

From: [REDACTED] behalf of [CHA_Review](#)
To: [REDACTED]
Cc: wanganandjagalingousog@gmail.com
Subject: RE: Reform the Aboriginal and Torres Strait Islander Cultural Heritage Acts
Date: Thursday, 31 March 2022 10:33:00 AM

Thank you for your feedback on the review of the Cultural Heritage Acts. The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships values your contribution towards finalising this review.

Please note that your submission will be published on our website following the public consultation closing date.

Regards

Cultural Heritage Acts Review Team
Legal Policy, Strategic Policy and Legislation, Aboriginal and Torres Strait Islander Partnerships
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

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-----Original Message-----

From: Robert Rutkowski [REDACTED]
Sent: Wednesday, 30 March 2022 10:45 PM
To: thepremier@premiers.qld.gov.au; CHA_Review <CHA_Review@dssatsip.qld.gov.au>
Cc: wanganandjagalingousog@gmail.com
Subject: Reform the Aboriginal and Torres Strait Islander Cultural Heritage Acts

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Re: Reform the Aboriginal and Torres Strait Islander Cultural Heritage Acts

Dear Premier:

The Queensland Government is currently reviewing the Aboriginal Cultural Heritage Act 2003 (Qld) and Torres Strait Islander Cultural Heritage Act 2003 (Qld) (Cultural Heritage Acts), with submissions open on the review until 31 March 2022.

Help empower First Nations to protect their cultural heritage across Queensland.

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, we are asking the Queensland Government to:

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.

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.

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

As you may know, 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 our 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.

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.

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 our own cultural heritage

Under the Cultural Heritage Acts we 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 our cultural heritage were legal, taking only the word of Bravus as to the legality of the destruction.

In October 2021, Nagana Yarrbayn became concerned that Wangan and Jagalingou cultural heritage located on the Carmichael coal mine site was being destroyed. They 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 the 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.

We need greater powers for Aboriginal and Torres Strait Islander People 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.

We need First Nations to 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 our hands, and not in the hands of the State or developers. The W&J Nagana Yarrbayn Cultural Custodians 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 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 the 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.

The W&J Nagana Yarrbayn Cultural Custodians will be making a more detailed submission to the Cultural Heritage Acts Review, which is open for submissions until 31 March 2022.

Yours sincerely,
Robert E. Rutkowski

cc:
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