7 April 2022

Cultural Heritage Acts Review
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
Sent via email only: CHA_Review@dsdsatsip.qld.gov.au

Dear Cultural Heritage Acts Review Team,

Submission to the review of the *Aboriginal Cultural Heritage Act 2003* (Qld) and *Torres Strait Islander Cultural Heritage Act 2003* (Qld) (the Cultural Heritage Acts)

We, the Nagana Yarrbayn cultural custodians of the Wangan and Jagalingou People, make the following submissions about our experiences with the *Aboriginal Cultural Heritage Act 2003* (Qld), (**ACH Act**) which has failed to protect our cultural heritage from harm and destruction. While our experience is under the ACH Act, in this submission we have referred to the Cultural Heritage Acts jointly, given the similarity of the ACH Act with the *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

We request the Queensland Government to make amendments to the Cultural Heritage Acts in Queensland so that Aboriginal cultural heritage can be properly protected, and so that First Nations are better consulted on any activities that may impact our cultural heritage.

We also request that the Queensland Government undertake this reform to ensure the amendments reflect our cultural rights protected in the *Human Rights Act 2019* (Qld), our international rights to self-determination and free prior and informed consent upheld in the Universal Declaration of the Rights of Indigenous Peoples which Australia is party to, and in a way that meaningfully reflects the Queensland Government's desires for treaties with First Nations. We also ask that this reform upholds the recommendations from the Final Report of the Inquiry into the destruction of 46,000-year-old caves at the Juukan Gorge in the Pilbara region of Western Australia, which are relevant also to Queensland's Cultural Heritage Acts.

Our key submission is that the correct cultural people must be empowered to speak to and protect the cultural heritage on their Country, through free, prior and informed consent being required from the correct people under the Cultural Heritage Acts.

Currently the Cultural Heritage Acts rely heavily on the native title law framework which has proved to be divisive of Aboriginal families and does not ensure that the correct cultural people are able to protect their cultural heritage.

The central issues in relation to cultural heritage protection go to the flawed system which operates to protect them. This system relies on a model of governance that is removed from the reality of First Nations laws and customs and fails to respect the fundamental rights of Indigenous people. We are forced to use majority decision-making rather than traditional, consensus-based decision-making, meaning that those in the minority are excluded even if they are the knowledge holders and have the authority to speak for Country.

A system that denies the right to free prior informed consent and self-determination of those who are practising culture, and enables development priorities over natural and cultural heritage protection, will always bias away from the cultural rights of First Nations people.

A more comprehensive reform of relations between First Nations, the state of Queensland and land holders and developers would benefit us all, such as through a treaty process. However, some focused reforms of the Cultural Heritage Acts will at least bring us some way along the path of mutual understanding and more effective protection of First Nations cultural heritage and empowerment of First Nations to protect their heritage.

SUMMARY OF SUBMISSIONS

The management and protection of cultural heritage should be in our hands, and not in the hands of the State or proponents. We are the ones who are practising and manifesting culture on Country, the knowledge holders with authority to speak for our Country and cultural heritage. We should be consulted from the start about any development that will impact our cultural landscapes and heritage.

We are calling for the following reforms, that are needed at a minimum to improve the protection of cultural heritage in Queensland:

- Amend the definition of 'Aboriginal party' so that Traditional Owners who are practising culture and that have cultural connection to and authority to speak for Country must be involved in consultation and negotiation processes, regardless of their status as a native title party or whether they are on a nominated committee.
- Require proponents to notify activities so Traditional Owners can nominate themselves as an Aboriginal party, and don't allow proponents to simply negotiate a CHMP with the native title party to satisfy their duties under the Act without consulting the right people to speak for Country.
- Undertake state-wide, government funded mapping of cultural heritage, including cultural landscapes, and also require proponents undertake specific mapping for individual activities under CHMPs with all Traditional Owners who assert a connection to the Country that is being impacted.
- Create greater enforcement powers for First Nations, so that we aren't reliant on the State to protect our cultural heritage if it is in imminent danger of harm or destruction.
- Support First Nations to develop their own governance bodies and systems at the local and regional levels that are responsible for protection and management of cultural landscapes, and that engage with Traditional Owners directly to determine who the right people to speak for Country are.

We address some of those specifics in our submission below –

FAILURE OF THE CULTURAL HERITAGE ACTS TO PROTECT OUR CULTURAL HERITAGE

The Carmichael Coal Mine is located on our ancestral Wangan and Jagalingou country. Hundreds of artefacts have been found on the mine site and it is a significant record of the Wangan and Jagalingou People's occupation of the area and evidence the area has been used by our people for thousands of years.

Under law, the proponents of the mine, Bravus Mining and Resources (**Bravus**), were required to consult with the 'Aboriginal party' and enter into a Cultural Heritage Management Plan (**CHMP**).

The Cultural Heritage Acts rely on the native title framework to determine who the 'Aboriginal party' is. This meant that Bravus negotiated a CHMP with the native title party for the area. The original CHMP was developed many years ago and has been assigned on a number of occasions, and is now the responsibility of the Clermont-Belyando native title applicant.

Under the CHMP, a Cultural Heritage Coordinator and a Cultural Heritage Committee was appointed by some members of the applicant (endorsed party). Under this CHMP, the Coordinator position was only authorised to be the liaison person between the proponent and the Wangan and Jagalingou People, in regard to schedules, budgets and engagement of field workers. However, the Coordinator acted outside of their authority, by not consulting the Wangan and Jagalingou People who hold cultural knowledge and connection to the area to be surveyed, and then authorising the destruction of cultural heritage. The Committee also acted outside of their authority in the same manner and purposely did not consult the knowledge holders of that Country and proceeded to approve the destruction of cultural heritage without any consultation with the 'right people for right country' to authorise a suitable management plan that would meet the needs of the cultural knowledge holders and keepers..

Decisions about our cultural heritage are being made by a select few individuals with close ties to the company, and even other members of the Committee have been excluded from the cultural heritage process. There is no authority to regulate this process and no consequences for the 'endorsed party' to be held accountable for not following the process delegated to them under the CHMP. There is also no engagement of traditional decision-making, meaning that majority decision-making has been used to exclude Wangan and Jagalingou People in the minority who are concerned the Committee isn't protecting their cultural heritage and Country.

In October 2021, we became concerned that Wangan and Jagalingou cultural heritage located on the Carmichael coal mine was being destroyed. We wrote to the Minister for Aboriginal and Torres Strait Islander Partnerships requesting he exercise his power under section 32 of the Cultural Heritage Act to issue a stop order to Bravus and prevent the carrying out of excavation works which were threatening our cultural heritage. We also requested that he investigate whether this activity was in breach of the Cultural Heritage Acts. We provided evidence that an archaeologist had established that the site contained significant cultural heritage.

Despite our concerns, a decision was made not to issue a stop order and not to investigate the allegations of offences under the ACH Act. In determining not to investigate, the Department advised that there was no evidence of harm occurring to Aboriginal cultural heritage on the site, and that Bravus had followed the statutory compliance process outlined in the ACH Act. Bravus carried out the works in accordance with the 2011 CHMP and therefore, to the extent any Aboriginal cultural

heritage may have been harmed in the course of those activities, Bravus would not have committed an offence.

There was no offer of a meeting to discuss our concerns nor was there a proposal for mediation to ensure the voices of Wangan and Jagalingou People excluded from the CHMP negotiation process were heard. Whether the works completed by Bravus were in compliance with the CHMP should have been properly determined through a thorough investigation.

We requested that the Department reconsider this decision not to investigate, on the basis that we were not able to obtain evidence of harm to our cultural heritage because Bravus refused us entry to the site. We also raised concerns that the Department had not consulted with the Cultural Heritage Committee before making the decision to confirm whether Bravus was actually acting in compliance with the CHMP. The Department decided not to reconsider the decision, because there was no evidence of harm to cultural heritage and said that it relied on correspondence from Bravus which stated that a single member of the Cultural Heritage Committee had confirmed the site had been 'culturally cleared'. That member of the Committee did not have authority to make that decision alone.

Not only did the State fail to act to protect our cultural heritage from harm, but we were also prevented from seeking an injunction to stop the excavation because of the high costs of legal action.

The Cultural Heritage Acts have failed to protect our cultural heritage. Because Bravus entered into a CHMP with the native title applicant, they were able to rely on that document to justify any harm to cultural heritage. While the Cultural Heritage Committee was meant to mediate between the Wangan and Jagalingou People and Bravus, this did not occur in practice, and a single person was able to sign off on the destruction of cultural heritage without consulting with members of the claim group and with the Traditional Owners with particular cultural knowledge and responsibility for that area.

When we tried to stop the destruction of our cultural heritage, we were told by the Department that we needed more evidence but we were prevented from accessing our land to get that evidence. The Department relied on the word of Bravus that they were complying with the CHMP and refused to investigate even though we told them we weren't being consulted and had serious concerns.

The result was that extensive cultural values and artefacts, and an ancient historical record, were destroyed. These failures, which allowed the destruction of our cultural heritage to occur under the Cultural Heritage Acts, are in breach of our cultural rights protected by section 28 of the Human Rights Act. We are not able to enjoy, maintain, control or protect our cultural heritage, which is a right protected under section 28(2)(a) of the Human Rights Act. The Cultural Heritage Acts need to be reformed so that Traditional Owners with connection to and cultural knowledge of Country are able to be recognised as a distinct party and consulted on cultural heritage management and protection. This must be independent of the native title framework.

One reason for the failure of the cultural heritage laws is in how CHMPs and agreements are made in the first place. These agreements are largely developer driven. They rely on an Aboriginal party which is often a construct of the native title process and may not of itself represent the true interests

of the First Nation; or may not be equipped to identify whether the protections are appropriate and to negotiate and enforce the agreement.

Agreement making itself, and enforcement, including enforcement by members of the First Nations community against its nominal representatives, becomes the most important factor in whether the Cultural Heritage Acts can do the work intended for them.

REFORMING THE CULTURAL HERITAGE ACTS

We have seen the Options Paper that has been prepared by the Queensland Government, that sets out proposals to improve cultural heritage protection. We have responded to those proposals below.

Proposals to improve cultural heritage protection

Proposal 1: Replace the current Duty of Care Guidelines with a Cultural Heritage Assessment Framework with greater engagement, consultation, agreement making and dispute resolution.

The current Duty of Care Guidelines are not working to protect Aboriginal cultural heritage and we have several concerns in relation to the proposed Assessment Framework:

1. We do not think that there should be any excluded activities which allow proponents to avoid consultation in 'high-risk areas' where there is recognised to be cultural heritage.
2. We are concerned that references to 'high-risk area' might mean that other cultural heritage that isn't located in these areas might be disregarded and not protected. There also aren't any details provided in the Options Paper about what a 'high-risk area' would be.
3. Details aren't provided about what a 'prescribed activity' would include, other than it would cause disturbance that would result in a lasting impact to ground that has not previously been disturbed. We are concerned that this Assessment Framework would allow proponents to self-assess whether their proposed activity would be a 'prescribed activity', meaning they could avoid consultation with First Nations. Clear guidelines and assessment should be provided to determine whether an activity is a 'prescribed activity' which requires consultation.

Ultimately it is the responsibility of proponents to ensure they are consulting with the Traditional Owners who have cultural connection with and cultural responsibility for that particular area. Currently, proponents are able to simply tick a box by entering into a CHMP with the Aboriginal party, regardless of whether they are the right people to speak for the area being impacted. Reforms are needed to the Cultural Heritage Acts to ensure that proponents are fulfilling their duties to consult meaningfully with the Traditional Owners in accordance with their own laws and customs, and not just doing the bare minimum required to get approval for their activities.

We are also concerned with the fact that there are currently no safeguards in the Cultural Heritage Acts for Traditional Owners whose cultural heritage interests are not being protected under a CHMP. Not every single person in a claim group is connected to every part of that Country, and so there

need to be protections for Traditional Owners who have cultural connection to an area that are not being protected under the CHMP. It is the responsibility of the Aboriginal party, usually a native title applicant or Prescribed Body Corporate, to represent the entire group, and they should be held accountable if they are not. That is the same for any Committee established under a CHMP to make decisions about cultural heritage – they are meant to represent and consult with the entire group, including the minority, and particularly the people who are culturally appropriate to speak to heritage on Country. Our family was not represented by the Cultural Heritage Committee established under the CHMP with Bravus, even though we had the knowledge and authority to speak for the area being impacted by clearing.

As we discuss further below, this reform presents an opportunity for First Nations governance innovation, by supporting local or regional First Nations organisations to be established at a grassroots level to protect and manage cultural heritage and cultural landscapes, and to engage directly with Traditional Owners on Country to help determine who the right people to speak for Country are. Ultimately, Traditional Owners with cultural connection and responsibilities for an area, who are practicing and manifesting culture on Country and who have cultural authority to speak for Country, should be able to be recognised as a distinct party and consulted on protection and management of cultural heritage, regardless of their relationship to the native title party.

Proposal 2: Integrate the mapping of high-risk cultural heritage areas into planning processes, so that risks to cultural heritage are identified and addressed early in project planning.

We agree that mapping should be conducted proactively, so that cultural heritage can be identified prior to development commencing and harm can be prevented proactively rather than being responded to reactively. The Queensland Government should be responsible for funding this mapping, and resources should be provided to First Nations to conduct surveys on Country.

This mapping should not just be limited to the planning and resource development process, as many pastoral lease holders are able to conduct activities that may harm cultural heritage without being required to notify or consult with First Nations.

Mapping must also be conducted with the First Nations who have connection to the particular area, and First Nations should have control of mapping and access to information, so that secret or restricted information is kept safe.

Mapping should be done at two different scales, and for different purposes.

Firstly, a broader mapping process should be undertaken which would provide an overview of cultural landscapes across Queensland. This is essential, as cultural heritage is embedded in often vast cultural landscapes. The Government will be required to make a significant investment to encompass and map the cultural values of traditional homelands. This must be done at scale and not simply parcel by parcel of individual tenures.

A process must be put in place to constrain developments that will destroy or harm cultural heritage while this process goes on, as it may take many years to complete. High risk areas must be prioritised and given immediate protection. A precautionary principle should be taken in respect of other cultural values.

Secondly, more specific mapping should then be undertaken for individual developments or activities, which will occur under a negotiated CHMP. This should occur at the start of any development process, and will require the proponent to engage with all Traditional Owners who assert a connection to the Country that is being impacted to determine who should be conducting particular mapping. As we discuss further below, the definition of 'Aboriginal party' should not be limited to the native title party, but should ensure that Traditional Owners with cultural knowledge and authority who are practising culture on Country are able to be negotiated with regarding the mapping of their cultural heritage.

Mapping of Country should also note who are the culturally appropriate people to speak for each area of Country and heritage in that area. This could be a requirement as part of the development of CHMPs for each area – that the correct people to speak for each area of Country that is the focus of the CHMP be mapped and noted in the CHMP, ensuring that all people with interests in the Country are consulted as part of this process.

Proposal 3: Amend the definitions in the Cultural Heritage Acts so that intangible cultural heritage, such as pathways or storylines, can also be protected.

Intangible cultural heritage – such as defined by UNESCO[1] - must also be considered in reforming the Cultural Heritage Acts.

We agree that the definition of cultural heritage should be amended to include intangible cultural heritage such as songlines, knowledge, stories, song and dance. Ownership of both tangible and intangible cultural heritage should also be vested in First Nations.

It is critical that intangible cultural heritage and the protection of the cultural landscape go hand in hand. That means getting away from the 'stones and bones' approach to cultural heritage protection and moving to living communities protecting areas of lands and waters that give meaning to the laws and customs, and specific cultural practices, of those First Nations.

Proposal 4: Provide a mechanism to resolve cultural heritage disputes, such as a First Nations body or advisory group, or increased dispute resolution powers and jurisdiction in the Land Court.

We disagree with the proposal for a single First Nations-led entity or advisory group to help resolve cultural heritage disputes. Instead, First Nations across Queensland should be empowered to develop their own systems of governance at the local or regional level, made up of First Nations who are from that region or watershed and who have authority to speak for Country. These governance bodies could engage directly with Traditional Owners on Country to help determine who the right people to speak for Country are.

Support should be provided so that First Nations can exercise self-determination to develop their own systems of governance at the local or regional level, which are responsible for protection and management of cultural landscapes and both tangible and intangible heritage, and which can

[1] https://ich.unesco.org/en/what-is-intangible-heritage-00003

engage with Traditional Owners on Country to determine who the right people to speak for Country are.

Proposal 5: Require land users to document and register all agreements and consultation under the Cultural Heritage Acts.

First Nations with cultural connection to Country should be able to access any agreement or CHMP that is entered into by the Aboriginal party, so that they can understand what has been agreed to and can ensure their cultural heritage is being protected. These documents should be kept in a registry that is independent of the parties to the agreement, so that Traditional Owners and cultural custodians with an interest in an area cannot be obstructed from obtaining information needed to identity the threats to their heritage and ensure timely protection of it.

One of the reasons we were not able to protect our cultural heritage on the Carmichael coal mine site was because we were not given access to the CHMP entered into by Bravus and the native title applicant. Bravus were able to say they were acting in accordance with the CHMP, and this was considered sufficient for the Minister to reject our requests for a Stop Order and investigation. We were not able to challenge that decision, even though we couldn't access the CHMP to confirm whether our cultural heritage was even being protected by it.

Proposal 6: Strengthen monitoring and enforcement capacity such as through rehabilitation and education orders, greater powers for authorised officers, or increased numbers of officers and specialised training.

The Cultural Heritage Acts fail to provide any accessible avenues for First Nations to prevent cultural heritage from being harmed or destroyed, leaving us reliant on the government to protect our cultural heritage.

There should be more enforcement powers for First Nations seeking to protect their cultural heritage from imminent harm. This should include groups of empowered cultural heritage officers, akin to Indigenous environmental rangers, who are able to intervene to prevent destruction. Where a dispute arises work must be stopped until the dispute is resolved.

Currently, First Nations either have to rely on the Minister to issue a Stop Order or have to risk incurring costs by seeking an injunction in the Land Court.

This was the case when we became concerned that Wangan and Jagalingou cultural heritage located on the Carmichael coal mine was being destroyed. We wrote to the Minister for Aboriginal and Torres Strait Islander Partnerships requesting he exercise his power under section 32 of the Cultural Heritage Act to issue a stop order to Bravus and prevent the carrying out of excavation works which were threatening our cultural heritage. We also requested that he investigate whether this activity was in breach of the Cultural Heritage Acts.

Despite our concerns, a decision was made not to issue a Stop Order and not to investigate the allegations of offences under the Cultural Heritage Acts. Because of this, Bravus have been allowed

to proceed with excavation works, potentially harming or destroying cultural heritage in the process.

Not only did the State fail to act to protect our cultural heritage from harm, but we were also prevented from seeking an injunction to stop the excavation because of the high costs of legal action, which is often a major barrier for First Nations.

What is needed are greater powers for First Nations to prevent, stop or seek redress for illegal actions. Dispute resolution in the Land Court should also be made available without the risk of significant costs, and the State should provide financial assistance to Traditional Owners seeking to protect their cultural heritage.

Reframing the definitions of Aboriginal party and Torres Strait Islander Party (removal of 'last claim standing' provision)

Option 1: In areas where there is no registered native title holder or claimant, a previously registered native title claimant is not considered a native title party and the test of knowledge and connection and interest to an area or object under s 35(7) is removed. Instead, any First Nations person can request recognition as a party if they claim to have a connection to the area under Aboriginal tradition or Ailan Kastom, and a First Nations body is established to review applications for party status.

Option 2: Where the Aboriginal or Torres Strait Islander party is a previously registered native title claimant subject to a determination that native title doesn't exist, a previously registered native title claimant subject to a negative determination is not considered a native title party and s 35(7) still applies to determine who the party is by reference to the person's knowledge, traditional/custom responsibilities or being a member of a recognised family or clan group for an area or object in the area.

We agree that the 'last claim standing' provision should be removed. However, we disagree with the reliance on the Native Title Act to determine who to consult with about cultural heritage, as it allows proponents to tick a box without engaging in a meaningful consent process with the appropriate First Nations knowledge holders who have cultural authority in relation to both tangible and intangible cultural heritage in an area.

Because there was a CHMP negotiated by Bravus with the native title applicants, many Wangan and Jagalingou People who were not involved in the native title process and had not given consent to the destruction of their heritage were excluded from consultation about cultural heritage, even though we had cultural knowledge about areas that would be affected by excavation works.

The Cultural Heritage Acts have failed the Wangan and Jagalingou People. By relying on native title to decide who the 'Aboriginal party' is, the Cultural Heritage Acts have excluded Wangan and Jagalingou People with cultural knowledge and connection to Country from participating in the protection and management of cultural heritage.

The definition of 'Aboriginal party' in the Cultural Heritage Acts should be changed so that First Nations with knowledge and authority about both tangible and intangible cultural heritage in an

area are able to be recognised as a party and actively engaged on cultural heritage management and protection, regardless of whether there is already a native title party recognised for that area.

There should be a requirement for proponents to publicly notify any activities they will be engaging in, and any persons who meet the definition of 'Aboriginal party' set out above should be recognised as a party. This notification should occur at the start of any approvals processes or activities, so that there is enough time for First Nations with cultural connection to the area to nominate themselves as an Aboriginal party, and to be heard about the significance of the cultural heritage on the site.

While it may be argued that the PBC or native title applicant is best placed to negotiate about cultural heritage protection with proponents, we would disagree and point to our own experiences with the Clermont Belyando native title applicant. Our family, including our representative on the applicant, was excluded because we disagreed with the ILUA entered into with Bravus, meaning we were not consulted about any cultural heritage on the Carmichael coal mine site. First Nations are often pressured into entering ILUAs, being given an ultimatum that they either sign the ILUA or lose their native title status. Those who walk away from this unfair process should not be doubly discriminated against. It is clear that simply relying on the native title party to determine who to consult with is failing First Nations across Queensland, who are not being represented by the PBC or the native title applicant. Ultimately, it is the people who are practising and manifesting culture, the knowledge holders with authority to speak for Country, who must be consulted about cultural heritage as a priority.

First Nations across Queensland should be empowered to develop their own systems of governance at the local or regional level, made up of First Nations who are from that region or watershed and who have authority to speak for Country. These governance bodies could engage directly with Traditional Owners on Country to help determine who the right people to speak for Country and particular cultural heritage are (discussed further **below**).

<u>Promoting leadership by First Nations Peoples</u>

Proposal 1: Establish a First Nations-led entity responsible for managing and protecting cultural heritage in Queensland. The entity could work with existing or future local Aboriginal and Torres Strait Islander groups who manage cultural heritage, and could provide dispute resolution support, assistance, and advice for managing and protecting cultural heritage in Qld.

Proposal 2: A First Nations independent decision-making entity, in partnership with Aboriginal and Torres Strait Islander peoples, could explore the most culturally appropriate approaches for recognising historical connection to an area for the purposes of cultural heritage management.

We disagree with the proposal to establish a single First Nations-led entity that is responsible for managing and protecting cultural heritage in Queensland. As discussed above, First Nations across Queensland should be supported to develop their own systems of governance at the local or regional level, made up of First Nations People who are from that region or watershed and who have authority to speak for Country. These systems of governance could engage directly with Traditional Owners on Country to help determine who the right people to speak for Country are.

Another large, bureaucratic organisation is not needed, and could instead continue to entrench the inequities experienced by Traditional Owners like us who have been excluded from cultural heritage. This reform of the Cultural Heritage Acts instead presents an opportunity for First Nations-led governance innovation, by listening to and supporting First Nations to develop their own systems of governance over Country in accordance with traditional decision-making and First Law and separately to the unfair native title framework.

Local or regional organisations at a grassroots level should be supported to develop, which would engage directly with the Traditional Owners about cultural heritage, and provide a point of contact for proponents to advise them on who to consult with. These organisations should be made up of First Nations People who are from that region or watershed, and who have cultural authority to speak for Country. These organisations should have a broader role than just conducting cultural heritage surveys or clearances, and would instead be responsible for protection and management of cultural landscapes, which includes intangible and tangible cultural heritage and the environment. They would also engage directly with Traditional Owners on Country to determine who the right people to speak for Country are, would resolve disputes in a culturally appropriate way, and would act as a point of contact for proponents to assist them to consult with the right people and ensure they are complying with their obligations under the Acts.

The empowerment of First Nations at the local and regional level to develop our own governance models and decision-making frameworks about cultural heritage and protection of culture and Country aligns with our rights of self-determination and free, prior and informed consent protected by international law, as well as our collective and individual cultural rights protected under the Human Rights Act. While this would be a resource intensive process, and would require significant financial support from the Queensland Government and proponents, it would ensure that First Nations like us can have our voices heard and be involved in the protection and management of our cultural heritage in accordance with First Law, separate from the native title framework which has failed us.

Other submissions

Breach of our human rights

The *Human Rights Act 2019* (Qld) specifically recognises the rights of Aboriginal and Torres Strait Islander peoples under section 28, stating at subsection (2):

> Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—
>
> (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
> (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and
> (c) to enjoy, maintain, control, protect and develop their kinship ties; and
> (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and

(e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

The Queensland Government must ensure that the amendments to the Cultural Heritage Acts truly reflect these cultural rights, as they are currently not being protected under the existing legislation. In particular, the reliance on native title to determine who to consult with has been detrimental to us, and the resulting destruction of our cultural heritage has been traumatising and heartbreaking and has hurt us spiritually and emotionally.

Department is hindering the operation of the Cultural Heritage Acts

A full-scale review of the Department is also needed to ensure that Department staff and processes are supporting and not hindering the operation of the Cultural Heritage Acts to protect cultural heritage, as well as to ensure staff do not involve themselves in decisions about which they have a conflict of interest, and are trained to be culturally appropriate, aware and respectful.

We are concerned that the Department officers charged with administering the Cultural Heritage Acts are not fulfilling their obligations, and are instead significantly hindering our attempts to protect our cultural heritage. This was seen in our failed attempts to seek compliance, investigation and enforcement activities from the Department even where offences were clear and well-evidenced. This should be of significant concern to the Queensland Government. We need a fully functioning Department that is able to deal with community complaints, and does not rely on the word of proponents over the concerns of Traditional Owners with cultural knowledge and authority.

Action is needed to review the behaviour and effectiveness of the Department in achieving the objects of the Cultural Heritage Acts. This includes ensuring that staff do not act in decision making roles where they have a conflict of interest, and that staff are trained to be culturally appropriate, aware and respectful. There should also be more First Nations staff employed by the Department.

CONCLUSION

The Cultural Heritage Acts in Queensland have failed the Wangan and Jagalingou People, and many other First Nations.

We are calling for the following reforms, that are needed at a minimum to improve the protection of cultural heritage in Queensland:

- Amend the definition of ‘Aboriginal party’ so that Traditional Owners who are practising culture and that have cultural connection to and authority to speak for Country can be involved in consultation and negotiation processes, regardless of their status as a native title party.
- Require proponents to notify activities so Traditional Owners can nominate themselves as an Aboriginal party, and don’t allow proponents to simply negotiate a CHMP with the native title party to satisfy their duties under the Act without consulting the right people to speak for Country.
- Undertake state-wide, government funded mapping of cultural heritage, including cultural landscapes, and also require proponents undertake specific mapping for individual

activities under CHMPs with all Traditional Owners who assert a connection to the Country that is being impacted.

- Create greater enforcement powers for First Nations, so that we aren't reliant on the State to protect our cultural heritage if it is in imminent danger of harm or destruction.
- Support First Nations to develop their own governance bodies and systems at the local and regional levels that are responsible for protection and management of cultural landscapes, and that engage with Traditional Owners directly to determine who the right people to speak for Country are.

Thank you for the opportunity to make submissions on the review of the Cultural Heritage Acts. We look forward to further consulting with the Queensland Government on how the Cultural Heritage Acts can be reformed to better ensure the protection of cultural heritage and to provide for the self-determination and free, prior and informed consent of First Nations.

Yours sincerely,

Adrian Burragubba, Sharon Ford and Lyndell Turbane

Wangan and Jagalingou Nagana Yarrbayn Cultural Custodians