International Convention on the Elimination of all forms of Racial Discrimination - Early Warning and Urgent Action

Introduction

1. We, Slim Parker, Kado Muir, Dr Anne Poelina, Clayton Lewis and Dr Hannah McGlade, respectfully request the Committee on the Elimination of Racial Discrimination ("Committee") to review the Western Australian ("WA") draft *Aboriginal Cultural Heritage Bill 2020* ("Bill")[i] (**Attachment 1**) under its early warning and urgent action procedure. The Bill is intended to supersede the *Aboriginal Heritage Act 1972* (WA) (the "AH Act") which requires urgent reform for failing to protect Aboriginal cultural heritage in WA. The Bill represents a once in a generation opportunity to reform the current WA Aboriginal cultural heritage scheme and to address its multiple failures. However, the Bill fails to overcome the key weakness of the AH Act and is opposed by Aboriginal people due to the serious risk to Aboriginal heritage it poses.

Background to the Bill

2. The AH Act has, in practice in WA, operated as a permit system to destroy Aboriginal cultural heritage rather than protect Aboriginal cultural heritage. The AH Act has not been substantially amended since its enactment in 1972, and 'It was drafted at a time when there was no consultation with Indigenous peoples, and based on a Eurocentric, anthropologically grounded 'museum mentality' that failed to understand that Indigenous heritage is living'.[ii] Although the inadequacies of the AH Act had been raised over many years by Traditional Owners, First Nations organisations, legal academics and lawyers, the devastating impacts of the reality of the legislation were seen in May 2020 when a highly significant sacred site, the 46,000 year old Juukan Gorge rock shelters, of the Puutu Kunti Kurrama and Pinikura peoples, was destroyed by Rio Tinto. This shocking destruction of such an important Aboriginal cultural heritage site was authorised under the AH Act.

3. The destruction of the Juukan Gorge rock shelters represents one of innumerable actions which have caused the destruction of Aboriginal cultural heritage under WA law.[iii] As noted by the Commonwealth Senate *Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia - Interim Report* (**Attachment 2**): 'Western Australian law played a critical role in the destruction of the shelters. The AH Act has failed to protect Aboriginal Heritage, making the destruction of Indigenous heritage not only legal but almost inevitable.'[iv] WA is a mining state where the interests of miners have clearly been privileged over the interests of Traditional Owners in protecting their cultural heritage. For example, from 1 July 2010 to 14 May 2020 on land covered by a mining lease there had been 463 applications for permission to destroy Aboriginal heritage (known as 'section 18' applications in the AH Act) and none of them were refused.[v] This is a highly pervasive form of systemic and structural racial discrimination, leading to widespread damage and destruction of Aboriginal people's cultural heritage in land. It clearly represents a violation of Indigenous peoples' human rights as set out in the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), the International Covenant on Civil and Political Rights ("ICCPR"), the International Covenant of Economic,

Social and Cultural Rights ("ICESCR") and the Convention of the Elimination of All Forms of Racial Discrimination ("Convention").

Summary of our Submission

4. While reform is necessary, we respectfully submit that the current Bill intended to replace the AH Act is incompatible with Australia's obligations under the Convention. The Bill does not adequately address the structural and historical issues and inequalities which has underwritten the past and contemporary destruction of cultural heritage in WA. First, the Bill does not provide any recognition that significant Aboriginal cultural heritage will be protected from destruction. It still permits the destruction of significant cultural heritage and fails to respect, protect and fulfil the right to culture and is incompatible with article 5 of the Convention. The preservation of Aboriginal culture and historical identity 'has been and still is jeopardized'.[vi]

5. Secondly, while there are some limited procedural guarantees with respect to consultation, they fall well short of free, prior and informed consent and are incompatible with article 5 of the Convention.

6. Thirdly, Traditional Owners are unable to say 'no' to activities which will destroy significant cultural heritage. The Minister administering the proposed legislation is the final decision-maker. The Minister is given a significant amount of discretion and the mandatory conditions that the Minister must take into account include what is 'in the interests of the State'. Without adding protections to the schema of the Bill, including a prohibition on destruction of significant cultural heritage or a weighing process in favour of protecting Aboriginal cultural heritage, little will change in practice where there is a dispute between Traditional Owners and a proponent of an activity proposing to harm Aboriginal cultural heritage. This risks a continuation of systemic and racial discrimination which has characterised the operation of the AH Act, which the Bill is supposed to address. This is incompatible with articles 3 and 5 of the Convention.

7. Fourthly, while the Bill provides for the creation of 'protected areas', a mechanism by which Traditional Owners can apply for higher protections for cultural heritage, this mechanism only protects Aboriginal heritage of 'outstanding significance' (which is to be determined by the Minister). There is no form of merits review to an external body available to Traditional Owners where the Minister refuses to designate an area.[vii] The lack of redress in these circumstances is incompatible with human rights standards and article 5 of the Convention.

8. Lastly, the historical injustice of colonisation and its contemporary manifestations continue through a failure to protect Aboriginal cultural heritage within WA. Australia has accepted obligations as a signatory to the Convention to address this historical failure by restoring Aboriginal control of their traditional lands and territories.[viii] There has been no truth process, no treaty process, no reckoning with the past in WA or with the political, colonial, systemic and structural conditions in WA that has permitted the destruction of Aboriginal cultural heritage, including the recent destruction of the Juukan Gorge. Without provisions in the Bill which protect Aboriginal cultural heritage, such as an enforceable

right to culture (a basic human right not protected in this Bill) there is no guarantee that the Minister will protect cultural heritage. A signalling of a change in the political and colonial conditions towards respect for the human rights of Aboriginal people would be to enshrine enforceable protections in the Bill. This has not occurred and, therefore, the Bill is incompatible with articles 3 and 5 of the Convention.

Timing

9. In terms of timing, we expect the formal Bill to be tabled in the WA Parliament in the very near future and, thus, we respectfully request the Committee's urgent attention.

10. We note that the initial draft Bill was released on 2 September 2020 and there was a five week consultation period to 9 October 2020.[ix] Although this was not enough time for consultation, there were 159 published responses to the call for submissions.[x] Various Aboriginal organisations, and non-Indigenous organisations that represent Aboriginal people, raised serious concerns about the content of the draft Bill and also the inadequate consultation time period. Recently the Kimberley Land Council also convened a protest outside the WA Parliament to condemn the Bill and lack of engagement by the state.

11. In the week of 16 August 2021, a document was made available by the WA Government that listed the amendments and additions that would be made to the Bill ("Changes from Consultation Draft document") (**Attachment 3**).[xi] However, we have not been able to view a new version of the Bill. Therefore, our communication is framed on the basis of the initial exposure draft but is also informed by the Changes from Consultation Draft document. The provision of such a document, as an alternative to, rather than being able to view the next iteration of the Bill has made it difficult for us to conduct legal analysis of the amendments/additions.

12. Given that there is no guarantee of any further process for consultation or submissions on the final iteration of the Bill, we believe that the issues that we have raised in this letter require the urgent attention of the Committee. When we can access a copy of the final iteration of the Bill, and undertake a legal analysis, we will bring to the Committee's attention any issues that affect our submissions as to the Bill's incompatibility with the Convention.

Incompatibility with Convention

13. We seek to raise the following substantive issues which are incompatible with the Convention:

<u>Lack of a clear requirement on the decision-maker to protect significant cultural heritage from destruction or degradation</u>

14. Where there is likely to be a medium to high impact[xii] on cultural heritage, the Bill requires an Aboriginal Cultural Heritage Management Plan ("Management Plan") to be in place. This involves a process of disclosure to and consultation with one or more Aboriginal parties. Where the proponent and the Aboriginal party agree to the Management Plan then there is an application for approval.

15. However, where the proponent and the Aboriginal party do not agree to the Management Plan there is an authorisation process and the final decision maker is the Minister for Aboriginal Affairs (an elected Government official who holds the office of Minister in the Cabinet) ("the Minister"). The decision is to be based on whether the Minister is satisfied that the statutory requirements are made out (that the activity will harm Aboriginal heritage; that there has been consultation with each person to be consulted about the activity; that there are reasonable steps in place for the activity to be carried out so as to avoid, *or minimise*, the risk of harm to Aboriginal cultural heritage by the activity);[xiii] and what is 'in the interests of the State'.[xiv] We note that the Minister must consider that reasonable steps are taken to avoid or minimise harm, but this only requires a minimisation of harm in the context of the development - and is not a clear requirement to protect heritage from degradation.

16. The phrase 'in the interests of the State' is defined as:

> …in the interests of the State includes —
>
> (a) for the social or economic benefit of the State, including Aboriginal people; and
>
> (b) the interests of future generations…[xv]

17. The definition of 'in the interests of the State' arguably allows for the protection of Aboriginal cultural heritage to be considered in the context of a balancing exercise against other economic or social benefits. We will further discuss this phrase below.

18. We note there are provisions in the Bill for 'protected areas'. Traditional Owners can apply for a declaration that an area is a protected area.[xvi] The application process culminates with a decision by the Minister whose decision is based on whether it meets specified statutory criteria (including outstanding significance of heritage to knowledge holders and requires protection) and what is 'in the interests of the State'.[xvii] However, there is no legal redress for Aboriginal people on refusals of applications for protected area declarations (ie no merits review opportunity with respect to the Minister's decision). Further, there are provisions that allow for the amending or repeal of a protected area order without statutorily required consultation with Traditional Owners.[xviii] Both of these latter contexts give rise to a political discretion for protection. We also note that the criteria of 'outstanding significance', within its natural interpretation, is too high a threshold for protection.

19. In this context, there is no clear requirement on the decision-maker to protect significant cultural heritage from destruction or degradation.[xix] The Bill does nothing to address the systemic, structural, political and colonial context in which decisions are being made. There is a real risk that the Bill will just continue business-as-usual destruction of Aboriginal cultural heritage without enshrining protections within the Bill, such as an enforceable prohibition on destruction of culture - which is a basic human right under the ICCPR and the ICESCR, and a right under article 8 of UNDRIP.

20. Any legislation to protect Aboriginal cultural heritage must include an enforceable right to culture where the proposed harm has a significant impact on Aboriginal culture and historical identity. This is consistent with the proportionality principle under the right to

culture[xx] in the ICCPR and ICSECR. This was made clear by the Human Rights Committee in *Angela Poma Poma v Peru:*[xxi]

> The Committee recognizes that a State may legitimately take steps to promote its economic development. Nevertheless, it recalls that economic development may not undermine the rights protected by article 27. Thus the leeway the State has in this area should be commensurate with the obligations it must assume under article 27. The Committee also points out that measures whose impact amounts to a denial of the right of a community to enjoy its own culture are incompatible with article 27, whereas measures with only a limited impact on the way of life and livelihood of persons belonging to that community would not necessarily amount to a denial of the rights under article 27.[xxii]

There is no such right in the Bill.

<u>No redress or effective remedy when Minister makes decision about heritage</u>

21. We note that the original iteration of the Bill included an opportunity for the Aboriginal party to get the Minister's decision reviewed (on its merits) in the State Administrative Tribunal of Western Australia ("SAT").[xxiii] However, the Changes from Consultation Draft document has identified that this merits review opportunity has been removed from the Bill.[xxiv] The reasoning provided by the state was: 'Change made to reflect accepted principles of modern governance, public administration and the recognized responsibilities of the elected government of the day'.[xxv] While we do not consider the SAT is an appropriate merits review body, as it has not shown a commitment to Indigenous legal pluralism or even participation, the lack of any review rights is unacceptable.
22. Under the suite of human rights conventions, Australia (which applies to all parts of a federal State) has a legal duty to provide domestic remedies from a competent body, including an administrative body. Article 8 of UNDRIP provides that States shall provide effective mechanisms for the prevention of, and redress for any action which has the aim or effect of depriving indigenous peoples of their integrity as distinct peoples, or of their cultural values and ethnic identities, which destruction of significant cultural heritage does. The reason given by the WA Government for the removal of merits review of a decision that would likely lead to destruction of Aboriginal cultural heritage is inconsistent with Australia's obligations under international law and is incompatible with article 5 and 6 of the Convention. Again, this leaves Aboriginal people in WA at the mercy of political decision making, which structurally has favoured non-Aboriginal interests and has led to the systematic destruction in WA of Aboriginal cultural heritage. Further, the discretionary aspect of the 'in the interests of the State' test is likely to reproduce the structural racism that has already led to the destruction of cultural heritage in WA.

<u>'[I]n the interests of the State'</u>

23. In making certain decisions, including relating to Management Plans (which are central to the Bill), the Minister must consider the 'in the interests of the State' test alongside other statutory requirements (such as adequate consultation and that reasonable steps have been taken to avoid, or minimise, risk of harm to cultural heritage). As noted immediately above, the 'in the interests of the State' test seems to apply a balancing act. This balancing act is of concern in circumstances where we have seen Ministers, at both State and

Commonwealth levels, making decisions that clearly put the state and mining economic interests above the interest of protecting Aboriginal culture (even in circumstances where the Minister has accepted that the cultural heritage is of "immeasurable" cultural value and of "particular significance to Aboriginal people").[xxvi]

24. We also note that while the definition of the phrase includes specific consideration of the social or economic benefit to Aboriginal people, these benefits are decided by the Minister (not by Aboriginal people). Further, such 'benefits' may be beneficial to some Aboriginal people, but not to the Traditional Owners whose heritage may be destroyed.

25. The paramount factor/weight in the Bill must be in favour of protecting cultural heritage to be compatible with Australia's obligations under the Convention.

Lack of self-determination and free, prior and informed consent

26. If we take the Management Plans as one example, the model of the Bill is such that it is not the Aboriginal people affected who make the primary decision, it is the Minister. This is not reconcilable with indigenous peoples' rights to self-determination and to own and control their lands and natural resources, including tangible and intangible cultural heritage. Moreover, Traditional Owners are unable to refuse consent for proposals that will destroy or degrade significant cultural heritage.

27. We note that this Bill has improved consultation requirements, that focus on consultation being prior and Traditional Owners being informed, compared to the AH Act. However, the foreshadowed consultation guidelines have not been released with the Bill making it hard to determine if they are satisfactory or meet international standards of free, prior and informed consent. This kind of information should have been made available during the consultation stage of the Bill. We understand from the Changes from Consultation Draft document that there is a proposal for a 'co-design' process of certain guidelines, including the consultation guidelines, but there is no substantive information on how this will proceed.[xxvii]

28. Regardless, where development will threaten cultural and physical survival, including sacred sites or important sites, states are obliged to affirmatively obtain consent from Traditional Owners.[xxviii] The process of obtaining that consent must meet the procedural standards of being 'free, prior and informed'. No decisions directly relating to indigenous peoples' rights and interests should be taken without their informed consent. The current Bill does not require consent of Traditional Owners with respect to all decisions that could impact significant Aboriginal heritage.

Lack of legal redress for breaches of the Bill

29. It is of concern that the decision to prosecute for a breach of the Bill is solely in the hands of the Chief Executive Officer of the relevant government department (or person authorised by them) and that, therefore, Aboriginal people have no legal redress for breaches of the Bill.[xxix] Indeed, Aboriginal parties who have agreed to a Management Plan cannot take any action themselves to enforce that plan. The Bill is no improvement on the current AH Act in this respect. Traditional Owners must be able to seek redress for breaches of legislation relating to destruction of heritage. The right to just and fair redress

is a key element of free, prior and informed consent and is an obligation under international human rights.

30. In addition, a further form of third-party civil enforcement (including the ability to seek an injunction) must be made available. There are similar forms of enforcement available in other legislation in Australia.

Failure to incorporate accepted standards to protect Indigenous cultural heritage (contained in the *UNDRIP* and reflected in Australia's obligations under the Convention, ICCPR and ICSECR) is incompatible with Convention.

31. In its General Recommendation No 23, the Committee has noted the obligation on states under the Convention to take positive steps to address historical colonial harm rooted in racial discrimination against indigenous peoples, which should not be confused with special measures. Ensuring that the basic human rights of indigenous peoples are respected, protected and fulfilled are positive steps that ensure that indigenous peoples are equal before the law, and are measures to combat and eliminate such discrimination. The failure of WA to address the current and historical destruction of cultural heritage across WA through ensuring that the Bill complies with Australia's minimum obligations under international human rights, is itself incompatible with the Convention and is a form of structural racial discrimination.

The authors of the request

Slim Parker, Kado Muir, Dr Anne Poelina, Clayton Lewis and Dr Hannah McGlade

Slim Parker

Slim Parker is a Martidja Banjima senior Elder and widely respected cultural leader. Mr Parker's traditional homeland (Yurlu) sits in the central west Pilbara region of WA, where iron ore mining has been the predominant industry since the 1980s. As Director of Banjima Native Title Aboriginal Corporation, Mr Parker ensures the continuance of traditional ceremonial law and culture as well as compliance with native title legal requirements and agreement making. Mr Parker continues to work at an executive level to promote to mining companies the importance of preserving and maintaining Banjima cultural heritage for younger and future generations.

Kado Muir

Kado Muir is a cultural leader of the Ngalia Peoples of the Goldfields region and traditional owner from the Western Desert regions of Western Australia. Anthropologist, Archaeologist, Linguist and Artist, Kado has worked his whole life professionally and as an activist in cultural heritage protection, native title and cultural education. He fills leadership roles on State and national Boards, including as Co-Chair of First Nations Heritage Protection Alliance, Indigenous Peoples' Organisation of Australia member, Tjiwarl Aboriginal Corporation and Director of the Ngalia

Heritage Research Council. Kado also works closely with the investment and mining sectors in the education and promotion of protection of the rights of First Nations Australians.

Dr Anne Poelina

Dr Anne Poelina is a Nyikina Warrwa woman who belongs to the Mardoowarra, the lower Fitzroy River in the Kimberley region of WA. She is an Adjunct Professor Senior Research Fellow with Notre Dame University, Research Fellow with Northern Australia Institute Charles Darwin University, Visiting Fellow Australian National University and Member of the ANU Water Justice Hub. Anne holds a Doctor of Philosophy (First Law), Doctor of Philosophy (Indigenous Wellbeing), Master Public Health and Tropical Medicine, Master Education, and Master of Arts (Indigenous Social Policy). Her current work explores First Law and the emergence of ancestral personhood, property rights, and equity through legal pluralism. Poelina advocates a Bio-regional Framework that focuses on regional governance, unity, and co-design in planning and decision-making.

Clayton Lewis

Clayton is a Nanda Widi man with family ties to the Mid-West, Murchison & Gascoyne regions and lives in the northern wheatbelt. Clayton was a co-founder of the Aboriginal Heritage Action Alliance (AHAA) in 2014 and is currently on the AHAA Leadership Group.

Clayton has worked in the promotion and protection of cultural heritage in employment roles in both the media and in government. He is a respected spokesperson and cultural leader for Indigenous people across Australia and particularly in his home state of Western Australia.

Dr Hannah McGlade

Dr Hannah McGlade (LLB, LLM, Ph.D) is from the Kurin Minang people and lives in Boorloo (Perth), she is an Associate Professor at Curtin Law School and has specialised in international human rights law, race discrimination, state violence, criminal justice and Aboriginal women and children's issues. Assoc. Prof. McGlade is currently a member of the UN Permanent Forum for Indigenous Issues (Pacific) and was the 2016 Senior Indigenous Fellow of the UN Office of the High Commissioner for Human Rights.

Attachments

Attachment 1: Draft Aboriginal Cultural Heritage Bill 2020 (WA).

Attachment 2: Commonwealth, Joint Standing Committee on Northern Australia, Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara region of Western Australia – Interim Report (December 2020).

Attachment 3: Government of Western Australia, 'Aboriginal Cultural Heritage Bill 2021: Changes from consultation draft' (Stakeholder information briefing, August 2021).

Attachment 4: Dr Hannah McGlade, 'A year after the Juukan Gorge blasts, it's time to listen to Aboriginal people who want to protect land and culture', *ABC News online* (12 May 2021).

Attachment 5: Dr Hannah McGlade, 'The McGlade Case: A Noongar History of Land, Social Justice and Activism' (2017) 43(2) *Australian Feminist Law Journal* 185.

Attachment 6: Intervention delivered by Kado Muir, as National Native Title Council's Chairperson, Ngalia cultural leader & Member of the Indigenous Peoples' Organisation (Australia) to Expert Mechanism on the Rights of Indigenous Peoples, 14th Session, Pacific and Asia Regional Meeting (13 July 2021).

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[i] Draft Aboriginal Cultural Heritage Bill 2020 (WA). Available at: AH-Consultation-Draft-Aboriginal-Cultural-Heritage-Bill-2020 (dplh.wa.gov.au).

[ii] Ambelin Kwaymullina, Blaze Kwaymullina and Lauren Butterly, 'Opportunity is There for the Taking: Legal and Cultural Principles to Re-Start the Discussion on Aboriginal Heritage Reform in WA' (2017) 91(5) *Australian Law Journal* 365, 365.

[iii] For example, from 1 July 2010 to 14 May 2020 on land covered by a mining lease there had been 463 applications for permission to destroy Aboriginal heritage (known as 'section 18' applications in the *Aboriginal Heritage Act 1972*) and none of them were refused: Western Australia, Parliamentary Debates, Legislative Council, 14 May 2020, 2703b-2703b (Hon Robin Chapple and Hon Stephen Dawson (representing the Minister for Aboriginal Affairs)). Note this is only land which is covered by a mining lease and does not count the other types of activities which have harmed cultural heritage. Moreover, WA has not had a process where it has inquired into the destruction of cultural heritage across the State since colonisation. One of the recommendations of the Commonwealth Senate *Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara region of Western Australia – Interim Report* was to: 'Undertake a mapping and truth-telling project to record all sites that have been destroyed or damaged pursuant to the Aboriginal Heritage Act 1972, including visual representations of the impact to country, with a view to establishing a permanent exhibition or memorial in the Western Australian Museum': Commonwealth, Joint Standing Committee on Northern Australia, *Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara region of Western Australia – Interim Report* (December 2020) <Never Again (aph.gov.au)> p 20 at [1.58]. This has not occurred.

[iv] Commonwealth, Joint Standing Committee on Northern Australia, *Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara region of Western Australia – Interim Report* (December 2020) <Never Again (aph.gov.au)> p vi.

[v] Western Australia, Parliamentary Debates, Legislative Council, 14 May 2020, 2703b-2703b (Hon Robin Chapple and Hon Stephen Dawson (representing the Minister for Aboriginal Affairs)).

[vi] Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on the rights of indigenous peoples,* Fifty-first session (1997) [3].

[vii] We note that such merits review should be made available only to Traditional Owners as they are the applicant seeking to protect their heritage.

[viii] Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on the rights of indigenous peoples,* Fifty-first session (1997) [3] and [5].

[ix] We note that there had been a longer consultation process prior to the Bill being released: Government of WA, 'Review of the Aboriginal Heritage Act 1972' <https://www.wa.gov.au/organisation/department-of-planning-lands-and-heritage/review-of-the-aboriginal-heritage-act-1972>. However, for free, prior and informed consent, there would need to be an adequate period for consultation on the basis of the actual proposed legislation and five weeks is inadequate.

[x] Government of Western Australia, 'Aboriginal Cultural Heritage Bill 2020: Published responses' <Published responses for Aboriginal Cultural Heritage Bill 2020 - WA DPLH - Citizen Space>.

[xi] Government of Western Australia, 'Aboriginal Cultural Heritage Bill 2021: Changes from consultation draft' (Stakeholder information briefing, August 2021) ("Changes from Consultation Draft document").

[xii] We understand from the Changes from Consultation Draft document that these will be renamed Tier 1, 2 and 3 activities: Changes from Consultation Draft document, p 13.
[xiii] Bill, cl 146(1).
[xiv] Bill, cl 147.
[xv] Bill, cl 9.
[xvi] Bill, Part 6.
[xvii] Bill, cll 72(4) and 74.
[xviii] Bill, cl 76.
[xix] We do note that there is provision for the Aboriginal Cultural Heritage ("ACH") Council (a statutory body under the Bill) to make a determination that heritage is of 'State significance': Bill, cl 152. State significance means that the heritage is of exceptional importance to the cultural identity of the State: Bill, cl 90. Guidelines are to be issued by the ACH Council about factors to be considered in determining this: Bill, cl 151. Before making this determination, public notice is to be given by the Council and submissions can be made in response: Bill, cl 153. However, while the designation of state significance impacts the authorisation process, such designation does not absolutely require protection. Further, significance is defined with the 'cultural identity of the State' as the determining factor.
[xx] *Angela Poma Poma v Peru* CCPR/C/95/D/1457/2006, 24 April 2008.
[xxi] *Angela Poma Poma v Peru* CCPR/C/95/D/1457/2006, 24 April 2008.
[xxii] *Angela Poma Poma v Peru* CCPR/C/95/D/1457/2006, 24 April 2008 [7.4].
[xxiii] Bill, cl 258
[xxiv] Changes from Consultation Draft document, p 17.
[xxv] Changes from Consultation Draft document, p 17.
[xxvi] See, for example: EDO, 'Environment Minister can still act to protect sacred sites after Gomeroi woman loses Court action' (22 July 2020) <https://www.edo.org.au/2020/07/22/gomeroi-court-judgment>.
[xxvii] Changes from Consultation Draft document, p 29.
[xxviii] *Angela Poma Poma v Peru* CCPR/C/95/D/1457/2006, 24 April 2008 [7.4]-[7.6].
[xxix] Bill, cl 240. We understand from the Changes from Consultation Draft document that this may be 'broadened' but only to include the state bodies of the Department of Public Prosecutions and the State Solicitors Office: Changes from Consultation Draft document, p 17.