

SUBMISSION

Review of the
Aboriginal Cultural Heritage Act 2003 (Qld)
and the
Torres Strait Islander Cultural Heritage Act 2003 (Qld)
(Cultural Heritage Acts)

by Simon Validzic

To whom it may concern:

As a person who advocates for the rights of indigenous peoples to self-determination and land-rights, I am writing to in support of First Nations Peoples to protect their cultural heritage across Queensland. I support their submissions to this review.

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 am asking the Queensland Government to:

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 they are not reliant on the State to protect their cultural heritage if it is in imminent danger of harm or destruction.
3. Establish an independent decision-making body, led by First Nations, 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 that 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.

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 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 their own cultural heritage

Under the *Cultural Heritage Acts*, Wangan and Jagalingou People had little to no ability to stop this recent destruction of their cultural heritage, leaving them reliant on the government to protect their 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 the cultural heritage of the Wangan and Jagalingou People were legal, taking only the word of *Bravus* as to the legality of the destruction.

In October 2021, Wangan and Jagalingou Nagana Yarrbayn Cultural Custodians became concerned that their 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 their cultural heritage. They also requested that he investigate whether this activity was in breach of the *Cultural Heritage Acts*.

Despite their 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 cultural heritage from harm, but Wangan and Jagalingou People were also prevented from seeking an injunction to stop the excavation because of the high costs of legal action.

Greater powers are needed for Aboriginal and Torres Strait Islander People to prevent or seek redress for illegal impacts to their 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 body, led by First Nations, 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 body that is led by First Nations 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 body that is led by First Nations responsible for determining who should be consulted would ensure that traditional owners with cultural knowledge and responsibility are not 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 their cultural heritage and to make decisions as to who is appropriate to speak for Country, often without cultural competency or sufficient knowledge of the culture to make these decisions.

First Nations need to be empowered to facilitate the protection of Country and the right Traditional Owners to speak for Country by introducing a new independent body in Queensland that is led by First Nations.

Conclusion

The Cultural Heritage Acts in Queensland have failed the Wangan and Jagalingou People, and many other Aboriginal and Torres Strait Islander Peoples. 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 join the Wangan and Jagalingou People in 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 they are not reliant on the State to protect their cultural heritage if it is in imminent danger of harm or destruction.
- Establish an independent decision-making body, led by First Nations, that is responsible for dispute resolution and mediation, and for assessing who the right people to speak for Country are.

Aboriginal Australians are the rightful owners of the land and they should have self-determination and decide how the land is managed.

I lived in Australia from 1970 to 1992 but returned to my country of origin because I do not wish to be part of a country that is the result of genocide against indigenous peoples and in which the large-scale killing of native animals, logging of forests and destruction of the environment continue to take place. For the same reasons, I try to avoid products that contain raw materials from Australia, North and South America, Southeast Asia and Sub-Saharan Africa and campaign against energy projects in Croatia and other European countries that involve the import of coal, oil and gas from these lands.

I hope that you take these concerns into consideration and empower First Nations People to protect their culture, land and the environment in general.

Yours sincerely,

Simon Validzic

