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To: CHA_Review
Cc: Wangan
Subject: Review of Aboriginal Cultural Heritage Acts

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To whom it may concern,

I am writing with regard to the current review of Queensland's Cultural Heritage Acts. In particular, I am writing in support of reforms put forward in the submission from the Wangan and Jagalingou peoples.

After following the work of the Wangan and Jagalingou peoples for many years, my view is that Queensland's Cultural Heritage Acts have failed to protect the precious cultural heritage of the Wangan and Jagalingou People on the Carmichael Coal Mine site. To prevent this happening for the Wangan and Jagalingou People and all other Traditional Owners in Queensland in future, I support the following:

1. Amend the definition of 'Aboriginal party' so that Traditional Owners with cultural connection to Country are always involved in consultation and negotiation processes, regardless of their status as a native title party.
2. Create greater enforcement powers for First Nations, so that First Nations peoples aren't reliant on the State to protect their cultural heritage if it is in imminent danger of harm or destruction.
3. Establish an independent First Nations-led decision-making body that is responsible for dispute resolution and mediation, and for assessing who the right people to speak for Country are.

Queensland's laws currently fail to recognise the right people to speak for Country

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

As there is significant cultural heritage on the mine site, 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**) with them.

The Cultural Heritage Acts currently rely on the native title framework to determine who the 'Aboriginal party' is. This meant that Bravus only negotiated a CHMP with the native title party for the area, the Clermont-Belyando native title applicants.

Other Wangan and Jagalingou People who are not native title applicants were not consulted about the impact to their cultural heritage, even though they have cultural knowledge and responsibility for areas on the mine site and are the right people to speak for Country.

This type of outcome is an explicit example of the type of structural racism that must be dismantled. Rather than embrace complexity - a complexity that is the direct result of colonialism - the Queensland Government chooses to take a path that most neatly fits the existing western law, which requires a defined group of "owners" while ignoring the complex nature of the relationships of First Nations peoples to land.

Under the CHMP, a Cultural Heritage Committee was appointed, who were meant to represent the interests and knowledge of the Traditional Owners for that Country. In practice, decisions about our cultural heritage are being made by a select few individuals without consultation with the Traditional Owners for that Country.

The Cultural Heritage Acts have failed the Wangan and Jagalingou People. By relying on native title status 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.

Therefore, I support the following:

That the definition of 'Aboriginal party' in the Cultural Heritage Acts should be changed so that Aboriginal and Torres Strait Islander People with particular knowledge about both tangible and intangible cultural heritage in an area are able to be recognised as a party and consulted on cultural heritage management and protection, regardless of whether there is already a native title party recognised for that area.

Enforcement powers for Traditional Owners to protect cultural heritage

Under the Cultural Heritage Acts the Wangan and Jagalingou peoples had little to no ability to stop this recent destruction of our cultural heritage, leaving us reliant on the government to protect our cultural heritage.

This is due to the broad defences available to Bravus under the Acts, and the high risk of adverse costs orders in seeking an injunction. The Queensland Government has subsequently refused to investigate whether the actions destroying their cultural heritage were legal, taking only the word of Bravus as to the legality of the destruction.

In October 2021, there was concern that Wangan and Jagalingou cultural heritage located on the Carmichael coal mine site was being destroyed.

Despite the concerns of the Wangan and Jagalingou peoples, recently a decision was made not to issue a stop order and not to investigate the allegations of offences under the Cultural Heritage Acts. This meant Bravus have been allowed to proceed with excavation works, potentially harming or destroying cultural heritage in the process.

In this way the State failed to act to protect cultural heritage from harm, and also prevented the Wangan and Jagalingou peoples from seeking an injunction to stop the excavation because of the high costs of legal action.

Therefore I support the following:

Greater powers for Aboriginal and Torres Strait Islander People are needed to prevent or seek redress for illegal impacts to our cultural heritage without high risks of adverse costs orders. The State should also provide financial assistance to Traditional Owners seeking to protect their cultural heritage under the law.

Independent First Nations-led decision-making body needed

An independent, First Nations-led body should be created that is responsible for managing and protecting cultural heritage in Queensland and to assist with resolving disputes in a way that is culturally competent and which avoids having to go to court.

A First Nations-led body could also be responsible for assessing and determining who the right people to speak for Country are. Currently, the Cultural Heritage Acts rely on native title to determine who should be consulted about cultural heritage. Having an independent, First Nations-led body responsible for determining who should be consulted would ensure that traditional owners with cultural knowledge and responsibility aren't excluded from consultation and negotiation, like the Wangan and Jagalingou People have been. This body could also assist with decisions on registering cultural heritage sites under the Act.

For too long Aboriginal and Torres Strait Islanders have had to rely on non-Indigenous bureaucrats or Ministers to protect our cultural heritage and to make decisions as to who is appropriate to speak for Country, often without cultural competency or sufficient knowledge of our culture to make these decisions.

Therefore I support the following:

First Nations peoples must be empowered to facilitate the protection of Country and the right Traditional Owners to speak for Country by introducing a new First Nations-led, independent body in Queensland.

Conclusion

The Cultural Heritage Acts in Queensland have failed the Wangan and Jagalingou People, and many other Aboriginal and Torres Strait Islander People. Currently these Acts simply allow developers a smooth ride to gain their approvals without meaningful consultation with the Traditional Owners for Country and without sufficient accountability when acting illegally.

The management and protection of cultural heritage should be in the hands of First Nations peoples, and not in the hands of the State or developers. I support 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 with cultural connection to Country can be involved in consultation and negotiation processes, regardless of their status as a native title party.
- 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.
 - Establish an independent First Nations-led decision-making body that is responsible for dispute resolution and mediation, and for assessing who the right people to speak for Country are.

Kind regards,
Maree Kimberley

