

Senate Standing Committee on Environment and Communications

Legislation Committee

Answers to questions on notice

Environment portfolio

Question No: 90
Hearing: Budget Estimates
Outcome: Outcome 1.4
Programme: Wildlife Heritage and Marine Division (WHM)
Topic: Burrup National Heritage Listing
Hansard Page: 71
Question Date: 26 May 2015
Question Type: Spoken

Senator Ludlam asked:

Senator LUDLAM: Has the department sought any information from the Barnett government on the reasons for its delisting or had any communication on that specific matter?

Mr Johnston: We have been in touch with Western Australian officials to get some background information. This is principally because the chair of our Heritage Council sought some information from us. Acting as secretariat to the Heritage Council, we were in discussions with them the week before last.

Senator LUDLAM: Could you please provide us with that correspondence on notice?

Mr Johnston: Yes.

Senator LUDLAM: Are you undertaking to provide it or are you undertaking to check to see if you will be able to provide it? I just want to be clear.

Mr Johnston: Both. So, we will check that we can provide it and if we can provide it we will provide it.

Answer:

The Western Australian Department of Aboriginal Affairs has agreed to the disclosure of the correspondence, which is attached as follows:

- **Attachment A** Email from Department of Aboriginal Affairs dated 15 May 2015
- **Attachment B** Map provided with **Attachment A**.

From:
To:
Subject: RE: For clearance: Advice for Carmen [SEC=UNCLASSIFIED]
Date: Friday, 15 May 2015 12:15:19 PM
Attachments: [image002.png](#)
[DAA 23323.pdf](#)
Importance: High

Hello Peter,

Please see the response to your questions below.

- **Dr Lawrence has received a request for an interview (below). She has asked our Department for urgent advice as to whether the “greater Burrup Peninsula” was in fact deregistered by the Western Australian Government before responding to this request.**

The place listed as ID 23323 is approximately 148km² in size, and refers to a catchment area that encompasses most of the Burrup Peninsula including adjacent islands, ocean, industrial lands and the town of Dampier.

The area was assessed by the Aboriginal Cultural Material Committee (ACMC) in 2013, which concluded that, on the basis of the information provided, the area in its entirety could not, and should not, be considered a site under the *Aboriginal Heritage Act 1972*.

Having a single site over the Burrup that picks up a whole range of existing archaeological sites, and picks up any that we do not already know about, is not an appropriate use of the legislation. In practical terms, for example, it is not usually feasible for archaeological sites (typically under section 5(a) of the *Aboriginal Heritage Act 1972*) to exist in exactly the same locations as roads or infrastructure.

This decision does not impact on the more than 2,400 individually reported heritage places on the Burrup Peninsula, or on any as yet unreported Aboriginal sites.

The decision in the Supreme Court of Western Australia on 1 April 2015 in *Robinson v Fielding* has the potential to affect any places on the Burrup that may be subject to section 5(b) of the *Aboriginal Heritage Act 1972* (see below). It is not appropriate to provide comment on this issue as the ramifications of *Robinson v Fielding* are still being assessed by the Western Australian Government.

Whether the whole of the Burrup might meet the requirements of section 5(b) of the *Aboriginal Heritage Act 1972* will be a matter for the ACMC to reconsider in the light of the Hon Justice Chaney’s decision of 1 April 2015 in *Robinson v Fielding*.

- **If possible, please could you forward a map showing the area that apparently was deregistered, and advise on whether it is in fact possible to register areas, as distinct from sites, under the *Aboriginal Heritage Act 1972*.**

A map is attached.

The definition of ‘Aboriginal site’ in section 4 of the *Aboriginal Heritage Act 1972* is ‘a place to which this Act applies by the operation of section 5’.

Section 5 applies the Act to:

- (a) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present;*
- (b) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;*
- (c) any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State;*
- (d) any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.*

The Act uses the term 'place' without explicitly defining how large a place might be.

Section 15 of the Act provides some guidance as to the types of places that might be subject to the Act:

Any person who has knowledge of the existence of any thing in the nature of Aboriginal burial grounds, symbols or objects of sacred, ritual or ceremonial significance, cave or rock paintings or engravings, stone structures or arranged stones, carved trees, or of any other place or thing to which this Act applies or to which this Act might reasonably be suspected to apply shall report its existence to the Registrar, or to a police officer, unless he has reasonable cause to believe the existence of the thing or place in question to be already known to the Registrar.

It is important to note the Burrup is one of the mostly heavily protected places in Western Australia. Economic activity exists in some parts of the Burrup, but most of the Burrup remains un-impacted.

In addition, a significant part of the Burrup Peninsula and islands in the surrounding Dampier Archipelago are listed on the National Heritage List under the Federal *Environment Protection and Biodiversity Conservation Act 1999*, and a reasonable part of this area forms the Burrup National Park which is on land owned by the Murujuga Aboriginal Corporation and leased back to the Western Australian Government as a National Park, and cared for by Aboriginal rangers.

Part of the Burrup is also a 'protected area' under the *Aboriginal Heritage Act 1972*.

- **In addition, please could you advise us as to whether rock art sites such as those found in the Dampier Archipelago are protected under the *Aboriginal Heritage Act 1972*, and hence whether the registration or deregistration of rock art sites has any effect on their protection under the *Aboriginal Heritage Act 1972*.**

Places that meet the requirements of section 5 of the Act (see above) are protected by the Act regardless of whether they are registered. There are a range of reasons why places may not be registered, and some Aboriginal people prefer not to disclose the locations of certain places and the *Aboriginal Heritage Act 1972*

makes provision for this.

Whether place ID 23323 is (or is not) a registered site has no impact on the protection of rock art under the *Aboriginal Heritage Act 1972*.

If you have any further questions please do not hesitate to contact me on (08) 6551 8160.

Kind Regards,

Director Site Assessment Branch
Ground Floor, 151 Royal Street, East Perth WA 6004
T (08) 6551 8160 | F (08) 6551 8088

DAA Strategic Framework 2012 – 2014



The information contained in this email, including any attachments, may contain confidential information. If you are not the intended recipient, any use, disclosure or copying of this information is unauthorised. If you have received this email in error, please notify the sender immediately by return email and then delete it from your system. Please don't print this email if you don't need to.



DAA 23323 - Murrumbidgee

