

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

It has become evident, over the years, that Queensland's Cultural Heritage Acts in their current form have failed to protect the cultural heritage of the First Peoples of this country – a heritage so important to them and to all of us Australians. In this particular case, the Wangan and Jagalingou People, the traditional owners of the site where the Carmichael Coal Mine is located, have been greatly harmed. As to prevent this to continue to happen, and in support of the Wangan and Jagalingou People and all other Traditional Owners in Queensland, we are asking the Queensland Government to listen and act appropriately.

### **It is very unfortunate, but Queensland's laws currently fail to recognise the right people to speak for Country.**

It is well known that the Carmichael Coal Mine is located on ancestral Wangan and Jagalingou Country. Hundreds of cultural artefacts have been found on the mine site, attesting the occupation of those lands by the Wangan and Jagalingou peoples for thousands of years.

The area where the proponents of the mine – Bravus Mining and Resources (Bravus) - is of great cultural significance for the Wangan and Jagalingou communities. Given this major cultural significance, Bravus were required to open dialogue and consult with the 'Aboriginal party', leading to the establishment of a Cultural Heritage Management Plan (CHMP). However, because the Cultural Heritage Acts currently rely on the native title framework to determine who the 'Aboriginal party' is, Bravus was obliged to only negotiate a CHMP with the native title party for the area, the Clermont-Belyando native title applicants. It is important to note that the other Wangan and Jagalingou People, who are not native title applicants, were not consulted about the impact to their cultural heritage. This is an aberration given the fact the Wangan and Jagalingou peoples are holders of the traditional cultural knowledge for the sites and, therefore, communally responsible for those sites – they 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.

It becomes clear that 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 enforcement of the Cultural Heritage Acts have excluded Wangan and Jagalingou People; the very people with have the cultural knowledge and connection to Country. Unfairly, the Wangan and Jagalingou have been taken out of the equation, they have been excluded from participating in the protection and management of their own cultural heritage sites. I believe that the definition of 'Aboriginal party' in the Cultural Heritage Acts should be changed so that Aboriginal and Torres Strait Islander People, with intrinsic knowledge about both tangible and intangible cultural heritage in an area, are able to be recognised as *a party* and duly 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 must be legislated**

Under the current Cultural Heritage Acts, the Wangan and Jaganlingou has had little, to no ability at all, to stop ongoing destruction of their cultural heritage; it is humiliating, to say the least, that they must solely rely on the government to protect their very own 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 leading to the destruction of their cultural heritage had a legal base; the government only took the word of Bravus as to the legality of the destruction.

Thus, in October 2021, the Wangan and Jagalingou Peoples became concerned that their cultural sites located on the Carmichael coal mine area were being destroyed. They then wrote to the Minister for Aboriginal and Torres Strait Islander Partnerships requesting he exercise his power under section 32 of the

Cultural Heritage Act, and to issue a stop order to Bravus as to prevent the carrying out of excavation works which were threatening Wangan and Jagalingou cultural heritage. They also requested that the Minister investigate whether this activity was in breach of the Cultural Heritage Acts.

To their dismay, and 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 their cultural heritage from harm, but they were also prevented from seeking an injunction to stop the excavation because of the high costs of legal action.

The Aboriginal and Torres Strait Islander People need greater powers as to prevent, or seek redress, for illegal impacts to our cultural heritage without being subject to 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. In Australia such a move would not only be admired but it is believed to be the right thing to do.

### **The need for an Independent First Nations-led decision-making body**

An independent, First Nations-led body must be created. It would be responsible for managing and protecting cultural heritage in Queensland and with powers to assist with resolving disputes in a way that is culturally competent and which avoids having to go to court; an always costly alternative to all parties involved.

A First Nations-led body could also be responsible for identifying, 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 – this approach is too restricted. Having an independent, First Nations-led body responsible for determining who should be consulted, would ensure that traditional owners with cultural knowledge and identifiable association the area aren't excluded from consultation and crucial negotiations. The absence of such a body thus far has led to the blunt exclusion of bona fide communities, like the Wangan and Jagalingou Peoples. Furthermore, 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 lacking cultural competency or sufficient knowledge of their culture to make these decisions. This is an outrage that shame us all decent Australians!

We need First Nations to be empowered so they can go on managing and protecting Country – it is their right and the outcome would benefit Australia and the rest of humanity. We, Australians, must stand up, affirm, and shout to the four corners of the world, the inalienable right of Traditional Owners to speak for Country. The government can do so by introducing a new First Nations-led, independent body in Queensland.

So, 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 the consultation and negotiation processes, regardless of their status as a native title party.
- Establish greater enforcement powers for First Nations, so that they are not solely reliant on the State to protect their very own cultural heritage, especially if it is in imminent danger of harm or destruction.
- Establish an independent First Nations-led decision-making body that would be responsible for dispute resolution and mediation, as well as for identifying and assessing who the rightful Peoples are as speakers for Country.

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