

UN committee says WA government's botched handling of Aboriginal heritage could be racial discrimination convention breach

By Rosanne Maloney

ABC Kimberley

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In short:

A UN committee has found the Australian and WA governments potentially breached racial discrimination convention over Aboriginal heritage issues.

The committee says the breach involved the state government's handling of Aboriginal cultural heritage laws and existing "weak" legislation.

What's next?

The committee is calling on the government to outline what steps it will take to address the issues identified.

A United Nations committee has accused Australia of breaching international racial discrimination conventions over failed changes to Western Australia's Aboriginal heritage laws.

The accusations have been laid under the UN Committee on the Elimination of Racial Discrimination (CERD), citing the lack of consultation with Aboriginal people through the process, and weak existing legislation.

In August last year, the WA government [controversially reversed the state's 2021 Aboriginal Cultural Heritage Act](#) to the 1972 Act legislation with some adjustments, after just five weeks in operation.

The laws were reversed after heavy criticism from the agricultural and pastoral sectors, who [described the laws](#) as confusing and effectively unworkable, arguing the vague wording could leave farmers and small businesses liable for heavy penalties for inadvertent breaches.

The state opposition also took up the campaign against the changes, despite previously waving them through parliament unopposed.

With early campaigning for the failed Voice to Parliament referendum taking place simultaneously, the [botched rollout](#) was repeatedly cited as a factor in the No campaign's strong performance in WA.

The decision drew scathing criticism from Indigenous people, who said there was [little-to-no consultation](#), sparking [calls for the Commonwealth government to intervene](#).

Prominent Indigenous Australians asked the UN's CERD to look into the legislation and the committee has now written to the Australian government to respond to its accusations.



Dr Hannah McGlade wrote to the UN Committee raising the alarm over the state government's mishandling of the laws. *(ABC News: James Carmody)*

Prominent human rights lawyer Hannah McGlade, one of several Indigenous experts who contacted CERD, was critical of the state and federal governments.

"The WA government reverted to the original 1972 legislation in the face of opposition by pastoralists and industry without any engagement with Indigenous Aboriginal peoples," Dr McGlade, a Noongar woman, said.

"This is completely contrary to international human rights standards."

Dr McGlade said a history of policies and laws that offered no protection to Indigenous culture had displaced Aboriginal people and separated them from culture.

Act never offered protection

In a letter to the federal government, the UN Committee on the Elimination of Racial Discrimination raises issue with the level of consultation given to

Indigenous communities; both during debate over new laws, and under the 1972 Act WA has reverted to using.

The CERD letter said the laws were inconsistent with Australia's binding commitments to the international treaty that prohibits race discrimination.

"According to the information before the Committee, the WA government took the decision to reinstate, with some amendments ... without consultation with, or consent by, Aboriginal Peoples," the letter states.

The letter goes on to highlight weaknesses in the existing laws under section 18 of the Act, and the fact that the minister has full discretion, giving weak powers to traditional owners to reject or appeal applications.

"None of the 463 mining-related applications made since 2010 under the Act of 1972 were rejected," the CERD letter states.

It said 13 landowners have been given consent with conditions under section 18 since the laws reverted, "one of those landowners being Rio Tinto, the company that destroyed 46,000-year-old heritage sites at Juukan Gorge".

The federal Aboriginal and Torres Strait Islander Heritage Protection Act (ATSHP) enables the Australian government to protect cultural heritage under threat, if state or territory laws have failed to protect it.

The letter calls on the federal government to respond to the findings and outline steps it will take to address the issues identified.

It also indicated the Australian government should seek advice from the UN Expert Mechanism on the Rights of Indigenous Peoples to ensure compliance with international human rights.

Kimberley Land Council not surprised by findings

Kimberley Land Council (KLC) chief executive Tyronne Garstone said there was no consultation afforded to KLC when the state reversed its heritage laws, and that existing laws were toothless.

"The finding by CERD clearly identifies that the Act ... is inappropriate," he said.

Mr Garstone said the federal government needed to strengthen its ATSIHP laws to ensure state legislation was doing its job.



Tyronne Garstone says the laws are weak and potentially could lead to the further destruction of Aboriginal sites. (ABC Kimberley: Ben Collins)

He said WA was the economic powerhouse of Australia, which required urgent attention for Aboriginal cultural heritage protection, as more land is cleared.

Mr Garstone said the Kimberley had some heritage protections through the KLC, but companies had to opt in.

"There are other companies that will use the law, and the weaknesses in the law," he said.

"So potentially we're going to see further destruction of Aboriginal sites."



The land council has previously been vocal about the lack of consultation it received from the WA government regarding cultural heritage laws. *(ABC Kimberley: Sam Tomlin)*

State government defends process

A WA government spokesperson said CERD's requests were sent to the federal government and as such the WA government had not seen the recommendations.

However, they highlighted multiple changes to the existing legislation that furthered cultural heritage protection.

The spokesperson also said "gag" clauses in contracts that prevent native title parties from seeking a right of review in section 18 proceedings to be of no effect.

A spokesperson for federal Attorney General Mark Dreyfus redirected the ABC to the National Indigenous Australians Agency, which has been contacted for comment.

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