

**Submission to Review of Cultural Heritage Acts:**  
**The *Aboriginal Cultural Heritage Act 2003* (Qld)**  
**&**  
**The *Torres Strait Islander Cultural Heritage Act 2003* (Qld)**  
**from**  
**Elizabeth Rice and Joseph Castley**

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## **1. Introduction**

I, Elizabeth Rice, am a settler Australian who has worked under the guidance of Aboriginal people for over 20 years on issues such as:

- reparation for the Stolen Generations, including measures to address the inter-generational trauma from historic forced separations of Aboriginal children and young people from their families and communities
- the impacts of the current child protection, out-of-home care and juvenile detention systems on Aboriginal children and young people, families and communities.

Over this time I have learned lessons that apply to all areas of non-Indigenous decision making on matters affecting Aboriginal and Torres Strait Islander Peoples. These lessons include:

- Aboriginal and Torres Strait Islander Peoples are the experts on all matters relating to their cultures, including the relationship to the land and how that affects all aspects of their societies, their values and their governance.
- It is beyond the capacity of non-Indigenous decision makers to make appropriate decisions for Aboriginal and Torres Strait Islander Peoples as, no matter how knowledgeable these decision makers might be, they do not have lived experience of Aboriginal culture, society and daily life.
- Because of this, non-Indigenous Australians do not always recognise the impacts of even well-intentioned legislation, policy, practice and review on the lives of Aboriginal and Torres Strait Islander Peoples.

Although I am from NSW (which is why my experience is mainly with Aboriginal people), I am making this submission as I believe it provides the Queensland Government with an opportunity to lead Australia in recognising the rights of Aboriginal and Torres Strait Islander Peoples and respecting all aspect of their cultures, including their decision-making.

My husband, Joseph Castley, a settler Australian who was born and grew up in Queensland, also supports this submission.

## **2. Recommendations**

We support the position of the W&J Nagana Yarrbayn Cultural Custodians as expressed at <https://standing-our-ground.org/2022/03/29/cultural-heritage-reform/>. We have abstracted key elements of that position below:

### **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.*

We also support the W&J Nagana Yarrbayn Cultural Custodians' conclusion that:

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. 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 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.

### 3. Conclusion

The *Uluru Statement from the Heart* states that:

Makarrata is the culmination of our agenda: *the coming together after a struggle*. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.

There is no need for the Queensland Government to wait until other Australian governments come to terms with the *Uluru Statement*. It can use this review of the above cultural heritage Acts to:

- determine how well these Acts respect self-determination, as expressed in the *United Nations Declaration on the Rights of Indigenous Peoples*, and as called for in the *Uluru Statement*
- amend the Acts to remove the obstacles to self-determination in this area, including:
  - the restrictive arrangements associated with the use of the native title framework to determine who the 'Aboriginal party' is
  - the lack of an independent First Nations-led body for managing and protecting cultural heritage, and resolving disputes.

We concur with the critique of the current legislation, as outlined by the W&J Nagana Yarrbayn Cultural Custodians at <https://standing-our-ground.org/2022/03/29/cultural-heritage-reform/>, and believe that the solutions they propose provide the basis for appropriate and effective legislative reforms.



Elizabeth Rice  
31 March 2022



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31 March 2022