

# ‘Dirty deeds done dirt cheap’: the WA Government’s assault on WA Aboriginal cultural heritage





**fara**

Friends of  
Australian  
Rock Art

## Objects of FARA Constitution, s 3 (1) c:

- ‘[to] support the traditional owners and custodians of Australian Aboriginal and Torres Strait Islander lands and waters in their struggles for recognition, retention, and safeguarding of their heritage as expressed in rock art and in other material of cultural significance;’



# FARA's international 'Stand up for the Burrup' campaign



# Stand ups per country

- Australia 64 China 2 France 32 England 2  
USA 6 Canada 1 Germany 4 Israel 1  
Netherlands 4 Japan 1 Spain 4 New  
Zealand 1 Italy 3 Singapore 1 Belgium 2  
South Africa 1 Brazil 2 Switzerland 1

# Opposing views

- ‘Heritage is in a mess in Western Australia. If Stonehenge were in the Pilbara, it would no longer exist.’  
*Sally Morgan (Balyku Native title group)*
- ‘We’ve dreamt of this area [the Burrup] becoming the most important industrial region in the southern hemisphere for twenty to thirty years, and finally the realization is starting to happen’  
*Fred Riebling, Speaker of the WA Legislative Assembly & MP for the Pilbara Region*

## Lessons from the Burrup campaign:

- If a site of the Burrup's global cultural significance can be destroyed with impunity, then potentially, no Aboriginal person's cultural heritage in WA is safe.
- Highlights role of s 18 of AHA as an ongoing mechanism for legalized destruction of Aboriginal cultural heritage.
- The dark side of the mining boom: what cultural price for national economic prosperity?
- Destruction of WA Aboriginal cultural heritage against wishes of TOs raises important human rights issues

# UN Declaration on the rights of indigenous peoples

## Article 7

- Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:
- (a) any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.

rock engravings (estimated at up to one million), but it's also one of WA's most important industrial areas, due to its proximity to petroleum, gas and iron-ore resources. Once established, the 4913 ha Murujuga National Park will protect the Burrup's outstanding cultural values.

**Millstream Chichester National Park**

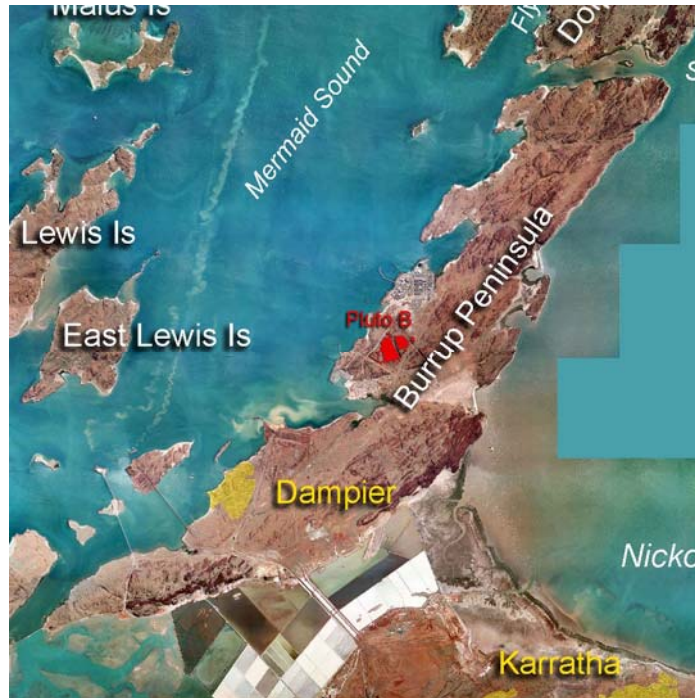
The permanent freshwater pools in the south-western corner of this park once supported a thriving pastoral station. Now they make a cool refuge for overheated travellers, keen anglers and paddlers – not to mention 38 species of waterbird, 30 species of dragonfly and damselfly, and the cryptic Pilbara olive python. Climb to the top of 367 m Mt Herbert for a jaw-dropping view of the coastal plain and the Chichester and Hamersley ranges.

elago's 42 islands are  
nsive collections of  
g waters boast the  
tate – including  
lugongs and dolphins.

lands  
on



# Dampier Peninsula/Murujuga/ Burrup Peninsula Pilbara, WA





# Why is Murujuga important?

- Oldest and largest outdoor rock art gallery in the world
- Natural art gallery
- continuous record of human cultural endeavour for 30,000 years till 1868
- WMF endangered list
- National Trust endangered list
- Of global scientific/cultural significance
- Significance to Aboriginal people

# 'Archaic faces'

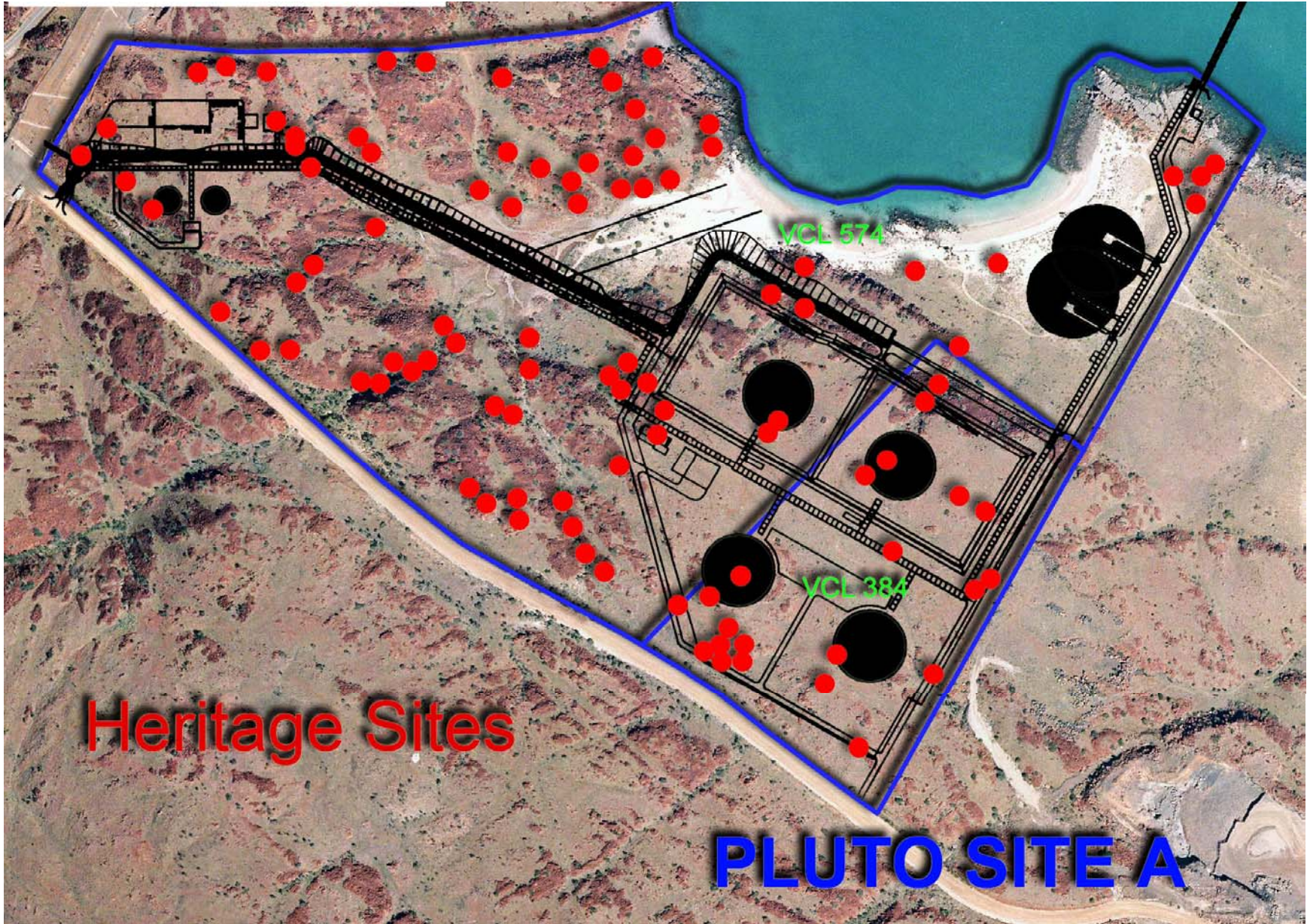


# Extinct species: 'the fat-tailed wallaby'



# Extinct species: 'the Burrup thylacine'





Heritage Sites

PLUTO SITE A

# What happened?

## Pluto:

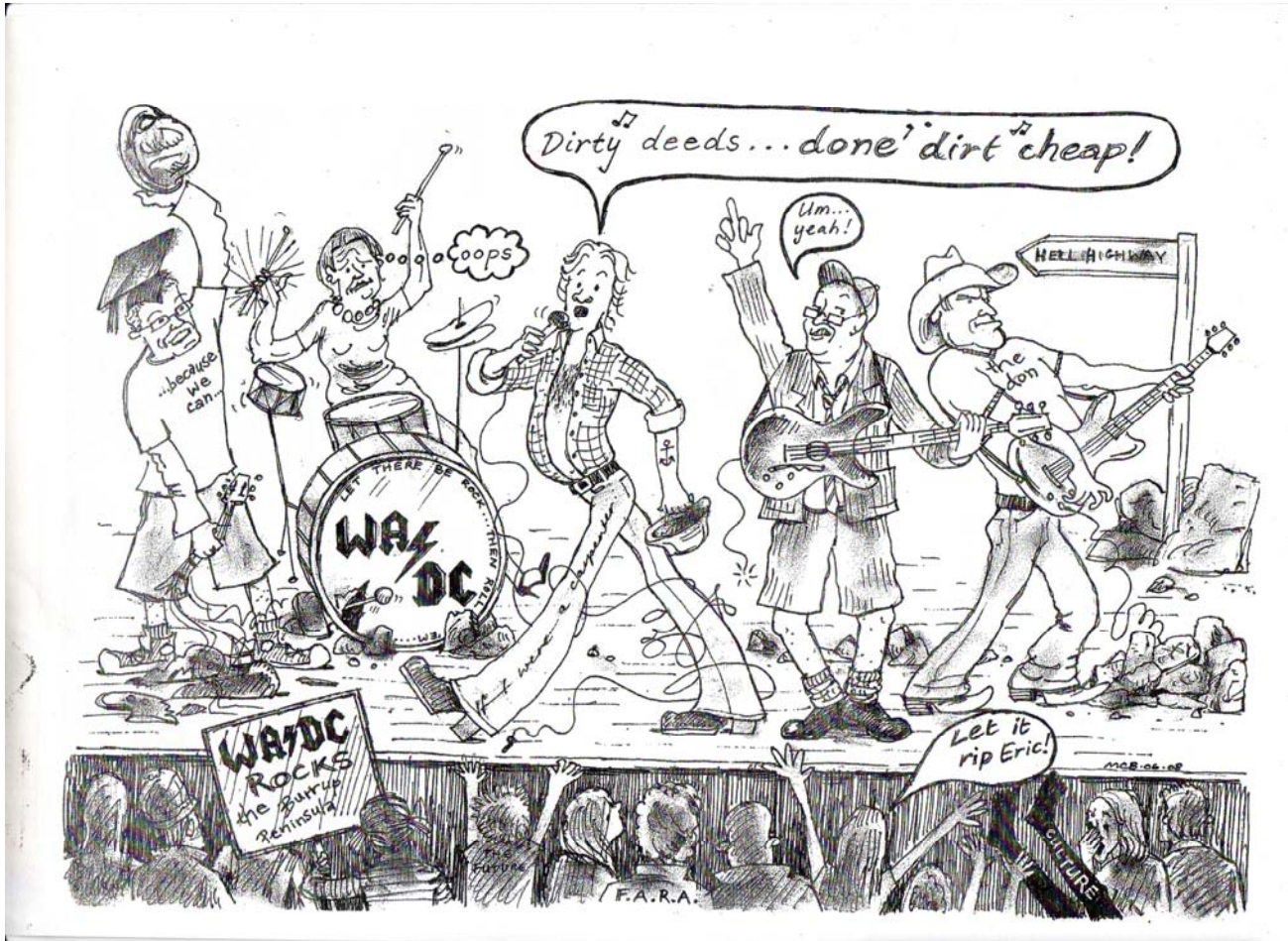
- ACMC unanimously rejects Woodside Pluto B s 18 application
- Indigenous Affairs Minister Michelle Roberts rejects ACMC recommendation
- Other non-destructive sites are available nearby
- S 9 & 10 ATSHIPPA application by Wong-Goo-Tt-Oo people rejected by Turnbull
- 941 rock art engravings removed to make way for LNG plant.
- Partial NHL listing of Burrup does not protect it:
- State government and DoIR currently pushing for five new industrial developments on Burrup, including proposed Burrup Fertilisers explosives plant.

# What happened?

## Abydos/Woodstock:

- ACMC rejects FMG Resources' s 18 application to lift heritage protection over two heritage protected areas to build a railway line (BHP refuses to play ball with FMG)
- Indigenous Affairs Minister Sheila McHale is directed to overturn expected decision one month before ACMC due to meet

# THE WA POLITICAL CONTEXT



# Primary political responsibility for destruction of WA Aboriginal heritage:

- Premier Alan Carpenter
- Minister for Resources (and Native Title!), Eric Ripper (Department of Industry and Resources: DoIR)

# Burrup and Maitland Industrial Estates Agreement

## s 4.8 and s 7.2

- ...the Contracting Parties will not, in their capacities as owners of the Burrup Non-Industrial Land, lodge or cause to be lodged any objection to development proposals intended to occur on land within the Industrial Estate.
- The contracting Parties hereby agree that...the State is entitled to compulsorily acquire any and all native title rights and interests in the Industrial Estate in accordance with the *Land Administration Act* and thereby extinguish any and all native title rights and interests in respect of the Industrial Estate.

# Aboriginal Heritage Act 1972 (WA)

- Section 18

- 'it is a myth, expressed by the objects of the Aboriginal Heritage Act, that the main purpose of the legislation is to protect Aboriginal heritage. It may be more accurate to describe the AHA as an act to regularize the obliteration of Aboriginal heritage...It is legislation by the non-Indigenous community for the non-Indigenous community that creates a superficial veneer of protection for Indigenous interests. The result is that the colonizing power can continue to do with Aboriginal places and materials exactly as it wants'
- David Ritter (ex-PLO, Yamatji LSC)

# The Chaloner Report

(submitted to State Parliament 2004)

- ‘...the dishonest and devious way that the AHA has been amended to progressively water down its application to protecting Aboriginal heritage and consequently to increase the powers of the Minister and the State government in achieving a ‘pro-development’ agenda’.
- See:  
**<http://www.dampierrockart.net/Studies.html>**

# The potential invalidity of the Pluto approvals process:

- State Government in breach of BMIEA agreement according to Ngarluma and Wong-Goo-Tt-Oo lawyers.
- Woodside in breach of Pluto B s 18 consent conditions (WGT lawyer)
- AHA s 18 potentially unconstitutional (Ritter)
- Pluto B EPA approval potentially invalid
- Burra Charter
- UNESCO Declaration on the Intentional Destruction of Cultural Heritage 2002
- Does site destruction impair the right to exercise Aboriginal religious beliefs (RDA)?



**Respect  
Religious  
Monuments**

**Stand Up  
for the Burrup**

# AHA amendment process

- DIA's submission for funding to carry out amendment process currently with Estimates Review Committee
- If approved, process to begin 17 June
- Two consultants to be appointed
- 'Discussion process' (???)
- New legislation to be introduced after next state election
- Estimated time for this process: two years

# What is the State Government Agenda?

- State currently pushing for five new companies to move onto Burrup despite NHL listing
- Garrett has declined to sign off on State/Commonwealth bilateral negotiations for Burrup Management plan (under EPBC) unless State upgrades to Cwealth standards
- Once State has initiated the AHA 'amendment process', they will demand that Federal Govt signs off, even though the legislation has not been passed.
- Dodgy, eh?

# What is going on in the WA mining agreement process?

- Signing off on atrocious heritage outcomes
- ‘this project is going to go ahead anyway...so you can either agree to it and get a payout, or refuse it and get nothing’
- ‘this is the best you are going to get’
- The dreaded ‘no objection to s 18 applications (or even ATSHIPPA for that matter: 93% failure rate)
- creating a false dichotomy between “economic benefits” and “heritage”
- The retreat from *informed* consent
- The O’Fairchaellaigh model

# Ciaran O'Faircheallaigh: 'Evaluating agreements between Indigenous Peoples and Resource Developers' Langton, Tehan, Palmer & Shain 2004

**Figure 18.2:** Levels of protection in relation to Indigenous cultural heritage

- 1 Sites or areas of significance may be damaged or destroyed by project development without any reference to Indigenous people.
- 2 Sites or areas of significance may be damaged and destroyed, and Indigenous parties only have an opportunity to mitigate the impact of the damage; for example, by removing artefacts or conducting ceremonies.
- 3 The developer must 'minimise' damage, to the extent that this is consistent with commercial requirements; for example, by re-routing infrastructure to avoid areas of significance.
- 4 The developer must avoid damage, except where to do so would make it impossible to proceed with the project (for instance, when a major site is co-located with the ore body to be developed).
- 5 There is an unqualified requirement to avoid damage.

# From 'land council' to 'native title bureaucracy'

- from political advocacy body to organism partly integrated into the State apparatus: bureaucratization and mainstreaming of NTRBs through Commonwealth funding arrangements.

# What does 'best practice' heritage management really look like?

- The Northern Territory model:
- AAPA statutory body on non-Aboriginal land
- ALRA on Aboriginal land

- Implementation of the Evatt report recommendations
- *Informed* consent by indigenous people
- Best practice heritage processes built in to all mining agreements
- An end to the ‘no objection to s 18’ clauses.
- No industry-contracted consultants working on heritage surveys (cf Moore)
- Adequate funding of NTRBs and DIA heritage section.
- Five stage model of heritage outcomes in mining agreements
- No rock art removal

# Rock art removal is no longer an acceptable cultural heritage methodology:

- Burra Charter
- UNESCO Declaration on the Intentional Destruction of Cultural Heritage
- Archaeological/scientific objections
- Contravenes Aboriginal Law
- Ethical concerns (Mulvaney)

# **Pushing the WA heritage envelope: a suggested political programme**

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# POLITICAL

- rediscovery of Aboriginal Land Councils' roots in political activism
- Recovery of a utopian vision after 11 years of John Howard
- Closer collaboration between WA NTRBs, FARA and National Trust on heritage issues
- National support for WA campaign for heritage reform from NNTC, AIATSIS and NTRBs
- More effective use of FOI, parliamentary questions and media on heritage issues

- Effective engagement with new Federal Government:
- ‘Don’t try to weasel out of this one Peter’
- ‘Yes Jenny, heritage *is* part of your portfolio’
- State election 2008
- 1968 ‘Weebo’ incident 40th anniversary commemoration (see GLSC or Kado Muir)

# LEGAL

- More robust use of legal remedies by NTRBs (eg s 18)

# LEGISLATIVE

- ATSHIPPA Amendment process (Dr John Avery)
- AHA Amendment process
- Implementation of Evatt report recommendations

# OPERATIONAL

- Best practice heritage management principles to be built into all future native title mining agreements in WA
- End rock art removal
- reinstatement of notion of informed consent by TOs within heritage agreement process

# AAS CODE OF ETHICS

- ‘4.5 In agreeing to participate in a research project anthropologists should have regard to whether any aspect of the project is deemed unethical, not simply the part that the anthropologist is directly responsible for’.
- ‘1.1 The Australian Anthropological Society cannot investigate or adjudicate allegations about unethical behaviour’.

# Policy of Australian Rock Art Research Association

- Recent expulsion of consultant engaged by a major resource company to remove rock art against wishes of TOs, following allegations of unethical conduct by an Aboriginal custodian.
- Legality of approvals process under WA law was not acceptable as a defence:
- ‘Mr X offered only inadequate explanations for his conduct, especially that it was in accordance with permission granted by the Minister. AURA’s role in this case was purely to assess the complaint received, and its effect on AURA’s standing in matters of Indigenous rights, not the legality of Mr X’s activities.’



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