

## **Reform of the Aboriginal Cultural Heritage Act: Summary of main points in FARA's submission on the draft 2020 Bill**

**FARA welcomes the development of new Aboriginal Cultural Heritage (ACH) legislation to replace the very outdated 1972 Aboriginal Heritage Act, and we certainly support the intention to improve the situation for Aboriginal cultural heritage.**

**However, while people might think that the Bill's primary goal is to protect and preserve Aboriginal cultural heritage, the draft Bill's current focus is to manage harm to cultural heritage! Shouldn't we aim to protect this irreplaceable cultural heritage, rather than just manage its destruction?**

**FARA is very concerned about the conflict of interest between the 2 portfolios of Minister Ben Wyatt, who is both Minister for Aboriginal Affairs and Treasurer, in a state dominated by mining especially in the Pilbara. This conflict may explain why the Bill's objectives don't explicitly include the need to care for, conserve and manage Aboriginal cultural heritage! Has Minister Wyatt been so busy balancing the budget that he doesn't realize the Bill will allow the mining and industrial sectors to continue to profit at the expense of Aboriginal cultural heritage, while calling it 'self-determination'?**

**Fundamentally, the Bill shifts the State's regulatory burden and responsibility to Indigenous people, without giving them enough money, technical assistance, or real decision-making POWER. This perpetuates the very unequal relationship between them and the extremely well-resourced mining and industry sectors. This Bill will likely disempower Aboriginal people from preserving and protecting their rich cultural heritage.**

**FARA is very concerned about these and other shortcomings of the Bill, as are many Aboriginal custodians and professional archeologists who have worked for decades in the field of cultural heritage.**

**The Bill requires substantive clarification and major amendments, such as:**

- including requirements to identify and assess cultural heritage early in the project planning process, and certainly before making agreements to manage harm!**
- providing adequate and ongoing funding and resources for the ACH Council and Local ACH Services – this could be done by creating a LEVY on large-development projects and establishing a public fund**
- giving Local ACH Services (LACHS) the power to make decisions about identifying and evaluating Aboriginal cultural heritage**
- establishing equal rights of review – the Bill clearly favours proponents and the Minister over Aboriginal custodians, especially relating to ACH permits, management plans and Protected Areas recommendations**
- require that the ACH Council and State Administrative Tribunal (SAT) include Aboriginal members, with cultural authority and heritage knowledge and experience, who are able to comment on cultural matters**
- including objectives to encourage the enhancement and understanding of the cultural significance of cultural heritage**
- and so much more ... as the Aboriginal custodians and cultural heritage professionals have clearly stated in their submissions**

**FARA is extremely concerned about the rushed time frame for writing and commenting on the draft Bill, and the lack of direct involvement of Aboriginal people in drafting the Bill – why wasn't this important piece of legislation given the adequate time, consideration and the respect that it deserves? Given the debacle of Juukan Gorge, we can't miss this vital opportunity to stand up for and protect our nation's Aboriginal cultural heritage.**

**Rather than leading to improved conservation or management of Aboriginal cultural heritage, the draft Bill will likely:**

- **ensure a continuation of the extreme power and resource imbalance between Indigenous groups charged with regulating cultural heritage and the very well-funded mining and industrial sectors, supported by the advantageous economic policies of the State and Commonwealth Governments**
- **ensure the continuation of routine sacrificing of Aboriginal cultural heritage for mining, industry and other activities, especially those promoted by the State of Western Australia.**

**The draft ACH Bill 2020 requires a major rewrite that directly involves Indigenous cultural advisers and gives them power in making and reviewing decisions, so that Aboriginal cultural heritage will be truly protected and preserved into the future, as part of our shared national heritage.**

**Links to press releases and other coverage relating to the draft Bill:**

**Evidence that the 1972 Bill has enabled damage to Aboriginal cultural heritage in WA**  
<https://auspublaw.org/2020/09/sorry-not-sorry-the-operation-of-was-aboriginal-heritage-act/>

**Indigenous people have expressed their concerns about the proposed Bill:**  
<https://www.abc.net.au/news/2020-09-08/juukan-gorge-repeat-possible-under-proposed-wa-law-leaders/12639846>

**Heritage professionals, archaeologists, anthropologists and solicitors have expressed their deep concerns about the Bill's inadequacies and shortcomings:**  
<https://australianarchaeologicalassociation.com.au/aaa-news/>

**Interview with Barrister Greg McIntyre Re Federal enquiry into Juukan Gorge disaster**  
<https://www.abc.net.au/radionational/programs/breakfast/traditional-owners-of-juukan/12753342>

**Interview with Marie Ferland (FARA) Re Aboriginal cultural heritage (ABC Pilbara radio):**  
To be broadcast Wednesday morning: 14/10/20