



30<sup>th</sup> March 2022

Cultural Heritage Acts Review

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

Sent via email only: [CHA\\_Review@dssdsatsip.qld.gov.au](mailto:CHA_Review@dssdsatsip.qld.gov.au)

Dear Madam/Sir,

**Submission to the review of the *Aboriginal Cultural Heritage Act 2003 (Qld)* and *Torres Strait Islander Cultural Heritage Act 2003 (Qld)* (the Cultural Heritage Acts).**

Thank you for the opportunity to provide a submission on the Options Paper: Finalising the review of Queensland's Cultural Heritage Acts (**Options Paper**).

We are Wit-boooka, Tribal Elder and Kabi Sovereign Tribal Law/Lore man, and Diane Djaki Widjung Keeper of Records for the Sovereign Kabi Tribe, and both of us are Tribal Guardians for Djaki Kundu at Gympie. We are writing on our own behalf and also on behalf of Kabi Tribal Elders past and present who appointed us as Guardians to protect Djaki Kundu and other sacred sites in 2013.

We have interests in the protection of Aboriginal cultural heritage located in Kabi Bunya Djha, in Gympie and the surrounding region because we have a religious and spiritual tribal obligation to protect Kabi cultural heritage and sacred sites in the area.

Serious reform of the Cultural Heritage Act in Queensland is needed so that cultural heritage can be better protected, and so that First Nation Peoples are meaningfully and effectively consulted on any activities that may impact our irreplaceable cultural heritage, so that what is commonly referred to as 'Aboriginal Cultural Heritage' is no longer allowed to be stolen, damaged and or destroyed, as is all too frequently allowed to occur at the present time..

The Queensland Government has a duty to ensure that the Cultural Heritage Acts are reformed in a way that is consistent with the following:

- [The United Nations Declaration on the Rights of Indigenous Peoples](#), in particular the rights to self-determination and free, prior and informed consent
- The recommendations made in [A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge](#)
- The Best Practice Standards in Indigenous Cultural Heritage Management and Legislation set out in [Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia](#)

- The [Human Rights Act 2019 \(Qld\)](#), in particular section 28 which protects the right of First Nations to ‘enjoy, maintain, control, protect and develop their identity and cultural heritage’
- The [letter](#) from a group of First Nations People to the UN Committee on the Elimination of Racial Discrimination (CERD) dated 30 August 2021, and the [letter](#) in response dated 3 December 2021, addressing allegations that the Western Australian Aboriginal Cultural Heritage Bill 2020, now the *Aboriginal Cultural Heritage Act 2021* (WA), does not incorporate the principle of free, prior and informed consent
- In a manner that prevents the use of provisions of the Act to be used to allow damage and destruction of First Nation Spiritual and religious beliefs and practises, culture, art, relics, foods, resources, lands, waters, song lines, and other ancestrally inherited possessions.

### **Experience with the Cultural Heritage Acts**

In 2021 the Kabi Sacred site of Djaki Kundu in the vicinity of Rocky Ridge Gympie was largely destroyed by the Queensland Department of Transport and Main Roads. Since the late 1970’s government authorities have been informed by Kabi Elders that the site is sacred. QDTMR chose to ignore our cultural and human rights and had police remove us from the site. QDTMR and their contractors began constructing roads on the sacred site and they:

- clear-felled/ destroyed a forest of at least 54 Sacred Bunya trees,
- destroyed at least 18 Scar trees including 3 bee trees,
- destroyed burial sites,
- destroyed other native forest with culturally important trees,
- destroyed the waterways, pygmy possum, Koala, Native sacred kabvai bee and other animal habitats,
- destroyed much of the surface environment including bush food and medicine plants,
- destroyed the surface features of many places where we commune with Kabi Ancestors,
- decimated the sacred women’s area, including the creek,
- destroyed sacred ponds with central mounds,
- destroyed the ochre gathering areas,
- destroyed women’s bora grounds and stone kippa rings, currently preventing further tribal corroborees and future initiations
- destroyed standing stones and other stone arrangements,
- destroyed ceremonial pathways,
- destroyed acres of dry stone wall terraced constructions,
- destroyed the remains of ancient stone houses,
- destroyed large culturally important ancient engraved and carved stones,
- destroyed stone axes and other ancient artefacts,
- destroyed a large stone hide,
- destroyed remains of a midden,
- destroyed ancient fire pits,
- destroyed ancient fossils,
- interfered with Kabi ancient tribal song lines,
- prevented us from preserving Kabi ancient Cultural Heritage,
- Destroyed our living village and ignored our human rights to continue cultural practice,
- interrupted a men’s tribal healing ceremony and had the men arrested,

- prevented and continue to prevent Kabi religious and spiritual practice at the sacred site,
- threaten to destroy the remaining culturally significant underground features of the site,

AND road construction is continuing, and if it is not stopped it will make it almost impossible for us to continue with any religious and spiritual tribal practice at what is left of the sacred landscape site.

All of the above was and is continuing to be done even after we provided photographs of the above culturally significant items to QDTMR and other government authorities (with the exception of the midden and actual human remains). Kabi representatives (including Wit-boooka) previously informed TMR Archaeologist Tanya Harding about the cultural heritage at the sacred site in the vicinity of Rocky Ridge Gympie, only to be told 'No, we can't have that'. We repeatedly invited government authorities, including those from QDTMR to come and see the site with us, but they repeatedly refused.

QDTMR and other government agents and agencies all claimed they had complied with the Aboriginal Cultural Heritage regulations, by consulting with 'Native Title Applicants'. The Kabi Kabi 'Native title applicants' are not proven to be ancestrally connected to Kabi Bunya Djha, and regardless of that they have no continuing connection to Djaki Kundu and they claim the site is not significant to them.

The 'Native title applicants' gained no prior consent to represent the Kabi mob, and possess no tribal Law/Lore knowledge of Djaki Kundu, no knowledge of cultural aspects, tribal practice or oral history of Djaki Kundu and are not tribal guardians of the sacred site.

To allow all the above listed damage and destruction to occur, the Aboriginal Cultural Heritage Acts are clearly deficient and useless to ensure the protection of the culture and heritage of Kabi and other First Nation Peoples. Provisions of the Aboriginal Cultural Heritage Acts have been used to remove rights, perpetrate frauds and damage and destroy irreplaceable Kabi cultural heritage and ignore our human rights.

### **Opportunities to improve cultural heritage protection**

The Options Paper sets out the following proposals to improve cultural heritage protection:

**Proposal 1:** Replace the current Duty of Care Guidelines with a Cultural Heritage Assessment Framework with greater engagement, consultation, agreement making and dispute resolution.

The first proposal will not be effective if 'engagement' is with people who have no tribal Law/Lore knowledge or bloodline connection to the country concerned, as was the case with Djaki Kundu. The Queensland Supreme Court affirmed our rights to protect Kabi cultural heritage at Djaki Kundu quite aside from those of any 'Native Title Applicants', but our rights were disregarded by QDTMR and Police, who neglected and or refused to act to prevent damage and destruction of Kabi Aboriginal Cultural Heritage.

To be effective, provision should be made in the Cultural heritage Acts, (also the Crimes Acts and the criminal Codes), for police to prevent cultural heritage crime, and be compelled to charge and prosecute those who damage or destroy 'Aboriginal cultural heritage'.

**Proposal 2:** Integrate the mapping of high-risk cultural heritage areas into planning processes, so that risks to cultural heritage are identified and addressed early in project planning.

The above will not be effective while developers and government agencies refuse to acknowledge 'Aboriginal cultural heritage' exists as they did concerning Djaki Kundu. The contents of letters, emails and other documentation of Djaki Kundu sent to government authorities were disregarded by all government agencies.

For the above proposal to be effective, when Government authorities are asked to register sacred and cultural sites, they should be automatically registered. Only tribal people concerned can know whether something is significant to them, no one else has the right to judge what is or is not significant to other peoples.

**Proposal 3:** Amend the definitions in the Cultural Heritage Acts so that intangible cultural heritage, such as sacred places, landscape features, pathways and song lines, can also be protected.

The third proposal is good, however, the above will not be effective if 'engagement' is with people who have no tribal Law/Lore knowledge or bloodline connection to the country concerned, as was the case with Djaki Kundu.

The above will also not be effective while developers and government agencies are allowed to refuse to acknowledge 'Aboriginal cultural heritage' exists as they did concerning Djaki Kundu.

**Proposal 4:** Provide a mechanism to resolve cultural heritage disputes, such as a First Nations body or advisory group, or increased dispute resolution powers and jurisdiction in the Land Court.

The above will not be effective if the group's 'engagement' is with people who have no tribal Law/Lore knowledge or bloodline connection to the country concerned, as was the case with Djaki Kundu. No group should be able to judge cultural heritage is not significant, for any other person or group who says it is significant to them.

**Proposal 5:** Require land users to document and register all agreements and consultation under the Cultural Heritage Acts.

To provide incentive for developers and government agents and agencies to protect cultural heritage, all interactions with tribal owners should be audio and video recorded, with the recordings to be made available to the relevant parties.

**Proposal 6:** Strengthen monitoring and enforcement capacity such as through rehabilitation and education orders, greater powers for authorised officers, or increased numbers of officers and specialised training.

The above proposals are a slight improvement, but they will not ensure the protection of 'Aboriginal Cultural Heritage' from damage and destruction, unless the legislation ensures that if a sacred site, artefacts, relics or any other cultural heritage is not significant to some people, those people must not be allowed to remove the rights to protect, preserve, practice and use cultural heritage, for the people to whom a sacred site, artefacts, relics or any other cultural heritage are significant.

Engagement must always be with people who have proven bloodline connection to the specific country, and tribal guardians with continuing connection to the specific country.

However it must be legislated that every First Nation man or woman has a right to speak to protect cultural heritage and sacred sites significant to them, because cultural heritage and sacred sites can sometimes be significant to tribal peoples from other tribal groups who also

may have song line and or religious and spiritual tribal Law/Lore connections. However no person or group has the right to say something is not significant to another tribal man or woman, and this should be written into the legislation.

Self assessment by builders, businesses and developers does not work for First Nation peoples, as it allows the possibility for development to destroy Aboriginal cultural heritage both by ignorance and or deliberate intent, and it should be abolished.

To ensure cultural heritage is not damaged or destroyed, monitors of any development or destructive activity must be people with ancestral connection to country (assisted by experienced or professional people of their own choice), because they will be most likely know what is culturally significant to their own country.

The effect of The Queensland Human Rights Act 2019, must be acknowledged in the rewriting of the Aboriginal Cultural Heritage Acts.

### **Reframing the definitions of Aboriginal party and Torres Strait Islander Party (removal of 'last claim standing' provision)**

The Options Paper sets out the following options to reframe the definitions of Aboriginal and Torres Strait Islander Party:

**Option 1:** In areas where there is no registered native title holder or claimant, a previously registered native title claimant is not considered a native title party and the test of knowledge and connection and interest to an area or object under s 35(7) is removed. Instead, any First Nations person can request recognition as a party if they claim to have a connection to the area under Aboriginal tradition or Ailan Kastom, and a First Nations body is established to review applications for party status.

**Option 2:** Where the Aboriginal or Torres Strait Islander party is a previously registered native title claimant subject to a determination that native title doesn't exist, a previously registered native title claimant subject to a negative determination is not considered a native title party and s 35(7) still applies to determine who the party is by reference to the person's knowledge, traditional/custom responsibilities or being a member of a recognised family or clan group for an area or object in the area.

Whether or not there is a registered native title holder or claimant, or there does or does not exist any previously registered native title claimant, s 35(7) still applies to determine who the party is by reference to the person's knowledge, tribal/traditional/custom responsibilities and or by being a member of an ancestrally bloodline connected family or clan group for an area or sacred site, landscape, relic, object or intangible story or feature of the area.

### **Promoting leadership by First Nations Peoples**

The Options Paper sets out the following proposals to promote leadership by First Nations Peoples in cultural heritage management and protection:

**Proposal 1:** Establish a First Nations-led entity responsible for managing and protecting cultural heritage in Queensland. The entity could work with existing or future local Aboriginal and Torres Strait Islander groups who manage cultural heritage, and could provide dispute resolution support, assistance and advice for managing and protecting cultural heritage in Qld.

**Proposal 2:** A First Nations independent decision-making entity, in partnership with Aboriginal and Torres Strait Islander peoples, could explore the most culturally

appropriate approaches for recognising historical connection to an area for the purposes of cultural heritage management.

Establish a First Nations appointed First Nation entity responsible for managing and protecting cultural heritage in Queensland. The entity would comprise locally elected members of existing or future local Aboriginal and Torres Strait Islander groups who own, use and or manage their own cultural heritage and tribal estates, who would be funded to allowed them to employ consultants to provide advice for their dispute resolution support, assistance and also advice for managing and protecting cultural heritage in Qld.

### **Other submissions**

It must be written into the Aboriginal Cultural Heritage Acts, that First Nation Tribal families and tribal guardians who have continuing connection to country must have the final rights to refuse any and all proposals which would damage or destroy their cultural heritage, in keeping with their cultural, religious and spiritual, and basic human rights.

Thank you for the opportunity to make submissions on the review of the Cultural Heritage Acts. We look forward to further consulting with the Queensland Government on how the Cultural Heritage Acts can be reformed to better ensure the protection of cultural heritage and to provide for the self-determination and free, prior and informed consent of First Nations, and acceptance of our rights to protect our culture and heritage from damage and destruction.

All Rights Reserved,  
In good faith,

Wit-boooka, Kabi,  
Tribal Law/Lore Man,  
Descendant of Kabi Apical Ancestors George Parsons, Albert Williams and Maggie Cantini/Cadenti  
And Bat'jula Ancestor Gary Owens.  
Member of the Sovereign Kabi Tribal Council of Elders.  
Sovereign Native Tribes of the Kabi First Nation.  
Member tribe of The Original Sovereign Tribal Federation.

Diane Djaki Widjung,  
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