



“We deserve better”: YMAC Board reaction to Aboriginal cultural heritage legislation disaster

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Pictured: YMAC Co-Chairperson – Yamatji Region, Peter Windie
(Photographer: Marg Bertling; Supplied by YMAC)

[Amidst overnight reports that former-Premier Mark McGowan is set to join BHP – and just shy of two years since the original architect of Western Australia’s disastrous Aboriginal cultural heritage review, then-Minister for Aboriginal Affairs, Ben Wyatt, joined Rio Tinto’s board](#) – Traditional Owners are still trying to navigate the chaos that has recently been created by the State Government.

At a meeting held in Exmouth today, Yamatji Marlpa Aboriginal Corporation’s (YMAC’s) Board of Directors aired their dissatisfaction at the State Government’s haste to impose the [Aboriginal Heritage Legislation Amendment and Repeal Bill 2023 \(WA\)](#) (AHLARB) – an inadequately amended version of the archaic *Aboriginal Heritage Act 1972 (WA)* (AHA).

As questioned by YMAC Co-Chairperson – Yamatji Region, Peter Windie, “By [the same State Government’s own admission back in 2019](#), the AHA was, objectively, so deficient that a whole new piece of legislation was agreed to be needed – a few modifications or some fine-tuning was never going to be enough to fix it; so why is that the case now?”



YMAC's Board then endorsed the following statement:

“As apologetic as the current Premier and Minister for Aboriginal Affairs were in the immediate wake of their snap decision to repeal the *Aboriginal Cultural Heritage Act 2021* (WA) (ACHA), it is their dismissiveness and distraction tactics since, more than their feigned remorse, that is leaving a lasting impression – one that will endure a lot longer than their “[most progressive cultural heritage legislation in the country](#)” did.

In recent announcements and [representations](#), each have claimed:

- to ‘have been listening’. They have not.
- to ‘stand up for the most disadvantaged in our community’. They do not.
- they ‘will do the right thing by marginal people in the community’. They are not.

Mr Cook's recent appointment to Premier, and the revolving door of Ministers for Aboriginal Affairs Western Australia has been subject to, are not justifications for these failures. It is the one and the same government that we have been pleading to the past several years.

Our representatives should be held accountable for the actions of their party, not shirking responsibility because they keep changing portfolios. And they certainly shouldn't be using something as significant and precious as our irreplaceable cultural heritage as a political football.

However, we can agree with the State Government on some specifics. For example:

- Has the introduction and implementation of the ACHA been a disaster?
Yes. There appears to be a widely shared consensus that persisting to progress this legislation was a mistake – even by the State Government's own admissions and apologies.



- Do Traditional Owners deserve a legislated right to appeal decisions approving the disturbance, damage, or destruction of *our* cultural heritage sites?

Yes. Much like proponents have had the right to challenge decisions under the AHA, of course Traditional Owners should have appeal mechanisms – this is just basic procedural fairness. However, this still does not meet [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) minimum standards, including the requirement of free, prior and informed consent.

- Should landowners be obliged to report the discovery of any new information relating to Aboriginal cultural sites they become aware of?

Yes. Australia is home to the oldest, continuous living culture in the world – [ten times older than the ancient Egyptian pyramids](#) – and we *all* have a role to play in its protection, conservation and celebration; the least of which involves the reporting of potential sites or new information about known sites.

We have worked too hard and for too long to accept this outcome. We deserve better than to simply revert back to an outdated and substandard 50-year-old piece of legislation.”

Mr Windie further shared, “We keep falling for their promises and cannot help but feel like we are always getting gaslighted by the State Government. As complex and confusing as the ACHA is, there are some provisions in there that improved on the 1972 act – a low benchmark, but still. These were acceptable to the government – they introduced and passed them in Parliament – and weren’t being challenged by other stakeholders, like the farmers, so why leave them out now?”

Such previously legislated commitments – under the ACHA – include (but are not limited to):

- recognising the importance and ownership of cultural heritage for Aboriginal people;



- a broader definition of Aboriginal cultural heritage that recognises social, spiritual, historical, scientific or aesthetic perspectives, rather than just “sacred, ritual and ceremonial sites”;
- due diligence requirements;
- increased penalties;
- a statutory role for Aboriginal people and requirements for their consultation, negotiation or mediation to reach agreements to avoid or minimise damage to cultural heritage;
- the requirement to return ancestral remains and secret sacred objects to the Aboriginal communities that they come from; and
- the ability to charge a fee for services provided in accordance with the act.

As YMAC CEO, Simon Hawkins observed, “It appears evident that the State Government does not genuinely value Aboriginal cultural heritage. Take its removal of increased penalties in the ACHA as just one example. For five weeks, there were fines equitable to those included in the *Heritage Act 2018 (WA)*, which explicitly does not apply to places of cultural heritage significance for Aboriginal people only. For Aboriginal cultural heritage sites, soon the 1972 penalties will be back in effect, which don’t even come close to matching that. It basically means that someone could be fined \$1million for painting a 100-year-old building the wrong colour, but only \$20,000 if they were to destroy a 50,000-year-old Aboriginal site. You don’t get much more of a clearer demonstration than that of just how out of proportion the imbalances are.”

Unless otherwise stated, all quotes to be attributed to YMAC CEO, Simon Hawkins.

Read more of YMAC’s media statements on this issue at www.ymac.org.au/media-releases/year/2023/
Review YMAC’s many submissions on this matter at www.ymac.org.au/advocacy-and-law-reform/submissions/

About Yamatji Marlpa Aboriginal Corporation

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB), delivering native title and other services across the Pilbara, Mid West, Murchison and Gascoyne regions of Western Australia. YMAC is run by a First Nations board of directors, representing several native title groups, each of whom have their own language, culture, traditions and protocols. YMAC services include native title claim and future act representation; heritage services; executive office, community, and economic development assistance; land administration, and natural resource management support.

Media contact: **Teri O’Neill**, Projects Coordinator, email editor@ymac.org.au and toneill@ymac.org.au, or phone **0418 115 908**.