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The shifting sands of Aboriginal cultural heritage management in Western Australia

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Aboriginal cultural heritage management (CHM) in Western Australia (WA) is epitomised by contradictions. Highly significant Aboriginal cultural sites and widespread Native Title rights are pitted against laissez-faire regulation and powerful economic forces. This is a state where colonial dynasties still flex political muscle, but also the state that 52 years ago launched the most progressive Indigenous heritage legislation of its time. It is the place where numerous ancient occupation sites have been excavated and dated but are literally not counted (most are still in the ‘grey literature’), and where such sites have been legally destroyed, also in unknown quantities. And in 2023, it was the place where five years of legislative reform was suddenly disowned by the same Government that crafted it.



Despite—or even because of—these contradictions, there can be optimism about the ways archaeological heritage will be managed in future. As a turning point in the state’s history of CHM, the start of 2024 is a fitting juncture to reflect on the last 50-odd years as guidance for archaeology in WA in the next 50 years, especially as these factors have parallels across Australia.

In 1969, Aboriginal anger about the commercial extraction of sacred stones from the Weebo area in the WA Goldfields sparked public outcry and justified the passing of WA’s first heritage law, the *Aboriginal Heritage Act 1972* (Herriman 2016). Co-developed by anthropologist Ronald Berndt, the 1972 Act considered the intangible and the tangible: it recognised spiritual, social, aesthetic, scientific, and historical dimensions of sites, unlike the relics-focused heritage laws of other states at the time. The traditional beliefs of Aboriginal people (as evaluated by a government committee) were to be the primary factor in the identification of Aboriginal heritage.

Perceived as a threat to development, the 1972 Act underwent major amendments: in 1980, while enabling drilling through the Noonkanbah sacred site, a Liberal government added a nebulous qualifier ‘of significance’, required to define any place as a site; in 1992, despite Traditional Owner opposition, a Labor government excluded the Marandoo mine from the Act to retrospectively excuse Hamersley Iron from breaching the law; and in 1995, another Liberal government assumed administration of the Act, previously managed by the WA Museum as an independent body. However, the Commonwealth’s *Native Title Act 1993* restored some balance, as land users now had to respect Native Title claimants’ interests. Major companies, recognising the politically unsustainable costs of avoiding compliance, became openly supportive of protection and recognition of Aboriginal heritage, including archaeological sites.

WA’s mining boom in the 2000s required unprecedented growth in archaeology and its community of practice. Aboriginal people worked with archaeologists and anthropologists on hundreds of surveys, developing shared expertise in the design and conduct of fieldwork. Thousands of new sites were documented, although only a fraction were officially reported due to the wrapping of CHM in Native Title and commercial activity. A volume reporting some of the new findings addressed the concern that much of this new knowledge was not being disseminated (Morse and White 2009).

During this boom, a new Liberal-Nationals government commissioned anthropologist John Avery to define heritage more narrowly under the 1972 Act, so that fewer sites could be registered. The review reversed earlier site identifications, de-registering some sacred sites because they were not places where ceremony was conducted—a principle

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overtaken in Supreme Court action by the Traditional Owners for one site. At the same time, 3200 archaeological sites were de-registered, many in active development areas (Dortch and Sapienza 2016). Unknown numbers of these had been impacted with Ministerial consent under s18 of the 1972 Act, but about half still existed, having been quietly converted to ‘non-sites’ by public servants with no Aboriginal oversight. The destructive stance was also illustrated by the Minister’s approval of destruction of the Juukan-2 rockshelter in 2013, at that point believed to be ‘only’ 20,000 years old (Slack et al. 2009). The same government attempted to change the 1972 Act, but the 2014 Amendment Bill was unsuccessful, due to Aboriginal protests and the WA Nationals breaking ranks with their Liberal colleagues.

It took the next Labor government to change the law altogether, passing the *Aboriginal Cultural Heritage Act 2021*. Despite five years of consultations prior to implementation in July 2023, the 2021 Act contained few features wanted by Aboriginal people, although at least it allowed for Traditional Owner identification of heritage, and their inclusion in decision-making about impacts. However, the 2021 Act allowed no right of review for any approval to impact. Its complex regulations addressed myriad activities that can impact heritage but offered little guidance on the conduct of surveys. Highly prescriptive, with rushed communication, the regulations scared landowners. Relentless reporting by Seven West Media (whose owner has significant development and resources interests) centred on the vague survey obligations and landowners’ perceived loss of access to land if sites were found. In August 2023, the Premier announced the 2021 Act would be repealed, and the 1972 Act reinstated with amendments—among them, the right for affected Aboriginal parties to seek review of an impact approval. Now passed, this is the first ‘review right’ offered to Aboriginal people by an Australian heritage act.

What this history shows is that governments and the interests of large businesses are deeply enmeshed and will be so well into the future. This is no surprise to any observer of Australian politics. But perhaps overlooked is that for 50 years, every positive change in the management of WA’s Aboriginal heritage was initiated by Aboriginal people, and then spread to the wider community, from the protests about Weebo in 1969 to the resistance to the 2014 amendment bill. Aboriginal concerns about the 2021 Act perhaps made it easier for the Government to disown this political liability and to propose a review right.

Even catastrophic decisions, from Nookanbah to Juukan, have catalysed Aboriginal activism and self-determination. Movements that have formed recently include the annual Yule River meetings in the Pilbara, the Aboriginal Heritage Action Alliance, and the national First Nations Heritage Protection Alliance. Aboriginal land councils and local corporations now assert more rights in managing heritage for their peoples. The few positive elements of the 2021 Act, and the few critical amendments to the 1972 Act, reflect Aboriginal aspirations. In these respects, the moral authority for Aboriginal people to make decisions about their heritage is no longer contested by governments.

Archaeologists and anthropologists have also articulated their concerns throughout these events, but for the last 15–20 years, state governments have mostly ignored professional advice that challenges business interests and have even used local media to portray heritage professionals as the enemy of Aboriginal self-determination (*The West Australian* 26 November 2014). This ‘othering’ is effective. The current Government’s determination to reinstate the old Act with new Regulations as soon as possible, with an advisory body that included seven industry peak bodies, three government agencies, but just four of the 70-plus Aboriginal corporations in WA, and no heritage professionals, created a strong sense of *déjà vu* and suggested that the fundamental threats to the protection of Aboriginal heritage will continue. WA may be extreme, but similar experiences are felt nationally (McConnell et al. 2021).

To counter these threats, archaeologists and anthropologists Australia-wide have no option but to strengthen their support for Indigenous interests. This will build on existing relationships. Community collaborations are now the norm in archaeological research. Many archaeologists are engaged by Indigenous corporations to undertake their CHM. Our discipline’s origins as a study of cultures mostly distinct from one’s own is merging into the study and conservation of shared heritage.

Suggested here is a fourfold response that in the right circumstances could unfold over coming years, drawing inspiration from the *Uluru Statement from the Heart*. The first three of these responses are well-accepted and should advance even further in coming decades; the fourth is a work in progress.

First, there is truth-telling—archaeological narratives are regularly subverted to support political interests. Neutrality should not be an option, since it enables misinformation (as seen whenever Indigenous rights are discussed). Archaeologists can instead strive for objectivity, not merely to negate misinformation, but also to promote scientific understanding of Indigenous heritage. In research

and in CHM, we do not have to agree with Indigenous collaborators, but respectful discourse can include finding common ground in research and in the identification of significant heritage.

Second, archaeologists should continue to recognise and include Indigenous expertise in land and culture, and in CHM practice, from the field to the boardroom. However, other questions may concern archaeologists, and especially the Australian Archaeological Association Inc., in the future: will there be a nationally recognised curriculum on heritage that includes Indigenous knowledge and methods? Will funding agencies encourage the inclusion of Indigenous knowledge and project design, as now occurs in New Zealand? Can we agree on higher standards to protect heritage through voluntary standards such as ethics certification for developers?

Third, we need to expand participation. Many Indigenous people wish for their archaeologies to be investigated further, expressing the desire to emulate the archaeological profile of other countries. Communities will continue to initiate or engage in ground-breaking research where there is respect for all parties. Australian archaeologists have done much in this area: we should keep up the good work.

The fourth and hardest goal is developing a shared sense of the value of Indigenous heritage for all Australians. Widespread public recognition of Indigenous history is needed. The Uluru Statement offers the inclusion of Indigenous history in Australian nationhood. Australians can appreciate

and protect Indigenous heritage whether they are Indigenous or not, and they do not have to treat it as the heritage of 'the other'. Australians have already advanced part-way in this goal. The next 50 years may see us advance all the way.

Disclosure statement

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