



# PURFLEET-TAREE LOCAL ABORIGINAL LAND COUNCIL



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DEWHA

17 SEP 2009

Heritage Division

## Submission Re: Indigenous Heritage Law reform (for discussion August 2009)

Proposal 1: The government should consider more vigorous support for the return of cultural artefacts and human remains from international and local museums and institutions. For small (if any \$) cost successive Australian governments could act in a more conciliatory way towards Indigenous Australians regarding the return of stolen remains, bones, skulls and such as well as (what are often) secret/sacred artefacts with strong cultural value.

Proposal 2: Question 2.2: The government may like to consider the inclusion, recognition and protection of customary places, massacre sites, discrete communities and cemeteries, (old) missions, etc. These sites often have historical as well as (living) cultural and socio-personal worth.

Proposal 3: To whom is the Minister responsible, to prevent or mitigate against arbitrary application of power/authority?

Proposal 4: Nil suggestions.

Proposal 5: The rights of and consultation with, individuals (such as Traditional Land Owners, Cultural Custodians and Law-Keepers) as well as with organisations, which often do not have community support due to family manipulation and nepotism need to be considered. 5.5: Prescribed bodies do NOT necessarily represent the best interests of community members, families and individuals, due to long-standing internecine disputes, abuses of power, manipulation of the democratic (voting) structure and unequal power/gender dynamics.

Proposal 6: 6.2: Fairness may be applied IF the ILUA genuinely meets the needs of TO's and others. 6.5: ILUA's would not necessarily be made stronger, or more effective in their application, under this proposal. Such an ILUA has the potential to adversely disenfranchise and marginalise many within communities.

Proposal 7: 7.2: Jurisdiction should be Commonwealth, to unify throughout the entire country, the reporting process, instead of having several separate and potentially divisive and ineffective pieces of State legislation. 7.3: Commonwealth legislation must not be applied arbitrarily, nor should it ever be used against the wishes of appropriate cultural custodians and TO's, as appears to be the case with the Northern Territory Intervention of the Howard Government, supported by the current Rudd Government. If there is a single

piece of Commonwealth legislation, this would bind all States, reducing or minimising duplication, obfuscation and partisan interpretation.

Proposal 8: 8.1: The proposal should be federal to prevent duplication and confusion. It also should have effective and transparent checks and balances to prevent partisan politicking.

Proposal 9: Gender, gendered rights to Country and gendered knowledge must be acknowledged and protected through appropriate consultative legislation. For an example of past abuses of this Indigenous gender-imperative, refer to the Hindmarsh Island fiasco involving the Ngarrindjerri, where 'Women's Business' was read publicly by a male and accessed freely by the wrong gender, representing a failure to acknowledge the gendered nature of the 'traditional' Australian landscape. All processes and engagement MUST be cognisant at all times and at all levels of government and interaction with individuals and organisations (such as LALC's) of the absolute need for gender separation throughout all interrogative, communicative and resolution processes.

Proposal 10: 10.1: The problem with conferences (talk-fests) is that they are usually filled with the same old faces saying the same old things, hence effective decision-making and appropriate change is either moot, or (it appears to the cynical observer) that decisions have already been made elsewhere and the purpose of a conference is to ratify same.

An additional concern with conferences, are that the cost to individuals and LALC's of attending or sending representatives, becomes prohibitive, leading to the same-old syndrome.

Representatives from isolated communities may not hear of such conferences and even when they do, distance and cost frequently prevents attendance and input.

Is there to be consideration of gender/sensitivities? If not, why not, since gendered knowledge/information will not be disclosed to participants at a mixed gender conference.

10.3: Issues may be resolved at conferences IF they are accessible to all interested parties and IF they are gender sensitive. 10.4: No.

Proposal 11: 11.1: Is there a penalty or other form of censure for breaches of confidentiality? If not, why not?

Proposal 12: Clearly a short-term protection order must receive urgent attention, however a delay of only 48 hours in development or destruction of a site may be little more than a minor irritation to a developer, or other entity, with more to gain from destruction than preservation. For an example see the failed Iron-Gates development adjacent to Bundjalung National Park, Northern NSW. Time must be allocated for communication to all interested parties, especially those who are hampered by distance, for whom English is a poorly understood foreign language, for those immersed in poverty and disadvantage, isolated by geography and lack of communicative technology (internet) and those who lack the education or skills to complete (let alone understand) what are frequently complex demands and documentation. Perhaps consideration should be given to the issuance of an interim protection order of longer than 48 hours, with a graduated (\$) scale of penalties for any breach, prior to full consultation and prior to receipt of objections or support, to ensure protection of sites and artefacts such as 'Scarred Trees'. 12.7: All TO's, all Lawmen/women, Elders and Elder's representative groups require acknowledgement and consultation.

Proposal 13: Instead of making the consultative process 'optional' as in 'could be consulted' perhaps consideration for 'would be consulted' may work better with Indigenous Australians who can ill afford the additional loss of culture. 13.2: It is vital that an independent arbiter be appointed, who is beyond party politics of the day, who can consider the broader socio-cultural, racial and historical picture and who is accountable directly to the Australian People and appropriate/authorised Cultural Custodians, not only to the (partisan) government of the day.

Proposal 14: Repair of (wilful or accidental) damage is often factored into development budgets, as are (\$) penalties, which are contemporarily far less than potential deviations from a planned route, or development. It is more cost-effective to destroy and risk a (relatively) small (\$) penalty than to conserve through cultural responsibility. Again, refer to the failed Iron Gates development, where the developer deliberately deviated from a council approved road plan to destroy several very important Scarred Trees, because the penalty for destruction was consider minor compared to the cost of preservation. Fines are cheap and penalties often of little concern to developers and so-called 'big business'.

Regards,



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