

Cultural heritage management, ethics and rock art in Western Australia

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Abstract: This report presents a critique of established cultural heritage practices in Western Australia, focusing on the control of the process by corporate proponents and its effects on rock art and stone arrangements. The moderating roles of scholarly societies in questions of ethics are reviewed, and the report concludes with a constructive proposal to end practices that have facilitated large-scale destruction of cultural heritage sites.

The practice of destroying rock art sites by professional archaeological consultants in the Dampier Archipelago, Western Australia, said to be the site of the world's largest concentration of rock art (Bednarik 2006), continues to throw a long shadow across the disciplines of archaeology and anthropology. The multi-million dollar business of removing rock art and destroying stone arrangements has become the focus of ethical considerations that may have far-reaching implications. It is run by professionals who, although the public would intuitively see them as the champions of cultural heritage and of indigenes, are obliged to abandon that role in pursuit of lucrative contracts with powerful resources companies. This is not a new issue; it has surfaced on previous occasions in many other countries; for example, in Portugal (Arcà et al. 2001) and in Chile (Bustamente Díaz 2006). In Western Australia the neglect of cultural heritage is facilitated by the state's legal regime of protecting Indigenous heritage and its rubberstamping of destruction orders through the racially discriminative Western Australian *Aboriginal Heritage Act 1972*. The Act allows the exploitation of a loophole, giving the developer the right to appeal, but not giving the Indigenous owner the same right. It merely regulates 'the

legalised destruction of WA's Aboriginal cultural heritage' (Ritter 2003). More than 99% of the applications to destroy Aboriginal cultural heritage in Western Australia have been granted since 1972 (Bednarik 2007). A fair indication of the state of legal deficiencies in Western Australia is the rate of Supreme Court judgments being overturned by the federal High Court, which is higher in that state than in any other.

In 2007 the Western Australian Crime and Corruption Commission found it necessary to investigate the intervention by the then Premier, Alan Carpenter, in the application to destroy cultural heritage at Abydos/Woodstock (also in the Pilbara), but unfortunately did not pursue the matter further. Similarly, the legality of the recent approvals of Woodside's Pluto project at Dampier is dubious, lacking Environment Protection Authority approval, and it contradicts Australia's international obligations (e.g. the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, which Australia is a signatory to), as well as the Australian instruments governing cultural heritage management (e.g. the Burra Charter).

More important than matters of legality — to the professional standing of the organisations

representing Australian archaeologists and anthropologists — are matters of ethics. The legislative body, the state government itself, has in the past consistently failed in its responsibility to the state's heritage; hence, legality is not the main issue here — professional integrity is. Organisations aspiring to high academic standards possess codes of ethics and constitutional provisions for enforcing them.

In September 2007 four relevant organisations received appeals from Dampier Traditional Custodians to take disciplinary action against a member alleged to have played a leading role in the destruction of rock art sites at Dampier. They were the Australian Anthropological Society (AAS), the Australian Archaeological Association (AAA), the Australian Association of Consulting Archaeologists Inc. (AACAI) and the Australian Rock Art Research Association Inc. (AURA). Their respective responses to a plea of help from an Aboriginal community whose cultural heritage is under severe and immediate threat may help in understanding their respective underlying ideologies.

AAS responded by explaining that it does not currently have any procedures to investigate or adjudicate allegations about unethical behaviour by its members, or to take any action about it. Although it is perceived as a professional association, it prescribes no professional culpability for its members. However, endeavours are underway to introduce appropriate procedures for investigating alleged breaches of the AAS Code of Professional Ethics, and to effect two amendments to the current constitution. The originator of the Code, drafted in 1986, has stated that, without a disciplinary clause, a code is 'aspirational' but not binding.

AAA, AACAI and AURA have robust procedures for dealing with unethical conduct, as, conversely, has the Anthropological Society of Western Australia. The relevant clause of the AAA (n.d.) Professional Code of Ethics states that:

Any person can notify the Executive Committee of a member's conduct which they believe to be detrimental to the interests of the Association. Complaints may activate procedures outlined in Section 32 (Expulsion

of Members) of the Constitution, including rights of appeal.

However, it is understood that the AAA Executive Committee has not advised the Dampier Traditional Custodians of any action in the matter concerning the destruction of Dampier rock art and stone arrangements.

The relevant clause of the AACAI (n.d.) Constitution states:

38. Where the National Executive Committee is of the opinion that a member of the Association:
- (a) has refused or neglected to comply with a provision or provisions of the Objects or Rules or Codes of Conduct; or
 - (b) has acted in a manner prejudicial to the interests of the Association; or
 - (c) has been guilty of conduct unbecoming a member, the National Executive Committee may, by resolution ('the initial resolution'):
 - (i) reprimand the member;
 - (ii) suspend the member from membership of the Association for a specified period; or
 - (iii) expel the member from the Association.

It is understood that, since the Traditional Custodians' submission was made to AAA in 2007, no decision on the matter has been made or communicated. However, AURA has reacted swiftly and, by decision of the Executive Committee, invited the member concerned to respond to the allegations that he or she removed rock art at Dampier, and to appeal against possible expulsion. He or she explained in defence that:

- a. The works carried out were done in accordance with the Section 18 notice issued by the Western Australian Minister for Aboriginal Affairs under the *Aboriginal Heritage Act 1972*.
- b. Endeavours to consult the Traditional Custodians had been made; however, the fraught nature of Aboriginal politics in the area meant that it was impossible to ensure the satisfaction 'of all Aboriginal persons laying claim to the area'.
- c. The works carried out were in accordance with the contractual obligations to an employer.

AURA found this explanation unsatisfactory, taking the view that:

- a. The association was under an obligation to assess the complaint purely from the point of view of the effect of the activities complained of on the Association's reputation, rather than their legality under state law.
- b. That, as a professional archaeologist, the member was subject to the codes of ethics or constitutions of various scientific bodies, including the provisions of the Burra Charter and the International Federation of Rock Art Organization's Code of Ethics. If his or her employer requested the member to breach those standards, then the contract ceased to be legally binding, and it was his or her professional obligation to refuse to carry out any inappropriate actions requested.

AURA determined that in removing rock art, the member had engaged in conduct that was detrimental to the association under clause 3.12 of the AURA Constitution and the member was expelled in accordance with clause 3.11.

The underlying issue in all of this is the state of the cultural heritage management industry in Western Australia, which in the case of non-British heritage is largely dominated by heritage consultancy work sponsored by the major resource companies operating in the state. The lucrative role of these heritage consultants is essentially to facilitate applications by the mining and hydrocarbon companies for exemptions under Section 18 of the Western Australia *Aboriginal Heritage Act 1972* (Moore 1999; Ritter 2003). That piece of flawed legislation provides developers with a means for the legalised destruction of any Indigenous heritage site in Western Australia following ministerial consent — which has been granted in 99.7% of recorded cases. Consequently, mining companies spend millions of dollars on consultants' fees (Bednarik 2007:238), in much the same way as they employ political lobbyists to influence politicians (many of whom have been sacked in recent years, following their exposure by the Western Australia Crime and Corruption Commission).

The consulting industry thus governing the protection of Indigenous cultural heritage in Western Australia contends with significant conflicts of interest: while it is expected to

preserve, for instance, rock art sites, it finds itself recruited as the facilitator of their destruction (Bednarik 2008). Archaeological or anthropological consultants are beholden to immensely powerful corporate entities that are capable of directing governments, and often find themselves involved in clandestine operations. Concealed from the attention of the public, these are conducted deliberately to mislead or misinform the media; participants are required to sign confidentiality clauses, and public access to reports of such operations is prevented (Laurie 2006). These conditions create a second layer of unethical conduct because the participants, while claiming academic privileges, are engaged in thwarting the unfettered access of their peers to their findings or results. The corporate consultants produce no published reports of their work, which remains shrouded in secrecy and generally inaccessible. They are clearly answerable only to their corporate masters, and not to the traditional owners of the rock art, or to their discipline, or to the state, the public, or to humanity at large. Thus the notorious lack of published works about the numerous Dampier consultancies, conducted at the cost of many millions of dollars, is attributable to the secrecy of the process of cultural heritage management in Western Australia. The amount of money spent on archaeological consultancies at Dampier exceeds by far that spent anywhere else in the country, and is in the order of that spent at locations in Egypt, Mesopotamia or the French Dordogne, which have yielded huge numbers of publications.

Bearing in mind that these monuments and cultural sites are, in the first instance, the patrimony of the Indigenous communities in question, and, in the second, the heritage of all of humanity, these practices are unethical. The Indigenous people, who in the case of Dampier have witnessed the genocide of the Yaburrara at the hands of the state (Bednarik 2006), and who today oppose the destruction of their heritage most vigorously (Churnside 2007), are pushed aside by the participants in this inequitable system. The nation of Australia is being robbed of its greatest single cultural asset, and the international community of nations loses one of its finest monuments. All of this is entirely unnecessary because hundreds of better locations are available for these industrial developments; and it is all done for the financial

gain of a few (the vast majority of contracts are let to overseas tenders), including the consultants doing the bidding of their employers.

While the resource companies may be driven by technical, logistic or political expedients, the destructive process would not be possible without the collaborating anthropological or archaeological consultants who facilitate the 'preferred outcomes' of their masters. They are defined as 'independent' when, in fact, they are patently dependent upon the resource companies; they claim the mantle of academia when, in fact, they exclude any form of peer review of their handiwork; they conduct themselves as cultural resource management experts when, in fact, their role is the destruction of the sites; and they present themselves as experts on the subject of their destruction when, in fact, they are not.

It is through this last proposition that a constructive solution becomes apparent. Australia, with many of the world's outstanding rock art researchers, has for some time been a world leader in rock art conservation and in the scientific study of this resource (Ward 1992; Ward and Sullivan 1989; Ward and Ward 1995; Watchman 1989). And yet, most of the consultants engaged in assessing rock art are general archaeologists who lack demonstrated or substantive expertise in rock art, its proper study, or its management and conservation. They are not members of a rock art organisation and do not participate in the development of the discipline, and yet they present themselves as experts on the study or management of rock art. Twenty years ago Australia hosted the first, and so far only, postgraduate diploma course on the conservation of rock art (Watchman 1989), at considerable cost to the nation. One half of the graduates of this course found no employment in that field in the year following the course. Even today, archaeologists lacking any worthwhile expertise on the subject of rock art dominate the lucrative consultancies offered by the state and industry. Moreover, these consultants have often displayed unacceptable attitudes to the rightful owners of the rock art, the Indigenous nations of Australia. Australian archaeological consultants who are of what Trigger (e.g. 1989) describes as nationalist, colonialist or militarist inclinations are not suitable to research Indigenous histories. The widely published concept of 'patholog-

ical anthropology' (e.g. Houtman 2006, 2007; McNamara 2007; Price 2000, 2005) could also be considered in archaeology.

The diagnosis, then, is that *some* of those who execute cultural heritage policies in Australia are politically, socially, epistemologically or academically unsuited for their tasks. Much more appropriate, better predisposed scholars would be available, but the industrial proponents have developed a symbiotic relationship with those consultants who have become dependent upon them — paradoxically describing them as 'independent' (Moore 1999:248). Proponents also corrupt the relationships between Indigenous communities and anthropologists: 'Typically the proponent is likely to prefer an anthropologist consultant who has done no previous work with the community in question' (Moore 1999:245). However, the communities only trust anthropologists with whom rapport has been established through long-term relationships and trust, an affinity not possible with strangers. The proponent, on the other hand, would tend to be opposed to an anthropologist forming any rapport with the indigenes and would rather have the anthropologist 'on side' — after all, the proponent does pay the anthropologist. Clearly, then, the 'research' of the anthropologist contradicts all canons of sound anthropology.

The solution to this unsatisfactory state is so obvious it hardly needs to be defined. Two things need to occur. First, the existing structures need to be replaced with a consultancy system that is equitable, that protects the cultural resource, is supportive of Indigenous aspirations, and is transparent and accountable. Second, the relevant legislation needs to be revised. It is absurd that the state abrogates its responsibility of managing the cultural heritage on its territory and passes it on to resource companies. Certainly, the proponents ought to meet the costs of assessments, but it is fundamentally objectionable, indeed self-corrupting, that they control who makes the assessments. This responsibility must be in independent hands. Here, then, is a proposal to restructure the management practices of the immovable cultural heritage of Australia:

1. The responsibility of awarding consultancies in this area is to be included in the duties of an existing government agency (such as

the Department of Indigenous Affairs, or AIATSIS), which, upon application from a proponent, issues tenders and selects consultants on behalf of the proponent. There is no contact between the proponent and the consultant other than co-operation in practical matters of access and logistics; the consultant is answerable to an independent agency. In addition, the ministerial prerogative is to be subject to appeal and legal action.

2. The Australian Rock Art Research Association Inc. will establish a register of rock art researchers who are specialists in the study and conservation of rock art rather than some other field, who are committed to the preservation of heritage, and who adhere to the existing management and ethical instruments (especially the Burra Charter) and the Constitution of AURA; it will maintain this register, recording the particular areas of expertise of each consultant, and making it available to the relevant state agencies and Indigenous communities. To counteract the secrecy surrounding such consultancies, AURA will publish details of all major contracts after completion and endeavour to publish relevant scientific papers wherever this may be appropriate.

These two simple measures involve no additional costs of any significance, and yet they will streamline the process and render it transparent and authentic. The only challenge is how to assess candidates for the register objectively and fairly. Selection boards of this nature exist in many other areas of expertise or endeavour, and can serve as models. A board has now been established, of Aboriginal representatives and highly experienced senior specialists, who would exclude themselves from consideration to be on the register; and a fair procedure of assessment, based on previous experience and performance, will be established. This is certainly not excessively difficult to achieve, but it would have a very significant impact on the effectiveness of cultural heritage management in Australia, which at present is seriously

compromised, particularly in Western Australia and Tasmania.

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