvious from a series of recent parliamentary questions on this issue, including the one quoted above.

One particularly telling example of the DAA bureaucracy's perceived lack of political independence from the State's mining industry should also be highlighted. One of the strongest advocates in the State Government for unrestrained development at the expense of Aboriginal heritage protection has been the Department of State Development (DSD, formerly Department of Industry and Resources). The fact that a recent DAA Deputy Director General and recent Manager of Heritage Services were both former DSD bureaucrats naturally undermines confidence in DAA's current ability to impartially manage the State's Aboriginal heritage, and has also provoked speculation that heritage decisions could be inappropriately influenced from within DAA by DSD's own ideology of 'development at all costs'.<sup>16</sup>

In contrast to DAA, the Northern Territory's AAPA was established as an independent statutory body under the Aboriginal Sacred Sites Protection Act (NT), with a Board of Aboriginal people which has had some of the most senior Law Men and Women in the NT as members. Although the Board advises AAPA on general heritage matters, it does not have the same administrative functions as the ACMC in directly advising the Minister on specific heritage applications like those under s 18 of the AHA. The AAPA also has far stronger powers to protect heritage sites by regulating development under the AAPA's Authority certificate regime, as well as a far better record of prosecutions for site violations than is the case under the AHA in WA.

It is clear that Commonwealth repatriation of its current Aboriginal heritage protection responsibilities to Western Australia's State Government could produce significant legal, political and international reputational challenges for the Commonwealth, as high impact projects are undertaken by the WA State Government without appropriate Federal heritage oversight. This in turn could impinge on the Commonwealth Government's stated ambition of continuing to maintain credibility on cultural heritage matters in UNESCO and other international fora.

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<sup>15</sup> <http://yindjibarndi.org.au/yindjibarndi/wp-content/uploads/2011/11/b-Sue-Singleton-to-Registrar.pdf>).

<sup>16</sup> Another example of the at times inappropriately cosy relationship between industry and Government in relation to heritage matters is the case of former EPA chief Barry Carbon, employed as Woodside's negotiator with the Federal Government on the Pluto project until resigning in August 2006 to take up his old position as EPA head for three months (at the precise moment that Woodside's Pluto B application was being considered by EPA).



## Other comments on Draft Strategy

*Promote 'ask first' indigenous consultation guidelines*

FARA supports this objective

*Ensure Indigenous Australians have a central role in decision making relating to their heritage while providing protection for traditional areas, objects and languages.*

FARA supports this objective

*Foster greater collaboration between heritage and tourism sectors... Encourage new ways in which innovative tourism experiences can be developed to encourage greater engagement with the cultural aspects of our heritage places, such as can be currently experienced at Uluru-Kata Tjuta and Kakadu National Parks. 23*

FARA has been a pioneer of sustainable cultural tourism on the Burrup Peninsula, and feels more should be done to promote such initiatives, also as a way of generating income for local Aboriginal people. The World Heritage listing of the Dampier Archipelago would provide a much-needed impetus to cultural tourism in the area and could potentially provide cultural tourism opportunities on a level comparable to those currently provided at Uluru-Kata Tjuta and Kakadu National Parks.

*Encourage greater visitation to National Heritage places by enhancing the Australian Government web site to better tell the stories of these places and investigate ways of further promoting these places with tourism bodies.*

The current interpretive framework provided at the Murujuga National Park is woefully inadequate to the potential of this globally significant cultural site and represents a lost opportunity for educating the public about the site's enormous global cultural significance.

*Build a more comprehensive understanding of the condition of our collective national heritage.*

FARA has long advocated a detailed inventory study of the rock art of the Dampier Archipelago, but to date the response from Commonwealth and State Government has not led to any movement in on this critical step.



## Australian Government

*The Australian Government's administrative roles and responsibilities for heritage are defined in the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and other Australian Government legislation and in various intergovernmental agreements with the states and territories. The states and territories and local government have their own heritage policies and legislation. Indigenous heritage is often managed under special legislation or as part of native title law.*

As stated previously, WA's AH Act and current DAA processes in relation to Aboriginal cultural heritage protection appear inconsistent with the Racial Discrimination Act and Native Title law.

*Contribute to international heritage standard setting and guidance and supporting our region to engage with, and share in the cultural, economic and social benefits of World Heritage recognition and protection.*

This objective would be promoted by listing the Dampier Archipelago including Burrup Peninsula rock art as a World Heritage site, and thus recognising its global significance to humanity.