

NQ DRY TROPICS

Traditional Owners Management Group (TOMG)

Tuesday 18 June 2019

Steele Davies Room, Arcadian Life Saving Club, The Strand

Townsville

Attendees:

Reggie Kerr	Gudjala (Charters Towers area)
Colin McLENNAN	Jangga People
Trevor ROBINSON	Bidjara People
Virginia WYLES	Gurambilbarra Wulgurukaba
Eddie SAVAGE	Birriah
Richard HOULIHAN	Gugu Badhun
Eddie SMALLWOOD	Bindal
James GASTON	Juru
Sheryl WAKE	GIA
Josephine SMALLWOOD	Wangan/Jagalingou
Walter PALM ISLAND	Manbarra
Sam DALLARCHY	Wiri
Charles MORGANSON	Warrungnu
Donna TURNER	NQ Dry Tropics
Karlie Passerini	DNRME
Ian SINCLAIR	NQ Dry Tropics

1. Background and process of the review

- There is a high level of scepticism amongst Traditional Owners as to whether this review is genuine and whether the government will listen to their concerns.
- The majority of Traditional Owners do not have the capacity or resources to prepare formal legal submissions whereas industry and its representative bodies, such as QRC, have significant resources to prepare extensive submissions in the 'language' of government.
- Are the voices of Traditional Owners going to be heard?
- There is a general feeling that government favours industry over Traditional Owners ie. the so called 'balance' which the legislation purports to seek is skewed towards industry.

2. Theme1: Ownership and Definitions of cultural heritage

- Why does the government own Aboriginal cultural heritage in any context? It belongs to the Traditional Owners.
- Ownership rights must include rights to access for significant sites on private property.

- 65% of Queensland is pastoral leases with no access rights for Traditional Owners – have to ask permission and 9 times out of 10 permission is not granted.
- What is the point of Native Title if the Traditional Owners don't actually own their cultural heritage?
- As many current Traditional Owners were removed from country they haven't been able to experience and retain the information like their elders — ACHA acknowledges the obligations of Aboriginal people to law and country in its key principles, but provides no access rights for Traditional Owners to fulfil these obligations or to reconnect with country.
- If legal ownership of ancestral remains applies regardless of where they are located, why can't this apply to artefacts as well, including artefacts still in the ground?
- Everything is connected (spiritual connections) — the legislation must take into account our stories and oral history in the definitions of cultural heritage.
- Need to recognise and include our living culture— ACHA must somehow incorporate what we (TO's) say about intangible significance.
- Some of the most significant Aboriginal cultural heritage sites are not archaeological sites.
- Is there any move to link the Aboriginal Land Act to the cultural heritage Acts? Significant sites should be owned by Traditional Owners.

3. Theme 2: Identifying who to consult

- Last claim standing – needs to be addressed and to be removed when claimant groups have been thrown out by the Federal Court Native Title process, especially if they are found not to be from that country - they should not be recognised as the contact people for cultural heritage forever— this needs to go.
- Last claim standing should depend on the reasons why claims fail – for example, failure to meet onerous connection evidence or other requirements may not be the same as a finding that the claimants are not the right people for country.
- When the ACHA was developed in 2003 there was a proposal put forward by Traditional Owners which advocated for an Aboriginal and Torres Strait Islander representative body/council, similar to the built heritage legislation (*Queensland Heritage Act*), to be appointed to determine who speaks for country – at that time this idea was not considered but it should be looked at again now.
- Native Title is a 'divide and conquer' process imposed by a white European legal system –it should not be so closely linked to cultural heritage.

4. Theme 3: Land user obligations

- Duty of Care guidelines allow proponents to 'self-assess' without any oversight or need to justify how they did this.
- The current legislation is racist or, at best, totally contradictory – the key principles in section 5 state that Aboriginal people are the guardians, keepers and knowledge holders of Aboriginal cultural heritage yet it goes on to allow non-Aboriginal people to assess and destroy heritage without consulting with Traditional Owners.
- There are numerous proponents who use the duty of care self-assessment process to avoid engaging with traditional Owners.
- Duty of Care contradicts the legislation – self-assessment should be taken out.
- The reality is that significant cultural heritage survives past disturbance/clearing – duty of care guidelines do not recognise this.
- Should be more mandatory engagement/agreements with Traditional Owners, not just for EIS processes.

- What happens when CHMPs or agreements fall over – there is no requirement for DATSIP to be involved – DATSIP doesn't even know which Traditional Owner groups have agreements with who as it is not compulsory under the legislation to register the agreements except under an EIS process.
- Who's monitoring the monitors? If an independent person/archaeologist carries out the monitoring/survey work, there is no requirement to provide Traditional Owners with copies of reports or to give them any information relating to sites or possible sites that may have been identified.
- Where is the independent umpire –Traditional Owners have nowhere to go if negotiations break down.
- Perception between good will and good faith is laughable - there is an imbalance of power between well-resourced proponents and poorly resourced Traditional Owner groups when negotiating agreements.

5. Theme 4: Compliance

- When prosecutions are successful the fines should go to the Traditional Owners.
- There should be a greater level of mandatory enforcement requirements.
- Lack of access to areas is a key factor why prosecutions are not successful – property owners can destroy things without anybody knowing - need to provide mandatory access in the ACHA for Traditional Owners.

6. Theme 5: Recording Cultural Heritage

- If a search is done and there are no previously recorded sites many proponents assume they are right to proceed – no contact made with TOs – this needs to change – need to look at mandatory contact requirements with TOs and not independent consultants
- When the Act was being developed in 2003/4 one of the recommendations from Traditional Owners was that an independent body should manage the database/register – this was never considered.
- There should be funding for Traditional Owner groups to audit/investigate what's on the database for their country