
Covenanting Commission

Proposal 4: Protecting Aboriginal Heritage Sites

That the Synod resolve:

To acknowledge:

- a) **The global significance and the historical and ongoing importance of Aboriginal Heritage sites;**
- b) **The intangible importance of the cultural and spiritual connections Aboriginal people have to certain places;**
- c) **The advocacy and solidarity demonstrated by members of Congress and the Synod in attempting to protect sites like the Beeliar Wetlands, Swan Brewery and Noonkanbah Station as Aboriginal Heritage sites;**

To call on the Federal Government to

- d) **To urgently reform the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) and the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), in close consultation with impacted Aboriginal groups, to ensure adequate protection for Aboriginal Heritage sites;**
- e) **To ensure Traditional Owners and Knowledge Holders retain access to and control over Aboriginal Heritage sites.**

To call on the State Government to

- f) **Fast-track the reform of the Aboriginal Heritage Act 1972 (AH Act) in close consultation with impacted Aboriginal groups, ensuring sufficient penalties of deterrence in cases of non-compliance;**
- g) **Abolish the Section 18 exemptions and any other loopholes that allow the destruction of Aboriginal Heritage sites without the consent of Traditional Owners and Knowledge Holders.**

Mover: Rev Robbie Jetta

Seconder: Rev Steve Francis

Rationale:

The ongoing and continually renewing nature of the Covenant calls the Uniting Church to continually act to remove the systems and structures of discrimination and oppression in Australia.

We acknowledge that the destruction of significant Aboriginal Heritage sites is not only a loss to humanity, given their ancient archaeological significance, but is particularly injurious to Aboriginal people. For many Aboriginal people there is a deep sorrow at the loss of their history and culture when a site is destroyed and a deep hurt that their cultural tradition is not considered of greater value than profit focused activity. Together, Congress WA and the Uniting Church WA grieve the

loss of these artefacts that tell the stories and hold the history of Aboriginal people and their culture over tens of thousands of years.

Together we also acknowledge that, like in the Christian tradition where we have places of particular significance due to their prominence in the biblical tradition or church history, that Aboriginal heritage sites are more than archaeological in significance. They also hold particular cultural significance and can be places of important spiritual connection.

WA Aboriginal Heritage Act

The recent [demolition of the Juukan Gorge](#), an ancient Aboriginal heritage sight, by Rio Tinto has again highlighted the inadequacy of the Aboriginal Heritage Act (AH Act). The State Government have signalled their intention to reform and have [begun the consultation process](#) but there are frustrations at the amount of time this has been taking, especially considering this was a commitment made when in Opposition and that sites like Juukan Gorge are still being destroyed.

We propose that the Uniting Church WA calls for the fast-tracking of this process. This is not intended to short-cut the process but a call to immediately release the draft legislation and prioritise its passage through Parliament.

Under the Barnett Government, changes were proposed to the AH Act however they were not well received among many in the Aboriginal community. In response, the current Government has instigated a review which began in 2018 and included a [consultation paper](#), stakeholder meetings and written public submissions. In March 2019 a [discussion paper](#) was released for additional feedback. Further public consultation and stakeholder meetings were held, proposals were refined and feedback was received which guided direction for drafting a new Aboriginal Cultural Heritage Bill. There is now new legislation being drafted and intention for the draft Aboriginal Cultural Heritage bill to be released for public stakeholder consultation and comment. There should be no reason for this to be delayed.

Background – Overall context

The Aboriginal Heritage Act 1972 was put in place to protect and manage Aboriginal Heritage sites in Western Australia. Prior to this Act coming into effect, there was no way of protecting Aboriginal places of significance. Heritage sites are places that are valued for cultural reasons for example, stories and traditions, archaeological and scientific values and for aesthetic values¹. However this can be quite hard to assess. The question of how sites are defined and what sites are protected is increasingly relevant today especially as there is greater competition for land use.

There have been numerous examples of Aboriginal Heritage sites in WA being threatened or impacted by industry. This can often lead to the question, why weren't these places protected under the Act?

Federal Legislation

Aboriginal Heritage sites can also come under the Federal Government's Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSHP Act) which further intersects with the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

¹ <https://aboriginalheritagewa.com/papers/>

In a [recent review of the EPBC Act](#) by an independent reviewer, Professor Graeme Samuel AC, and an expert panel, it was deemed that EPBC Act is not fulfilling its objectives as they relate to the role of Indigenous Australians.

According to the review, the key reasons why the EPBC Act is not fulfilling its objectives are:

“There is a culture of tokenism and symbolism. Indigenous knowledge or views are not fully valued in decision-making. The EPBC Act prioritises the views of western science, and Indigenous knowledge and views are diluted in the formal provision of advice to decision-makers.

Indigenous Australians are seeking stronger national protection of their cultural heritage. The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) provides last-minute intervention and does not work effectively with the development assessment and approval processes of the EPBC Act. The national level arrangements are unsatisfactory.

The EPBC Act does not meet the aspirations of Traditional Owners for managing their land. The settings for the Director of National Parks and the joint boards means that ultimately, decisions are made by the Director.”

We therefore want to see a thorough independent review of the ATSIHP Act and the EPBC Act in close consultation with impacted Aboriginal groups, to ensure adequate protection for Aboriginal Heritage sites.

Financial benefit to Uniting Church WA from companies implicated

The Covenanting Commission has agreed that communication should be made to Rio Tinto to express our disappointment in their destruction of Juukan Gorge since we have a financial relationship with them. This aligns with previous examples of engagement the Uniting Church has taken with companies that have acted out of alignment with our values. Ultimately we reserve the right to withdraw from any financial arrangements according to our ethical investment principles, but in this instance we can first request a change of behaviour.

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