SUBMISSION OF PETER JOHN GIFFORD TO THE GOVERNMENT OF WESTERN AUSTRALIA REGARDING POTENTIAL CHANGES TO THE ABORIGINAL HERITAGE ACT (1972)

I am a semi-retired ethnographer and ethno-historian, with a doctorate and first class honours degree in Australian history from Murdoch University, and undergraduate prizes in history from Murdoch and the University of Adelaide.

From 1993, when I was the first ethno-historian appointed by the Western Australian Museum's then Department of Aboriginal Sites, I have been interested in the working and administration of the Aboriginal Heritage Act (1972), which I believe can be revised and if necessary rewritten to provide better and wider ranging protection for Aboriginal heritage in general. My experience since 1993 has involved working with Aboriginal people throughout Western Australia in the areas of oral history and native title research, and in the compilation of numerous reports commissioned by both private and government agencies concerning Aboriginal sites and thus the Aboriginal Heritage Act (AHA).

Like many of my colleagues in the disciplines of anthropology and archaeology, I viewed with considerable concern the Barnett Government's attempts to revise the AHA, which in my view came close to rendering the legislation irrelevant and useless, and hence I welcome the opportunity to offer some opinions on how the Act might instead be improved.

One of my specific concerns is with the question of penalties for offences under the Act, which was set up specifically in 1972 to recognise Aboriginal sites and objects as such, rather than merely part of heritage generally.

In particular, the legislation made it an offence to damage an Aboriginal site, even if unregistered or unlisted as such. But while a number of such offences have occurred over the years, there have been few if any prosecutions – partly because of the 12 month statute of limitations applying to the legislation, but mostly because of a lack of will among bureaucrats and politicians.

I consider that not only should such prosecutions be launched as a matter of course whenever violations of the Act are detected, but that the penalties involved should be substantially increased, to the point of including terms of imprisonment, so that such penalties will be seen as a genuine deterrent.

Likewise I believe that as a matter of course after the granting of applications under section 18 of the Act, State government officials be sent to inspect the sites involved to ensure that all section 18 requirements such as Aboriginal monitoring of such sites and rehabilitation of country are carried out properly. Penalties appropriate under the revised Act would apply in cases of non-compliance.

My concerns also include the function and working of the Aboriginal Cultural Material Committee (ACMC), which was originally comprised of Aboriginal and expert members such as qualified and experienced anthropologists, archaeologists and historians, with a departmental head as chair; when I started at the Sites Department, they would meet each month under its auspices and make recommendations to the Minister for Aboriginal Affairs as to

whether sites potentially endangered by development proposals could be damaged or destroyed.

A principal complaint about the ACMC, I understand, has always been that its Aboriginal members have come from throughout the State; this has led inevitably to Noongar people from the south-west, for example, being asked to decide on projects outside their home country in areas such as the Pilbara, and vice versa.

I understand this could have been at least partly revised by in effect localising Aboriginal committee member deliberations to projects and sites within their own areas. Instead what has happened gradually, and in particular under the Barnett Government, is that the ACMC itself has been sidelined and its membership diminished in expert terms.

While the situation at present is not as bad as under the previous administration, discussions with people still involved in Western Australian Aboriginal heritage matters indicate that there remains considerable room for improvement; it is not, and never has been, fair to Aboriginal members of the ACMC to be asked to consider matters concerning places outside their own traditional country, even with expert professional assistance.

This leads, at a more localised level, to the question of who should comprise the parties responsible for bringing matters requiring consideration under the AHA to the attention of the ACMC and ultimately the Minister.

Aboriginal people from throughout the State have since 1972 been selected on the basis of traditional knowledge and relationship to country, to take part in heritage surveys, usually with anthropologists, archaeologists or historians who collate and write the reports involved for consideration by the ACMC, on behalf of government or private clients whose development interests may involve seeking clearances under various sections of the Act.

One example of the selection process for such surveys is through the Noongar Standard Heritage Agreement (NSHA), which was negotiated by the South West Aboriginal Land and Sea Council (SWALSC), the Noongar Agreements Groups and the State Government "to ensure compliance with the Aboriginal Heritage Act and Regulations where a planned land-use activity may impact an Aboriginal site".

By its own definition, the NSHA provides:

- "a uniform and efficient approach to the conduct of Aboriginal heritage surveys
- streamlined land approvals in compliance with the Aboriginal Heritage Act 1972 and Aboriginal Heritage Regulations 1974;
- consistency with the WA Government's Aboriginal Heritage Due Diligence Guidelines
- all parties with a clear, timetabled framework about their various obligations
- [and] a process to ensure the submission of relevant site and Aboriginal object information for inclusion on the Register of places and objects - available via the Aboriginal Heritage Inquiry System".

In practice, however, I am reliably informed, by an experienced anthropological consultant, that:

> "Essentially how it now works is that whoever is at the SWALSC working party meetings self-select themselves when survey requests come across the table, despite

knowledge and connections. Anthropological advice and historical precedent play no part in this as SWALSC staff are bound to take direction from these working parties.

If a list of the working party representatives was obtained under F(reedom) O(f) I(information) and compared against lists sent out by SWALSC it would show that most people selected sit on these groups, or at least their close friends and immediate kin. It has nothing to do with knowledge or being an informant for sites.

Despite my protests they rarely select DPLH [Department of Planning, Lands and Heritage, with responsibility for Aboriginal heritage] informants … Also, membership of these boards seems to fail the test of having a direct link to an apical [ancestor] … the state has tried to make SWALSC the one stop shop where they are supposed to be an ethical body that determines heritage based upon research, however it is very obvious it's based upon political position only, corruption by the big man in the village syndrome."

This obviously corrupt situation could be rectified - as with prosecutions under the Act – by an expression of will; what needs to be done, as my erstwhile consultant colleague says, is simply for real selection guidelines involving genuine knowledge of country to be set in place – and followed – by government and land council officials.

The same guidelines should also be in place for all land councils in Western Australia, and for Aboriginal members of the ACMC charged with assessing AHA matters relating to their own traditional country, to remove any question of conflict of interest.

Again, thank you for the opportunity to express my views on these important matters.

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