



Hon. Roger Cook MLA
Premier



Hon Dr. Tony Buti MLA
Minister for Aboriginal Affairs



Hon. John Quigley MLA
Attorney General

Laws overturned: Aboriginal cultural heritage legislation replaced

- Cook Government listens to community feedback and reverses decision
- Original *Aboriginal Heritage Act of 1972* to be restored, with simple amendments
- The new legislation went too far, was too prescriptive and complicated
- Common sense to drive Aboriginal cultural heritage protection
- All additional obligations placed on landowners in 2021 Act to be removed

After serious consideration and consultation, the Cook Government will repeal Aboriginal cultural heritage laws and restore the original *Aboriginal Heritage Act of 1972*, with simple and effective amendments to help prevent another Juukan Gorge incident.

Following public workshops, education sessions, and consultation with key stakeholders and the implementation group, important amendments to the original *Aboriginal Heritage Act* will be introduced to Parliament, to strike the right balance and end confusion.

The decision to revert to the original laws – which had been in place for 50 years – draws on legal advice from the Solicitor-General, with the addition of vital amendments to deliver a common sense approach and help prevent another incident like Juukan Gorge.

The *Aboriginal Heritage Legislation Amendment and Repeal Bill 2023* will provide confidence to all WA property owners that they can continue to operate on their property, just like they have for the past 50 years, without any fear of committing an offence by unknowingly disrupting cultural heritage.

The exemptions which were introduced as part of the 2021 laws will no longer be required under the restored 1972 legislation, as every landowner is equal, and the changes announced impose no new burden on landowners before undertaking activities on their land.

The critical amendments to the restored legislation from 1972 include:

- The newly formed Aboriginal Cultural Heritage Council will take on the role of the Committee established under the 1972 Act to make recommendations to the Minister;
- Proponents and Native Title parties will have the same right of review for Section 18 decisions, with clear timelines and an ability for the Premier to call-in a decision of 'State significance', to act in the interests of all Western Australians; and
- When a Section 18 has been approved, making it a requirement for the owner to notify the Minister of any new information about an Aboriginal site – an important reform to help prevent another Juukan Gorge.

There will be no requirement on everyday landowners to conduct their own heritage survey.

The State Government will commence a long-term plan over the next ten years to undertake heritage surveys of unsurveyed areas in high priority areas of the State, with the consent of

landowners. Surveys will be centrally held and published by Government, and available to view by all land users.

The cost recovery model introduced for proponents who need to submit a management plan to the Aboriginal Cultural Heritage Council, will also be replaced with a fairer and simpler model, to be established with industry in coming weeks.

The concept of Local Aboriginal Cultural Heritage Services will not continue, instead support will be provided to existing relevant Native Title groups, including the relevant prescribed body corporate, registered claimants or native title representative bodies, to improve capacity.

The work of the implementation group – consisting of representatives from industries such as mining, property, farming and agriculture, as well as local government, Aboriginal corporations and the Aboriginal Cultural Heritage Council – will continue to ensure a smooth transition back to the renewed 1972 legislation.

Comments attributed to Premier Roger Cook:

“The Juukan Gorge tragedy was a global embarrassment, but our response was wrong, we took it too far, unintentionally causing stress, confusion and division in our community.

“I’ve been the Premier for eight weeks now, and it’s obvious that we need to make changes, restore confidence in our cultural heritage system and get the balance right.

“The complicated regulations, the burden on landowners and the poor rollout of the new laws have been unworkable for all members of our community – and for that, I am sorry.

“The original intent of the legislative change nearly two years ago, was to prevent another Juukan Gorge – and my Government will deliver on that commitment.

“As Premier, I will always lead a Government that listens, and governs in the interests of all Western Australians – we are here to help and to deliver responsible government.

“WA is home to some of the world’s oldest known Aboriginal cultural heritage, we want to preserve this into the future, and ensure Western Australians can continue to live their lives and reach their full potential.

“We got the balance wrong, what we did hasn’t worked – it’s vital we manage cultural heritage in a common sense manner, so we can move forward together as a community.”

Comments attributed to Aboriginal Affairs Minister Tony Buti:

“We’ve listened to the concerns raised and taken the time to assess its impact and find a way forward that is fair, reasonable and responsible.

“The Juukan Gorge tragedy occurred because new information about the caves was not disclosed and with our important amendments to the 1972 legislation, we will ensure it can never happen again.

“The Section 18 process will be strengthened – with these changes mainly impacting miners and Government, whose work most impacts cultural heritage.

“As Aboriginal Affairs Minister, it is pleasing that our amendments to Section 18 provide Traditional Owners with the same rights of appeal as those afforded to proponents.

“Also, our amendments to the 1972 Act, will expressly make it clear that ‘gag orders’ which constrain Traditional Owners will be unlawful.

“Australian Aboriginal culture is one of the world’s oldest continuing cultures dating back at least 60,000 years – cultural heritage is central to the health and vitality of Aboriginal communities – and these amendments to our existing laws will protect it forever.”

Comments attributed to Attorney General John Quigley:

“For more than fifty years the *Aboriginal Heritage Act of 1972* performed an important role to protect cultural heritage and with some simple amendments, we can be sure that heritage will be protected into the future and provide clarity and certainty for the whole community.

“By repealing the 2021 legislation it means all the extra burdens and obligations placed on landowners have now been removed.

“This means that all landowners, be they freehold, leasehold, licensee, invitee or citizen, at large have one simple obligation: that is to not knowingly damage an Aboriginal cultural heritage site, which has been the law since 1972.

“For the first time ever, Traditional Owners will have a right of appeal under Aboriginal cultural heritage laws in Western Australia.”

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