

14/07/2013

Dear Sir/ Madam,

**Submission to Mineral and Energy Resource Exploration Inquiry Productivity Commission Draft Report**

This submission is focused on: Chapter 5 Heritage Protection. Quotes from the report are in bold and comments on those quotes are underneath.

In particular:

- **5.1 Once all jurisdictional regimes are operating satisfactorily to Commonwealth standards, the Commonwealth should repeal the ATSIHP Act.**
- Comments: What are the Commonwealth standards? Where does it clearly state where these are?
- **DRAFT RECOMMENDATION 5.3 State and territory governments should manage Indigenous heritage on a risk assessment basis. Where there is a low likelihood of heritage significance in a tenement and the exploration activity is low risk, a streamlined 'duty of care' or 'due diligence' process should be adopted.**
- Comments: How can this low likelihood of heritage significance be determined?
- **Where there is a high likelihood of heritage significance and the exploration activity is higher risk, models of agreement making should be adopted rather than a government authorisation system.**
- Comment: What about best practice? Onus on the Aboriginal community to be very good negotiators and fully knowing all of their rights which is not usually the case.
- **When negotiated agreements cannot be reached, governments should make decisions about heritage protection based on clear criteria, transparency and consultation with all parties that have a direct interest.**
- Comment: Why should the Government make the decision? Who is authorised in Government to make that decision? Only Traditional Custodians should be making that decision.
- **Scope of the inquiry: to determine if there is evidence of unnecessary regulatory burden and if there is, make recommendations on how to reduce or eliminate these burdens.**
- Comment: Why did they just look at Indigenous heritage and not European/ non-Indigenous/ landscape etc.? Why is it only the Indigenous heritage Act that is recommended to be repealed?
- **DRAFT RECOMMENDATION 3.4 Where not already implemented, governments should ensure that at a minimum their lead agencies responsible for exploration, coordinate exploration licensing and related approvals (such as environment and heritage approvals).**

**This should include the provision of guidance on the range of approvals that may be required, and on how to navigate the approvals processes.**

- Comment: why is this an 'approvals process' shouldn't it be an 'assessment process'? If heritage is too important and needs protecting it should be protected not just approved.
- **Chapter 5 Heritage Protection. 'Overlap between the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and state/territory legislation needs to be addressed. Accreditation of state and territory regimes can resolve the issue.**
- Comment: The main purpose of the Federal Act is to protect sites when the state Act doesn't work. There is no overlap with that.
- **Building better Indigenous heritage registers is necessary for greater expediency in heritage decisions and for avoiding unnecessary cost.**
- Comment: people have different beliefs of what is important registers shouldn't have significance level as that is up to the Aboriginal people of that time.
- **Where risk of harming heritage is low, a streamlined 'duty of care' or 'due diligence' process will prevent an unnecessary regulatory burden for explorers.**
- Comment: where are the criteria of this determination??? It's very dangerous to say what is low risk of harming heritage, what about spiritual areas where there is no physical attributes visible to non-Indigenous people??
- **Where Indigenous heritage is of high significance, expediency in approvals and agreements is not the primary goal. Rather, the objective is to protect Indigenous heritage while facilitating exploration to the extent possible**
- Comment: This sentence is conflicting and what does 'to the extent possible' mean?
- **Negotiated agreements between explorers and Indigenous parties (or third parties) are likely to produce better outcomes for heritage protection than systems which rely on ministerial or departmental authorisation for exploration.**
- Comment: what evidence is there of this?
- **When harm to heritage cannot be avoided and/or management plans cannot be agreed upon, ministerial (or departmental) decisions to allow exploration to go ahead should be based on clear decision making criteria, transparency and consultation with all parties that have a direct-interest.**
- Comment: so the Government can just decide that the heritage can be destroyed!!!
- **Queensland, Aboriginal Cultural Heritage Act 2003, Torres Strait Islander Cultural Heritage Act 2003, Queensland Heritage Act 1992, Department of Environment and Heritage Protection (Table)**
- Comment: Table lists the wrong department! (p134)
- **Aboriginal parties are identified via the native title system — Registered Native Title Holders, then Claimants, then 'failed claimants' are identified and notified of proposed activities. If there is no native title party, Aboriginal people with a 'particular knowledge' can be identified. Agreement-making with Indigenous groups is a key approach to meeting duty of care. When agreement cannot be reached a proposed CHMP can be referred to the Land Court. The tribunal will make a recommendation to the responsible Minister who makes the decision.**
- Comment: administered through cultural heritage bodies as well. How do you identify 'particular knowledge'??

- **‘Duty of care’ (Queensland) or ‘due diligence’ (New South Wales) processes require explorers to take all reasonable and practicable measures to prevent harm to Indigenous cultural heritage (p142).**
- Comment: but this isn’t policed/ enforced!
- **Establishing who has authority to speak for country.**
- Comment: this has no substance this paragraph (p153)- they could have said a lot more and suggested a way forward.

My general comments are:

- Repealing the federal legislation the ATSHIP Act is a threat to Australia’s Aboriginal cultural heritage. Whilst one acknowledges that in the administration of the act, it has only been able to save five places, I put it that it is down to lack of awareness of the act, including government employees, ability and willingness for the government to act to protect sites.
- Threat to social justice- why is it just the Aboriginal cultural heritage act?
- Balanced view is needed- very bias it should not for the mining companies. What about tourism of sites?
- Queensland Cultural Heritage Act is not working, will take a long time for it to get to a stage where it is effective due to poor mapping of sites, Traditional Owners being members of The Stolen Generations and being removed from Country and thus not gaining that knowledge of where their sites are.
- A lot of sites are ‘unseen’ and are linked in with the environment e.g. old growth vegetation, waterholes, hunting grounds (grassland) these are not ‘archaeological’ sites and usually do not get recorded on mapping systems.
- Poor consultation of Australia’s Indigenous population around this matter has not been adhered to. Doesn’t the Australian Government have a RAP?
- Removal will make sure that there is no ‘safety-net’ left.
- Impact on future generations.
- Mining only 0.5% of the economy- tourism??
- Review of federal legislation was only a few years ago which changed the legislation and removed similarities to state legislation effectively watering it down. Why now are there recommendations to remove it? If it is not working adequately why is the administering system not being looked at instead of repealing the law?
- When I called from local government back in 2008 about how to get a site put through the system to get reviewed under the ATSHIP act, I was passed from officer to officer who did not know what I was talking about under I finally got someone who basically told me it was not worth it as only 5 sites had been protecting under the act and what a lot of work it is. Perhaps this should be made more accessible to the Aboriginal community? And a knowledge building exercise occurs throughout all levels of government, in particular the department that is supposed to be administering the act.
- We are in danger of losing important cultural places, which are important for all humanity just to make way for mining. If this is to go ahead the ramifications of this repeal will be felt for many generations to come.

Please don't hesitate to contact me if you would like to discuss any of this.

Yours sincerely,

Kate Greenwood