# ABORIGINAL HERITAGE INDUSTRY: KA-BOOM OR BUSTED!

***A PAPER PRESENTED TO THE JOINT ANNUAL CONFERENCE OF THE ASA, ASAANZ AND AAS. 8TH -12TH DECEMBER 2008, UNIVERSITY OF AUCKLAND, NEW ZEALAND.***

**KADO MUIR**

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KIAORA! I AM PLEASED ONCE AGAIN TO BE IN THIS FABULOUS COUNTRY, AND PRIVALEGED TO BE INTERACTING WITH MY OLD FRIENDS, MAKING NEW FRIENDS AND NOT QUITE MEETING THOSE THAT POTENTIALLY ARE NEW FRIENDS IN THIS TIRED DUSTY OLD DISCIPLINE OF ANTHROPOLOGY.

KIORA ESPECIALLY TO NGATI WHATUA, THE OWNERS OF THIS LAND AND TO ALL THE WHENUA OF THIS COUNTRY, I BRING GREETINGS FROM THE TANGATA TE WHENUA OF AUSTRALIA, AND PARTICUALRY FROM MY COUNTRY IN THE DESERTS OF WETERN AUSTRALIA.

I WISH ALSO TO ACKNOWLEDGE THE WORK OF MY ELDERS AND ANCESTORS WHO ARE A PART OF THIS DISCUSSION, ALSO THE CONTRIBUTION OF THE GOLDFIELDS LAND AND SEA COUNCIL HISTORIAN CRAIG MULLER FOR HIS ARCHIVAL RESEARCH AND OF COURSE MY WIFE AND FAMILY WHO ENDURE MY ABSENCES FROM HOME.

TODAY I WANT TO TELL YOU A SHORT BUT SHOCKING STORY, ONE THAT HAS BEEN TOLD BEFORE, IN BOOKS, ARTICLES, NEWSPAPER HEADLINES, EVEN AN ABC TELEVISION FOUR CORNERS STORY – TITLED "SECRET WHITEMAN'S BUSINESS". THIS STORY STRIKES AT THE FUNDAMENTAL QUESTION OF THIS CONFERENCE - OWNERSHIP AND APPROPRIATION. IT RELATES TO THE OWNERSHIP OF LAND, THE OWNERSHIP OF HERITAGE, THE OWNERSHIP OF CULTURE AND ULTIMATELY THE OWNERSHIP OF IDENTITY. MY VERSION OF THIS STORY STARTS WITH THE CONTESTED OWNERSHIP OF STONES AND ENDS WITH THE COLLATERAL DAMAGE RESULTING FROM THE "ALLEGED" OWNERSHIP OF MINERALS IN THE CROWN. I SAY ALLEGED BECAUSE I FOR ONE BELIEVE THAT INDIGENOUS PEOPLE STILL RETAIN AN INALIENABLE RIGHT TO RESOURCES INCLUDING MINERALS, WHICH IS THE CRUX OF THE PROBLEM WE ARE EXPLORING IN THE THEME TO THIS PANEL. INDIGENOUS PARTICIPATION IN AUSTRALIAN FRONTIER ECONOMIES.

LET ME TAKE US BACK FOR A MOMENT, TO A YEAR BEFORE I WAS BORN. THE YEAR IS 1969, THE PLACE IS LEONORA WESTERN AUSTRALIA AND AN OLD MAN IS TALKING TO AN ANTHROPOLOGIST! THIS OLD MAN IS ONE OF MY OLD UNCLES, NOW MANY YEARS DECEASED AND THIS IS WHAT HE HAD TO SAY.

The white man have taken everything from the *Wangkai* (Aborigines); they've taken their land and everything; and now they've taken even their private (sacred) things… Jack Murphy, Mantjintjarra Ngalia elder 1969.

MY OLD UNCLE WAS ONE OF THE LEAD SPOKESMEN IN A DISPUTE THAT BRIEFLY GRIPPED THE IMAGINATION OF WESTERN AUSTRAIAN'S OVER THE 1968-1969 PERIOD AND FINALLY RESOLVING ITSELF IN 1972. THIS DISPUTE IS KNOWN AS THE WEEBO DISPUTE AND TO MY KNOWLEDGE IT IS ONE OF THE FIRST TIMES ABORIGINAL PEOPLE IN WESTERN AUSTRALIA WERE ABLE TO ACCESS THE LEGAL SYSTEM TO FIGHT TO PROTECT THAT WHICH IS SACRED TO THEM.

LET ME BRIEFLY EXPLAIN THE WEEBO DISPUTE. WEEBO IS A SACRED AREA SOME 90-100KMS NORTH OF THE WEST AUSTRALIAN GOLD MINING TOWN OF LEONORA. IT'S A TEN HOUR DRIVE FROM PERTH OR A ONE HOUR FLIGHT IF YOU'RE A FLY IN FLY OUT MINER. IT'S A PLACE OF GREAT CEREMONIAL, RITUAL AND SPIRITUAL SIGNIFICANCE TO THE PEOPLE OF THE WESTERN DESERT OF AUSTRALIA. AT THIS PLACE ARE SOME UNUSUAL LOOKING STONES. THESE STONES ARE CENTRAL TO THE IMPORTANCE OF THE SITE. UNFORTUNATELY FOR MY PEOPLE PERTH WAS GOING THROUGH A BOOM, SIMILAR TO THE ONE JUST SCALING DOWN AT THE MOMENT AND PEOPLE WERE BUILDING HOUSES WITH ORNAMENTAL FIREPLACES AND ROCK FEATURES. A PROSPECTOR IN LEONORA APPLIED TO REMOVE THESE ATTRACTIVE STONES FROM THE SACRED AREA AND SELL TO THE PERTH MARKET. HE COLLECTED SAMPLES OF THE STONE AND DISPLAYED IN A SHOP

WINDOW IN LEONORA. THIS IS WHAT THE NATIVE WELFARE DEPARTMENT HAD TO SAY ABOUT THIS:

"Natives of this area were greatly agitated that the stones were on display, and threatened to break the window and forcibly remove them if they weren't removed."

(Letter from J Dunn, Relieving Officer, Department of Native Welfare 5th November 1968)

THESE STONES WERE SACRED MEN'S ONLY OBJECTS AND ITS PUBLIC DISPLAY CAUSED OUTRAGE. ABORIGINAL WOMEN CROSSED THE ROAD TO AVOID GLANCING AT THE STONES AND FOR THE FIRST TIME IN NEARLY FIFTY YEARS THE OLD MEN WERE CONSIDERING SPEARING A WHITEMAN. THE CUSTODIANS OF THE SITE WERE ALREADY IN TROUBLE, AND TWO ABORIGINAL MEN WERE ACCUSED OF SHOWING THIS PROSPECTOR THE STONES, FOR PROFIT AND WERE SENTENCED TO DEATH!

THE NATIVE WELFARE DEPARTMENT LEAD AN APPEAL AGAINST THE MINING LEASE APPLICATION, AND AT THE SAME TIME SOUGHT TO HAVE THE AREA DECLARED A RESERVE. IT COMMISSIONED AN ANTHROPOLOGIST BY THE NAME OF GARRET BARDON TO ASSIST IN DOCUMENTING EVIDENCE OF THE SIGNIFICANCE OF THE SITE AND TO BE AN EXPERT WITNESS IN THE WARDENS COURT.

BARDON CONSULTED WITH THE MEN AND WROTE TWO REPORTS, THE FIRST IN ANTICIPATION OF THE LEGAL PROCEEDINGS AND THE SECOND

ADDING FURTHER EVIDENCE OF SIGNFICANCE AS WELL AS AN ANALYSIS OF THE FAILURE OF THE LEGAL PROCEEDINGS.

THE MATTER WENT TO TRIAL IN MARCH 1969. THE WARDEN REJECTED THE APPEAL AND GRANTED THE MINING LEASE. HE DISMISSED THE ANTHROPOLOGICAL EVIDENCE AS HEARSAY, HE ONLY RECOGNISED THE IMPORTANCE OF THE STONES NOT THE AREA AND HE GAVE THE ABORIGINAL PEOPLE TWO MONTHS TO REMOVE STONES THEY THOUGHT WAS SPECIAL BEFORE MINING MAY PROCEEED.

THE NATIVE WELFARE DEPARTMENT WERE REELING FFROM THIS DECISION AND IN A REPORT TO THE COMMISSIONER FOR NATIVE WELFARE THE DIVISIONAL SUPERINTENDENT, MR BUDGE HIGHLIGHTED FIVE POINTS OF DIFFICULTY ENCOUNTERED IN THE CASE.

1. Reluctance on the part of Aborigines to discuss sacred matters with white people and particularly in a “white man’s Court”.
2. The misinterpretation by native witnesses of questions asked in Court and of the answers given by the natives by the Europeans involved in the case due to a lack of knowledge of aboriginal culture.
3. The rejection of Mr. Bardens evidence by the Court.
4. The “commercial attitude” on the part of some aborigines in respect of the sale of the stones.
5. The unexpected appearance of a lawyer to represent Mr Hoffman…!

(19th March 1969, Budge report to Commissioner)

WHAT IS SO INTERESTING ABOUT THESE DIFFICULTIES IS THAT TODAY SOME FORTY YEARS LATER THESE VERY SAME ISSUES HAUNT US, MAYBE WITH THE EXCEPTION OF A CHANGE TO THE HEARSAY RULE, BROUGHT ABOUT BY NATIVE TITLE CLAIMS, AND CERTAINLY POINT NUMBER FIVE WOULD NEVER HAPPEN TODAY!

THE DECISION WAS NOT THE END OF IT, AS A PUBLIC CAMPAIGN GAINED MOMENTUM. ABORIGINAL ELDERS FROM THE REGION WENT TO CANBERRA TO PRESS THEIR CASE, "DE-TRIBALIZED NATIVES" IN RESPECTABLE POSITIONS AS SCHOOL TEACHERS, LIKE MY OLD AUNTY MAY BECAME SPOKESPEOPLE, THE PASTORAL LAND HOLDERS FOR WEEBO STATION, UNIVERSITY STUDENTS, MEMBERS OF THE PUBLIC, THE WEST AUSTRALIAN NEWSPAPER, PROFESSOR BERNDT AND POLITICAINS PRESSURED THE GOVERNMENT TO REVIEW THE DECISION. IT IS POSSIBLE THAT THE RANGE OF PEOPLE PARTICIPATING IN THIS PUBLIC CAMPAIGN **MAY NEVER** BE SEEN IN SUCH A DISPUTE AGAIN.

THE GOVERNMENT CAPITULATED AND AGREED TO PROTECT THE AREA, AT FIRST WITH A 25SQM TEMPORARY RESERVE AND AFTER A REVIEW THEY GRANTED A 2SQM RESERVE IN 1972.

THIS DISPUTE LEAD TO THE GOVERNMENT UNDER PRESSURE RECOGNISING THE NEED FOR ABORIGINAL HERITAGE LEGISLATION. HOWEVER PREMIER BRAND'S COMMENTS WHEN CONSDIERED IN THE

CONTXT OF WEEBO ARE USEFUL IN UNDERSTANDING THE REAL INTENT OF THE LEGISLATION.

> Premier Brand said yesterday that the State Government thought a stage had been reached where all Aboriginal sacred sites should be registered. The government was prepared to make a survey of sacred sites, but it could not be achieved in such a short time.
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> (The West Australian, 16 April 1969)

WEEBO WAS A SUCCESS FOR MY ELDERS. UNFORTUNATELY THERE WAS ONE PROBLEM NOT EVER PRESENTING ITSELF DURING THE WEEBO DISPUTE, NO-ONE EVER MENTIONED THE IMPORTANT WOMENS AREA IMMEDIATELY TO THE EAST. THIS AREA MAY HAVE BEEN PROTECTED BY THE 25SQ.M RESERVE BUT WAS NOT INCORPORATED INTO THE 2SQ.M RESERVE AND IS OPEN TO DISTURBANCE BY MINING AND EXPLORATION ACTIVITY. FORTUNATELY IT HAS NOT, AT THIS STAGE.

**ABORIGINAL HERITAGE ACT 1972**

A LOT HAS BEEN WRITTEN ABOUT THE ABORIGINAL HERITAGE ACT, SEE RITTER 2003 AND FOR A COMPREHSIVE DISCUSSION SEE CHALONER 2004. ANOTHER ARTICLE WHICH DEALS WITH THE ROLE OF CONSULTANT ANTHROPOLOGISTS IS MOORE 1999.

THE ABORIGINAL HERITAGE IN THEORY PROTECTS ABORIGINAL HERITAGE. IT IS LIMITED IN ITS APPLICATION AND IN ITS SCOPE, ESPECIALLY AFTER THE NOONKANBAH DISPUTE 1980, WHICH LEAD TO

GREATER MINISTERIAL CONTROL AND RESTRICTED DEFINITIONS OF HERITAGE.

BEFORE THE ADVENT OF THE NATIVE TITLE ACT WESTERN AUSTRALIA DID NOT HAVE LAND RIGHTS LAWS. THE ABORIGINAL HERITAGE ACT WAS THE ONLY FORUM MANY PEOPLE COULD USE TO ARTICULATE THEIR RELATIONSHIP TO LAND AND SOMETIMES TO ADVOCATE FOR PARTICIPATION IN THE FRONTIER ECONOMY OF MINING.

THE WAY IN WHICH GOVERNMENT HAS RESPONDED TO ABORIGINAL CONCERNS FOR THE PROTECTION FO THE HERITAGE HAS BEEN OUTRAGEOUS! IN ALMOST ALL CASES THE GOVERNMENT OPERATES OFF THIS LIMITED DEFINITION OF THE PUBLIC INTEREST. THE QUESTION IS JUST WHAT IS THE PUBLIC INTEREST AND HOW IS IT BEST SERVED.

IN NOONKANBAH, THE PREMIER SIR CHARLES COURT SENT THE DRILLERS UP TO DRILL WITH A FULL POLICE ESCORT. HE THEN AMMENDED THE ABORIGINAL HERITAGE ACT TO MAKE IT MORE RESTRICTIVE. SOME CLAIM THE NOONKANBAH DISPUTE WAS A RUSE TO FORCE CHANGES TO THE ABORIGINAL HERITAGE ACT TO ALLOW THE STATE AND ITS MINING PARTNER DEVELOP THE ARGYLE DIAMOND MINE, WHICH WAS ALSO DISPUTE ON HERITAGE GROUNDS.

THE SWAN BREWERY DISPUTE OF THE 1990'S BROUGHT ABORIGINAL HERITAGE HOME TO THE DOORSTEPS OF PERTH. THE MANY LEGAL PROCEEDINGS FROM THE SWAN BREWERY REWROTE MANY ADMINISTRATIVE LAWS AND SOME OF THE HERITAGE LAWS. IT ALSO LEAD THE LABOUR GOVERNMENT OF THE DAY TO INTRODUCE EUROPEAN HERITAGE LEGISLATION, AS IT RELATES TO BUILDINGS.

THE MARANDOO HERITAGE DISPUTE ALSO IN 1990, UNDER THE WATCHFUL EYES OF LABOUR PREMIER CARMEN LAWRENCE FOLLOWED A NOVEL SOLUTION. INTRODUCE A NEW PIECE OF LEGISLATION CALLED THE MARANDOO ABORIGINAL HERITAGE ACT AND SIMPLY EXCISE THE MARANDOO PROJECT FROM THE OPERATION OF THE ORIGINAL HERITAGE ACT. VIOLA! NO LONGER A HERITAGE PROBLEM.

THE YAKABINDIE DISPUTE 1989 TO PRESENT, THREW OPEN THE DOORS ON CONSULTANT ANTHROPOLOGISTS AND SCRUTINISED WHETHER THEY WERE IN FACT DOING THEIR JOB RIGHT. IT LED TO MASSIVE UPHEAVALS WITHIN THE DISCIPLINE AND WITHIN THE ABORIGINAL COMMUNITY. I CAN'T SAY TOO MUCH ABOUT THIS DISPUTE AS I AM ONE OF THE PROTAGONISTS AND TECHNICALLY WE ARE STILL FIGHTING THE FIGHT TO PROTECT THIS AREA OF 200 SITES DESPITE , EVERY STATE GOVERNMENT SINCE 1990, AND THE HOWARD GOVERNMENT APPROVING ITS DEVELOPMENT. WATCH THIS SPACE.

INTO THE LATE 1990'S AND 2000'S WE HAVE A LITANY OF HERITAGE DISPUTES, THE ONE WITH WORLD ATTENTION AT THE MOMENT IS THE BURRUP, ANOTHER ONE WHICH SHOULD BE LOOKED AT IS THE WOODSTOCK – ABYDOS SITE, (THIS IS PARTICULARLY SHOCKING GVEN THAT WOODSTOCK/ABYDOS IS FORMALLY A PROTECTED AREA UNDER THE AHA AND THEREFORE SHOULD BE SACROSANCT, REMEMBER THE WORDS OF JIM BRENNAN!) WINDARLING, WHICH IS NO MORE AND OTHERS IN THE WINGS WAITING THEIR DAY IN THE SUN.

THE ABORIGINAL HERITAGE ACT IS NOT ABOUT PROTECTING HERITAGE. IT IS IN FACT A DEVELOPMENT APPROVALS PROCESS. RITTER DESCRIBES IT THUS, IN;

Critical legal theory of "loaning"…"the registering of a site, "loans" protection to it that is readily recoverable under the Section 18 process". (Ritter 2003:199)

"Having apparently legislated to preserve Aboriginal heritage, the legislation has the effect (in politcal substance) of legitimising its destruction". (Ritter 2003:200)

IN WINDING DOWN LETS US CONSIDER SOME FACTS AND FIGURES. IN THE LAST SIX YEARS BETWEEN 10$^{TH}$ FEB 2001 AND 5$^{TH}$ SEPT 2007 THE STATE GOVERNMENT HAS APPROVED THE DESTRUCTION OF FOUR HUNDRED AND EIGHTY ABORIGINAL SITES. THESE SITES CAN NOT BE DESTROYED UNLES THEY ARE REGISTERED, HENCE THE CONCEPT OF LOANING PROTECTION. IN ALMOST ALL CASES THESE SITES ARE DESTROYED TO ALLOW FOR DEVELOPMENT.

IN LAST SIX YEARS THE ABORIGINAL CULTURAL MATERIALS COMMITTEE WHO ARE THE EXPERT PANEL CONSISTING OF ABORIGINAL PEOPLE, ANTHROPOLOGISTS AND BEAURACRATS ADVISED THE MINISTER NOT TO APPROVE FOUR SECTION 18 APPLICATIONS. ONE WAS THE BURRUP AND ONE WAS YAKABINDIE.

IN THE HISTORY OF ABORIGINAL HERITAGE PROTECTION IN WESTERN AUSTRALIA, THERE HAS ONLY BEEN THREE PROSECUTIONS FOR DAMAGE TO AN ABORIGINAL SITE. I CAN'T FIND REFERENCES TO THE FIRST WHICH I BELIEVE HAPPENED IN THE KIMBERELY IN TE 1980'S. THE OTHER TWO HAPPENED IN THE LAST SIX YEARS. THE FIRST INVOLVED A MINER SCRATCHING HIS INITIALS ONTO SOME ROCK ART AT JINAWANURA CAVE. HE WAS REPORTED BY THE COMPANY AND SUESSFULLY PROSECUTED. THE SECOND IS THE WEST AUSTRALIAN AIRPORTS CORPORATION WHO RAN A BULLDOZER OVER AN ARCHAEOLOGCAL SITE AT THE PERTH AIRPORT. IN THE LATTER CASE THEY WERE AWARE THE SITE EXISTED, BUT I SUPPOSE FELT THE $2000 FINE FOR DISTURBING A SITE WAS A SMALL PRICE TO PAY IF THEY WERE TO EXPAND AND BETTER SERVE THE BOOMING RESOURCES INDUSTRY OF PERTH.

THE FIGURES SPEAK FOR THEMSELVES, IN THE CLIMATE OF THE BOOM BIG BUSINESS GETS A HAND UP AT THE COST OF THE INESTIMABLE HERITAGE VALUE FOR INDIGENOUS AND INDEED ALL AUSTRALIANS.

LET ME CONCLUDE BY GIVING YOU ONE LAST INSIGHT INTO THE MACHINATIONS OF ABORIGINAL HERITAGE, INDUSTRY AND GOVERNMENT IN WESTERN AUSTRALIA. GO TO THE FOLLOWING WEBSITE AND READ THE TRANSCRIPT OF THE CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA AS IT GRILLED THE FORMER DISGRACED MINISTER JOHN BOWLER OVER HIS RELATIONSHIP WITH FORMER PREMIER BRIAN BURKE, FORMER DEPUTY PREMIER JULIAN GRILL IN THEIR NEW ROLE AS LOBBYISTS FOR INDUSTRY. I AM NOT SURE IF I'M ALLOWED TO REPRODUCE THE MATERIAL SO I RECOMMEND YOU READING IT YOURSELF.

I HOPE IN THIS PAPER YOU HAVE GAINED SOME INSIGHT INTO THE STRUGGLE FOR ABORIGINAL PEOPLE TO PROTECT THEIR HERITAGE AT THE MOST BASIC LEVELS.

THANKYOU, KIAORA!