

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

**Review to the Queensland Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003 (Qld) (Cultural Heritage Acts),**

5<sup>th</sup> April 2022

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'concerned Australians' (cA) value the opportunity to contribute to this review. We commend the Queensland Government in seeking reform to the Queensland Aboriginal and Torres Strait Islander Cultural Heritage Acts. We implore this committee to prioritise First Nations Peoples direction. Traditional Owners, Elders and Cultural Custodians have a two-way responsibility to their lands and hold deep knowledge of their lands. They are the original and continuing Owners of these lands<sup>1</sup> and are deeply bound by their law/lore 'to country'. 'Country' is described as 'Mother Earth'. Something that only belatedly we non-Indigenous peoples (as relatively newcomers to this land now called Australia) are coming to understand and value. The Acts must be informed by the First Nations Peoples who have lived in this land for over 70, 000 -80, 000 plus years. Traditional Owners are asking to be respected and to be central to all processes involving their lives and lands.

cA are a voluntary human rights advocacy group, which formed following the onset of the Federally imposed 2007 Northern Territory (NT) Intervention. We have been engaged with First Nations Elders and communities of the NT, and others around Australia for almost fifteen years, including Elders and First Nations leaders from Queensland. Our mandate is to listen to and to allow First Nations voices to be heard. Their voices, cultural processes, structures, and authority exist and is deeply respected. cA have learnt much from the knowledge and wisdom of First Peoples of this land. We believe cultural Integrity, cultural authority and mutual respect and responsibility is vital as Australia moves forward as a Nation. cA never speak for First Nations Peoples. Our submission to this review fully supports the Wangan and Jagalingou People of the Carmichael Coal mine site (and all other Traditional Owners and Cultural leaders) who continue to be adversely impacted by unethical, neo-colonial and unsustainable processes whether in Queensland or across Australia. It is not okay for just a select few to be consulted, as is common practise across our land. As their submission to this review states,

*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.*

The Wangan and Jagalingou People of the Carmichael mine site request that,

*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:*

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<sup>1</sup> Sovereignty has never been ceded and we are yet to negotiate treaty/ies.

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- *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.*

Their submission goes into more detail. These are fair, sensible, and just requests. Australian laws currently fail the people and their lands, and deny the right to self-determination.

The Wangan and Jagalingou Traditional Owners and Cultural Custodians are being grossly disrespected. Their voices and cultural authority are being excluded from participation in affairs that directly impact on their well-being and lands. Consequently, their cultural heritage, lands, sacred sites, dreaming and very lives continue to be attacked/destroyed under unethical neo-colonial processes; ecocide and cultural genocide a reality. The gross power imbalance is an everyday lived experience. Traditional Owners too often have limited resources and are unable to fight mega mining conglomerates or the State as many recent reviews around Australia have proved<sup>2</sup>. People are worn down over years of disempowering processes; people die before justice. Eddie Mabo, a point in case.

The Adani/Bravus processes for example, have proved to be deeply flawed yet allowed under inadequate Australian and Queensland laws.

*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***

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<sup>2</sup> Juukan Gorge reviews

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***heritage management and protection, regardless of whether there is already a native title party recognised for that area.***

The current Queensland Acts fail to respect First Nations Peoples. And, there are other concerns.

Millions of people, including children, across Australia have joined with First Nations leaders to call for an end to Fossil Fuels. These are wealth, climate and health hazards. They make NO financial sense. Coal mines across the world are closing, some been bankrupted twice! Global Banks, Insurance companies etc are increasingly refusing to support these unethical and unviable enterprises. Additionally, large corporations including superannuation companies, down to the ordinary people are divesting from fossil fuels. Coal mines are economically unviable and rapidly becoming stranded assets. To continue to build the climate wrecking Adani/Bravus Carmichael Coal mine is environmentally and economically irresponsible and negligent! For Governments to continue to support this destruction of 'Mother Earth' is irresponsible for every reason, as the cultural authority of the area, as Indigenous and climate scientists, as the International Panel on Climate Change (IPCC), International Energy Agency (IEA), United Nations, Climate Council of Australia and more report. Governments have a responsibility to the people of Australia, a duty of care to future generations and our world. Currently Australia is acting against the rest of the world, reneging on various global agreements. Worse, delay on climate action is the new denial. This is absolute negligence. Fossil fuel companies have known about their destructive impacts for in excess of 50 years. The world is screaming out for zero emissions now! 2050/2030 is too late! Hence the need to respond to the calls of First Nations Leadership in this now.

Globally there is a campaign to establish a **law of Ecocide**, making large scale and systemic destruction of nature an international crime!

The reformed Queensland Acts need to work alongside current and emerging environmental laws in our land.

*"The rules of our world are laws, and they can be changed. Laws can restrict or they can enable. What matters is what they serve. Many of the laws in our world serve property – they are based on ownership. But imagine a law that has a higher moral authority... a law that puts people and planet first. Imagine a law that starts from first do no harm, that stops this dangerous game and takes us to a place of safety..."* Polly Higgins, 2015

*"We need to change the rules".* Greta Thunberg, 2019

Australia's First Nations youth remind us,

*As Aboriginal and Torres Strait Islander young people we are a part of the oldest continuing culture in the world and have lived in harmony with our land for generations.  
Right now climate change is disproportionately affecting Aboriginal and Torres Strait Islander people. We are experiencing rising sea levels in the Torres Strait, the loss of sacred country, diminishing food and water accessibility.  
For Aboriginal and Torres Strait Islander people the injustices go beyond the climate impacts. The fossil fuel industry has been putting stress on our land, our culture and our communities for decades. Our vision is for a just and sustainable future with strong cultures and communities, powered by renewable energy. Our vision and the fossil fuel industry cannot coexist.  
We are calling for climate justice now – this means moving beyond dirty fossil fuels and transitioning to safe, clean, renewable energy.*

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*We are calling on you to stand with us in solidarity for a just and safe climate.*<sup>3</sup> Indigenous Youth Climate Network, SeedMob, Australia.

Australia's irresponsible and negligent action subsidising and expanding fossil fuel extractivism across this country comes at great cost to Indigenous lives, is a global embarrassment with other dire consequences, and is an existential threat upon our planet. We are witnessing unsustainable practises, dispossession and death and ecocide at unprecedented levels! Millions of species have been wiped from the face of Australia due to the climate emergency of droughts, bush fires 2019/2020 and more recently the floods 2022.

The detrimental impacts upon the local and global populations and environments are unfolding as our planet warms at a frightening rate. With the recent Australian disasters, for example, there are greater than seven thousand homes uninhabitable in the town of Lismore, NSW, alone. How many in Queensland? Dispossession off lands and increasing homelessness of other Australians are harsh realities. Governments need to be responsible for the climate diaspora. The economic costs of this is unfathomable!

The climate and ecological emergency is a reality. Many First Nations Peoples have long called it out and are on the front line as their lands are destroyed, sea waters rise, as 'country' faces increasing droughts, floods, contamination of waterways. Additionally, First Nations communities face depletion of their water sources from unscrupulous mining practises and short-sighted State/Territory water give-aways to mining conglomerates. We all face other climatic and health disasters, as animal and plant life and food sources disappear.

Respecting and taking direction from the cultural leadership of First Nations Peoples has long been demanded and is long overdue. Their knowledges run deep. The Traditional Owners and Custodians of this land must have their rightful place at the table. Indeed, a United Nations report in 2019 stated that *Indigenous Sovereignty Could Save The Planet*<sup>4</sup>. Australia is the only commonwealth country in the world not to have a Treaty/ies with her First Nations Peoples. Indigenous lives, our lives and the health of our global environment are all connected. Indigenous rights, social and climate justice are intricately related. The right to Indigenous self-determination is intrinsic to human rights.

### **Human Rights**

There is an urgent need to ensure Human and Indigenous Rights principles are embedded into the law/s of our land including into Queensland law more fully, and that both Acts under review comply with Human Rights.

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<sup>3</sup> SeedMob Youth [https://www.seedmob.org.au/indigenous\\_youth\\_declaration?fbclid=IwAR2D5J-gJJWsf1baFlgDhaSumgliZ1Dd6wNWH4\\_U7B71Ytzvediu30u5Yfc](https://www.seedmob.org.au/indigenous_youth_declaration?fbclid=IwAR2D5J-gJJWsf1baFlgDhaSumgliZ1Dd6wNWH4_U7B71Ytzvediu30u5Yfc)

<sup>4</sup> **UN REPORT SAYS INDIGENOUS SOVEREIGNTY COULD SAVE THE PLANET**, Mike Ludwig, Truthout , May 7, 2019. <https://truthout.org/articles/un-report-says-indigenous-sovereignty-could-save-the-planet/>

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Cultural competency throughout State, bureaucratic and business processes is limited yet essential. Cultural integrity, mutual respect and mutual responsibility also vital in the way forward as various United Nations Special Rapporteurs for Indigenous Peoples have reminded us in recent years.

The Australian politic, at all levels must come to respect and understand that First Nation Peoples must be part of all processes regarding their lives and lands. First Nations Peoples right to self-determination and to their indigeneity must be respected.

The Acts must be informed by Queensland's First Nations cultural leaders and Traditional Owners. This will pave a way for 'all' the voices-including those with cultural authority and responsibility 'to county' in future to be respected and included.

Sadly, various Acts and land rights gains, including the 1993 Native Title Act, have been inadequate and then latter 'reformed'/eroded. Prime Minister John Howard's Ten Point WIK Plan is a clear example in Queensland. Hard fought land Rights grossly weakened in favour of the State and mining companies at a stroke of a pen by the whims of Government of the day.

Today in 2022 the situation seems to be deteriorating for many. Over the past decade or more the cultural leaders of the Wangan and Jagalingou People of the coal mine site have been excluded from processes impacting on 'their' lands. Not all people have been correctly or rightly acknowledged as Traditional Owners/Custodians or as Cultural leaders with authority over their land estates as explained in their submission.

Engagement and direction over their lands MUST come from the relevant First Nations cultural leaders *who have authority to speak for country*. The latter will ensure the protection of First Nations cultural heritage in Queensland, empower First Nations Peoples and will work to minimize frustrating delays and unnecessary court expenses, too often experienced by First Nations Peoples and others, including mining companies, the State/Territories and businesses. Following United Nations human rights covenants and principles will ensure just and right outcomes for both Indigenous and non-Indigenous parties. Business ethics and Indigenous rights do matter.

## **Indigenous Rights**

Australia and her States/Territories must abide by the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) seriously. Australia gave her support to the declaration in 2009 but little has changed.

Relevant articles of UNDRIP include:

### **Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

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**Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Article 8 (1):** Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

**Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 11 (1):** Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

**Article 11 (2):** States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**Article 12(1):** Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

**Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 20 1.**

Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

**Article 25 (1):** Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

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**Article 28 1.**

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

**Article 28 2.**

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress

**Article 29.2**

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent

**Article 30 1.**

Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

**Article 31 1.** Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

**Article 32 1.** Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. **States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources**

And, as **Article 38** of the UNDRIP adds,

*States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.*

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The Australian, state and Territory governments are yet to embed the UNDRIP into law.<sup>5</sup>

Australia is also bound by other international and legally binding covenants which include

- UN International Covenant on Economic, Social and Cultural Rights
- UN International Civil and Political Rights
- UN Committee on the Elimination of Racial Discrimination
- UN Convention on the Prevention and Punishment of the Crime of Genocide

In 2002 Australia belatedly legislated to make genocide a crime. Australia needs to take this seriously. Leading scholars, as First Nations Peoples have long and continue<sup>6</sup> to call cultural genocide out.

We recommend Martin Cook and Damien Short's 2019 article the , [Political Economy of Genocide in Australia: The architecture of Dispossession Then and Now](#)<sup>7</sup> to this review process and also the work of Jon Altman [here](#)<sup>8</sup>

### **There are other guiding principles, including in business**

*It is well established that effective engagement with Aboriginal persons is a key element of the social licence to operate for business and industry. In 2007 this became a de facto obligation when the United Nations adopted the Declaration on the Rights of Aboriginal Peoples. This Declaration, coupled with the United Nations Universal Declaration on Human Rights, led to the production of the [United Nations Guiding Principles on Business and Human Rights in 2011](#). Since then we have seen the business sector, especially the investing and financial sector adopting practices which support the concept of Free, Prior and Informed Consent, which is core to the Declaration on the rights of Aboriginal people*

As highlighted throughout the Australasian Centre for Corporate Responsibility (ACCR) in their submission to the Juukan Gorge destruction inquiry the ACCR were damning of Rio Tinto and Australian States when they reminded us the,

*Gaps between local laws and international standards can create risk for companies operating in the jurisdiction of regulatory insufficiency. Australian laws are plainly insufficient, in general, in upholding the cultural heritage-related rights contained in the UNDRIP.<sup>9</sup>*

Investors more and more look to ethical investments. The profound destruction of Juukan Gorge has cost the reputations of Rio Tinto, the Australian Sate and WA greatly. In addition, it was said,

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<sup>5</sup> Australian Government-Human Rights ,UNDRIP at <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>

<sup>6</sup> Yingiya Mark Guyula MLA NT, in regards under 13 years of ongoing NT Intervention/Stronger Futures and related Legislation, transcript, p 3/ 59:44 [http://www.concernedaustralians.com.au/media/13\\_Yrs\\_Intervention\\_Transcript\\_Yingiya\\_Mark\\_Guyula.pdf](http://www.concernedaustralians.com.au/media/13_Yrs_Intervention_Transcript_Yingiya_Mark_Guyula.pdf)

<sup>7</sup> <http://www.concernedaustralians.com.au/media/2019%20-%20MC%20DS%20A%20Political%20Economy%20of%20Genocide%20in%20Australia-the%20architecture%20of%20Dispossession%20Then%20and%20Now.pdf>

<sup>8</sup> Jon Altman, 'Self-Determination's Land Rights Destined to disappoint?' published in *Indigenous Self-Determination in Australia: Histories and Historiography*, edited by Laura Rademaker and Tim Rowse, published 2020 by ANU Press, The Australian National University, Canberra, Australia.

<sup>9</sup> [Australasian Centre for Corporate Responsibility](#)(ACCR), Submission: Parliamentary Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge, 31 July 2020 [here](#)

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*It is well established that effective engagement with Aboriginal persons is a key element of the social licence to operate for business and industry. In 2007 this became a de facto obligation when the United Nations adopted the Declaration on the Rights of Aboriginal Peoples. This Declaration, coupled with the United Nations Universal Declaration on Human Rights, led to the production of the United Nations Guiding Principles on Business and Human Rights in 2011. Since then we have seen the business sector, especially the investing and financial sector adopting practices which support the concept of Free, Prior and Informed Consent, which is core to the Declaration on the rights of Aboriginal people*

In 2022, as our climate warms and catastrophes become more regular, we need to abide by our human rights norms and environmental laws, abide by best practise as articulated by the ACCR and Human Rights organisations and in particular follow the leadership of the correct First Nations groups. Self-determination must be respected.

We implore this review process to carefully consider the submission of the Wangan and Jagalingou People of the Carmichael Coal mine site as they concluded,

*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. 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.*

As Australia's Indigenous Peoples Organisation conclude and add,

*The IPO supports the review of Queensland Cultural Heritage Acts. We welcome any measure that legislates the rights of Indigenous Custodians to speak for Country. We strongly endorse the submission made by the Wangan and Jagalingou People to this review. We urge the Queensland Government to review and ensure its compliance with Section 28 of the Queensland Human Rights Act 2019, which says that:*

1. *Aboriginal people and Torres Strait Islander peoples hold distinct cultural rights.*

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*2. Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community 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 and develop and use their language, including traditional cultural expression; 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.*

*3. Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture. ...*

Self determination vital.

Thank you

Georgina Gartland for cA

'concerned Australians' acknowledge the First Nations People, the Traditional Owners of this land and their many unique cultures and languages. We respect the knowledge and wisdom of Elders past and present. They have never ceded their sovereignty and we commit to walking with them in their quest for truth, justice, and treaties.