# Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003 - Review

# Submission

Queensland Government
Cultural Heritage Review Team
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

Dear Sir,

**Re: SUBMISSION - Cultural Heritage Acts (Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003)**

The subject Acts involve Aboriginal and Torres Strait Islander peoples. Hereinafter, this submission will focus on the Aborigine, albeit equivalent discussion would apply to Torres Strait Islanders. This submission addresses the three key areas mentioned in the options paper. These key areas are described as:

1. **Providing opportunities to improve cultural heritage protection** through increased consultation with Aboriginal and Torres Strait Islander peoples, recognising intangible cultural heritage, and strengthening compliance mechanisms.
2. **Reframing the definitions of 'Aboriginal party' and 'Torres Strait Islander party'** so that people who have a connection to an area under Aboriginal tradition or Ailan Kastom have an opportunity to be involved in cultural heritage management and protection.
3. **Promoting leadership by First Nations peoples** in cultural heritage management and decision-making.

**Key Area 1.**

Preservation of Aboriginal cultural heritage has become increasingly about Aboriginal organisations and individuals exerting power and control over Australian society; a society in which many Aborigines refuse to participate other than to take advantage of its benefits. Indeed, many Aborigines refuse to say they are Australians, demanding to be called Aborigines (or First Nations People). Authorities and others who support and facilitate such moves are typically motivated by a false and unreasoned guilt; a guilt formed by ignorance of the facts:

- about the legality of British settlement of Australia;

  See for example: Sir Anthony Mason, former Chief Justice of the High Court of Australia, at http://www5.austlii.edu.au/au/journals/UWSLRev/2007/1.html - "All members of the High Court concluded that, irrespective of the original presence of the Aboriginal inhabitants, on the basis of the 'desert and uncultivated' doctrine at common law, Australia was a territory acquired by settlement."

- and of the realities of traditional Aboriginal culture;

  See for example: Jacinta Price, an Aboriginal woman, is the daughter of

> Warlpiri woman and politician Bess Price and an Anglo-Celtic father, at https://www.ntnews.com.au/lifestyle/traditional-culture-accepts-violence/news-story/4a3823224ffcd46534e175c485182133 - *"TRADITIONAL desert culture accepts violence against women and must change and Australia should no longer shy away from discussing disproportionate rates of violence in Aboriginal families and communities. In my culture men are hardly seen as being capable of doing anything wrong — and women are the ones to blame if they should. This was and still is the norm for Aboriginal women whose cultures are intact, whose cultures have been maintained, whose cultures are steeped in tradition … and maintain the rights for men to control them. Aboriginal culture is a culture that accepts violence and in many ways desensitises those living the culture to violence."*

The idea is absurd that Aborigines can declare, and Governments agree, that any and possibly all landscapes, objects, and Aboriginal art, are culturally significant or 'sacred'. This is to concede that because traditional Aborigines hunted and gathered across the land and had superstitious beliefs about the creation of things (hills, rocks, rivers, and almost anything else), these things have important cultural heritage that legislation must protect at significant cost and inconvenience to other Australians. An equivalent idea would for a future society in Australia, say 200 years from now, to declare sacred and of cultural significance all structures built and items used by today's non-Aboriginal inhabitants; including all buildings, roads, vehicles, lampposts, mechanical objects, and graffiti.

There are many examples where the protection of Aboriginal 'culture' is nonsensical:

- Aboriginal cultural heritage and its 'protection' extend to dot painting. Aborigines say nobody can copy the dot-painting technique that they learnt from Geoffrey Bardon, a white man, at Papunya in the early 1970s.
- Aborigines have refused permission for a white man, Mike Donaldson, to publish his latest book on aboriginal rock art because it reflects 'secret' business.
- An Aboriginal permit is necessary to drive on many Australian outback roads, including the 1,126 km main route from Yulara in the NT, near Ayers Rock, to Laverton in WA, about 250 km north of Kalgoorlie. While such permits are sometimes free, they limit public access typically to a narrow corridor along the road, sometimes no wider than 30 metres each side of the road. Importantly, these are roads funded by the taxpayer. Permission is required because these are private roads; the governments that agreed to the Aboriginal land claims where these roads exist did not excise the public roads from the areas claimed.
- The smoking ceremony is claimed to be part of Aboriginal heritage, pretending it was a universal practise of traditional Aborigines. It was not. There were many different protocols used by different Aboriginal groups to welcome visitors. Some used a version of a smoking ceremony. The idea, however, was popularised by the entertainers Ernie Dingo and Richard Walley who created this ceremony in Perth in 1976. Almost exactly 40 years ago these ceremonies first began to enter the Australian mainstream after a performance by West Australian Richard Walley and the Middar Theatre at the Perth International Arts Festival (which is on again for another few days) of 1976. Richard and other performers with the Middar Aboriginal Theatre officially welcomed Maori and Cook Islander dancers who were refusing to perform without one on the lawns of The University of

Western Australia during a multicultural dance performance. Today, it is sycophantically mandatory at, and an added cost to, most public ceremonies.

- The "acknowledgement of traditional owners and elders" speech is obsequiously mandatory at all government, council and most public events, reinforcing division within Australian society.

What the Cultural Heritage Acts should declare is that representative examples only of significant and actual Aboriginal heritage, artefacts, and art are to be preserved, not all. The artwork in the Juukan Gorge caves might or might not have been unique and, therefore, worthy of protection. Most essential is that any artefact, story, or artwork claimed by Aborigines to be important must be analysed scientifically and forensically to verify authenticity. This analysis is required because there have been and are examples where claims have been fabricated or not proven. Especially, no credence must be given to “secret business”. Judgements must be made in light of the full facts.

There are many examples of fabricated or questionable Aboriginal claims. Some are listed following:

- One fabrication involved the Hindmarsh bridge saga. A group of Ngarrindjeri women elders claimed the site was sacred to them for reasons that could not be revealed. This "secret women's business" was used in an attempt to stop the development and became the subject of intense legal battles. Other Ngarrindjeri women came forward to dispute the veracity of the claims. The Hindmarsh Island Royal Commission found that "secret women's business" had been fabricated. This matter continues to be contested, however.
- An example of a false land claim is that the Shoalhaven is Yuin land when in fact it is Jerrinja land.
- In Victoria, Aboriginal groups are fighting over the Taungurung settlement deal with the Victorian Government in 2018.
- Claims of Aboriginal ‘nations’ are false. There were never Aboriginal nations. Aborigines lived in extended family groups of about 30 people.
- Aboriginal rock art must be carefully and scientifically verified as ancient. There are non-Aboriginal people teaching Aborigines how to over-paint, refresh and create artworks on rocks and in caves using techniques that replicate early works. The Norval Art Gallery in Derby, W.A., revealed this practise. Art galleries in most cultures today hold examples of a few esteemed artists. No art gallery preserves every artwork no matter how well or poorly done.
- Hills and rivers, etc, that Aborigines claim to be sacred because of “Dreamtime” stories should be recorded as such in historical archives. How easy is it for activist Aborigines and their supporters to claim almost anything to be ‘sacred’ when wanting to exercise power and control? Regardless, access to such places by non-Aborigines, other than on freehold land, must not be prohibited or onerously controlled, as is now the case with Ayers Rock (Uluru) and a great many other parts of Australia, as indicated above.

While Governments and authorities should seek advice from relevant Aborigines about the significance of sites and artefacts, the final decision must not be by Aborigines but by Government authorities aware of the bigger picture, acting for all Australians.

**Key Area 2.**

The definition of Aboriginality is part of the problem. It is so loose as to be almost meaningless. For accessing government benefits, Aboriginality is defined as:

a. being of Aboriginal descent,

b. identifying as an Aboriginal person, and

c. being accepted as such by the community in which you live, or formerly lived.

All three criteria must apply.

Courts use various definitions depending on circumstances. Some judgements have declared that, "*Aboriginal descent alone is sufficient,… that once it is established that a person is 'non-trivially' of Aboriginal descent, then that person is Aboriginal within the ordinary meaning of that word. Neither self-identification nor community recognition is necessary.*"

"*The courts, in interpreting statutory definitions in federal legislation, have emphasised the importance of descent in establishing Aboriginal identity, but have recognised that self-identification and community recognition may be relevant to establishing descent, and hence Aboriginal identity, for the purposes of specific legislation.*"

**Reference**: https://www.alrc.gov.au/publication/essentially-yours-the-protection-of-human-genetic-information-in-australia-alrc-report-96/36-kinship-and-identity/legal-definitions-of-Aboriginality/, Clauses 36.21, 36.22, and 36.28.

Australian Censuses collect information about Aboriginality through self-identification questions. There is no requirement to prove descent or acceptance, merely self-identification. This very loose definition of Aboriginality is why the number of "Aborigines" is so high. Almost anyone who sees benefit can claim Aboriginality without penalty. Bruce Pascoe, the author of "Dark Emu" and other books about Aborigines is a case in point. No evidence has been found to support his claim to Aboriginality and Aborigines deny his claim. Yet, he has been funded and supported to produce his books, like "Dark Emu" in which he declares that Aborigines were agriculturalists, lived in villages, and in houses, among other things. Researchers and anthropologists have soundly quashed his claims. Yet his books are included in school curriculums, misguiding Australian children to believe particular fairy tales.

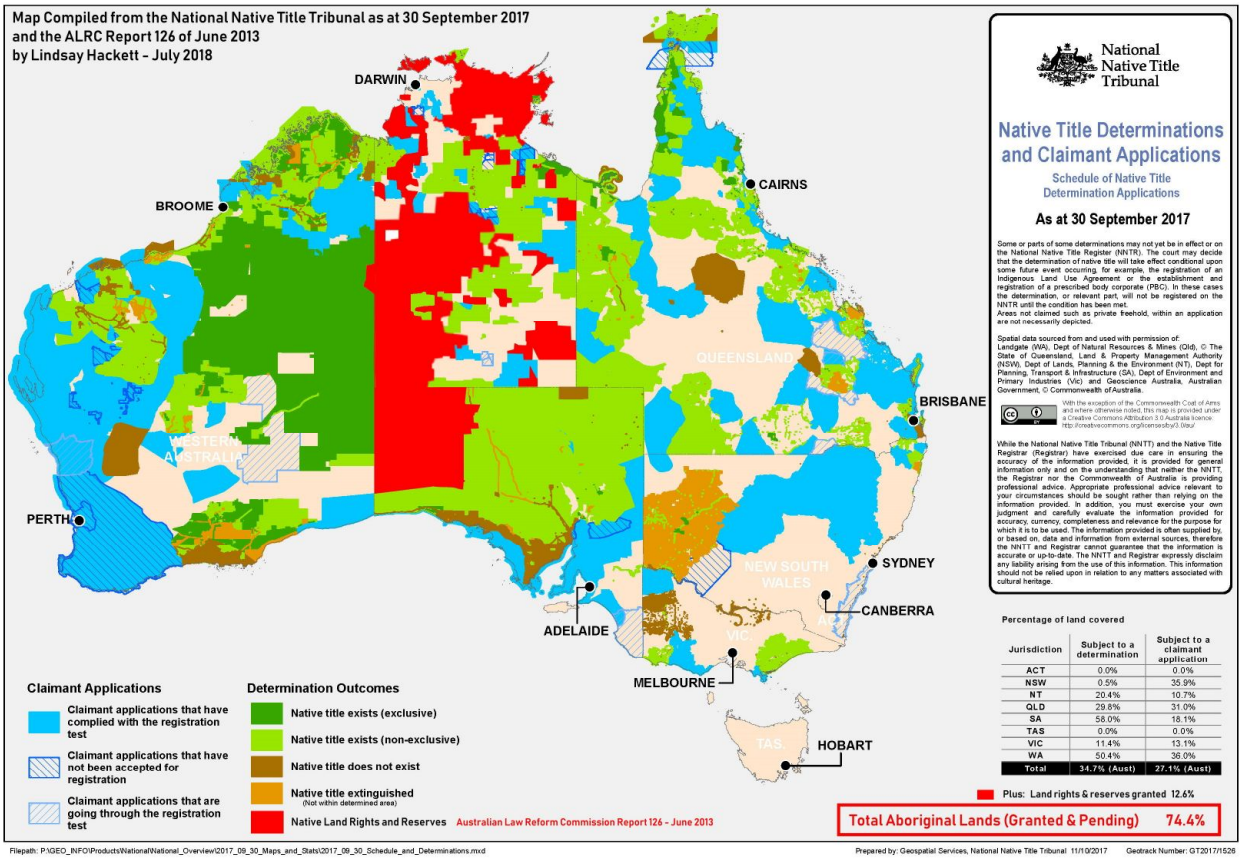
Anybody who can prove actual Aboriginal descent can claim Aboriginality, no matter how small the fraction of "blood'. No other people in Australia can claim such special identification. All Australians are descended from various races or ethnic groups, but none is entitled to the discriminatory benefits available to the Aborigine because of race or ethnicity. Why, in Australia, can a person with one thirty second part of Aboriginal blood be able to legally claim to be an Aborigine when another person with the same proportion of Irish blood, say, is expected to claim Australian identity?

Many Indian tribes in the United States of America have strict blood quantum rules for defining membership. Some require the Indian blood quantum to be one half, others one quarter, one eighth, or one sixteenth. Similar rules apply in various other countries. Yet, in Australia, Aboriginality is encouraged for emotional reasons as stated above, at the beginning of the section Key Area 1.

Then, as Key Area 2 declares, there is the question of 'connection' to land. Most Aborigines do not live on their ancestral lands but in 'white' cities and towns. These

people may claim connection only because of possible benefits. Some Aborigines live and work in remote communities not associated with their ancestral lands. Aboriginal groups, who do live on ancestral lands, do so differently today compared with traditional life-styles. No Aborigine lives today, as did his traditional ancestors. Even in the most remote Aboriginal groups, they live in houses constructed from modern materials, and western goods abound in the form of food, clothing, cars, and electricity, and many have found 'white man's' religions. Few Aborigines would wish to return to the lifestyle that existed before colonisation. Their connection to land is akin to the usual attachment of many people whose ancestors have lived in one place for generations. This does not presuppose that such people have rights to that land or otherwise that are superior to the rights of other people. These Cultural Heritage Acts are another move to treat Aborigines differently from all other Australians, to divide and discriminate.

Aboriginal land rights (Native Title) under the Native Title Act 1993 are linked closely to Aboriginal claims of cultural heritage and directly to 'connection to land'. Aborigines have been granted Native Title over 34% of the Australian landmass today (exclusive and non-exclusive), and will have Native Title over 62% if all present claims are agreed. Added to this are the lands and reserves subject to State based Land Rights granted prior to the Native Title Act 1993. In aggregate, there is Aboriginal freehold ownership, Native Title, land rights and reserves, and pending determinations of native title over 74% of the Australian landmass. In most of these areas, the public has little if any right of access. The picture following is taken from official sources and amended to include lands given to Aborigines as Land Rights and Reserves prior to the Native Title Act. Note that most of this map is coloured, indicating Aboriginal involvement. Little of Australia is left unencumbered for non-Aboriginal Australians.



**Key Area 3.**

Key Area 3 addresses the apparent need for Aborigines to take charge of affairs that affect them. The Cultural Heritage Act is part of the move by Aborigines to increase their power over other Australians, with their aim of eventually obtaining sovereignty.

The Uluru Statement from the Heart was endorsed by a gathering of 250 Aboriginal and Torres Strait Islander leaders on May 26, 2017, following a four-day First Nations National Constitutional Convention held at Uluru. It proposes three key elements for sequential reform: *"Voice, Treaty, Truth".*

The Voice is top of the list. The Voice would constitute an advisory body of First Nations traditional owners to advise Parliament on policy affecting Aboriginal people; in reality, all policy.

Then would come a Treaty. The Treaty would be a formal agreement between the Government and Aboriginal people that would have legal outcomes. It would likely include binding 'rights', and agreements on specific issues like health and education. A Treaty would likely create ongoing legal turmoil.

Following a Treaty, Aboriginal activists and their followers have stated the necessity for Aboriginal sovereignty and self-determination. Sovereignty, would give the power to Aborigines to determine their own form of government and the power to interpret their own laws and ordinances. There has never been an Aboriginal nation or nations. Aboriginal cultural practises, languages, and laws varied widely between the 600-odd, separate, Aboriginal groups dispersed across Australia before 'settlement'. Indeed, there was never Aboriginal sovereignty over the land now called Australia because there was never a supreme authority controlling the country or parts of it until settlement by the British in the 1700s.

Clearly, the essence of the Uluru Statement is to separate Aborigines forever from other Australians.

**Summary**

The subject Cultural Heritage Acts must be amended to ensure protection is accorded only to important, representative, and real examples of Aboriginal and Torres Strait people's cultures.

The definitions of Aboriginality and of Torres Strait peoples must be redefined with the aim of removing the ability of almost anyone being able to claim identification with those groups.

Aborigines must not be allowed to have control over their affairs either with or without Government oversight. All Australians must be governed equally by Government and before the law.

**Conclusion**

Many Aboriginal representatives and non-Aboriginal sympathisers are attempting to perpetuate divisions within the Australian community by trying to set the Aborigine apart, including within the Constitution and in these Cultural Heritage Acts. Australia is what it is today because of settlement by the British in 1788, not because of the Aborigine.

No group of people within Australia must be allowed discriminatory powers to control

their own destiny within or without the control and oversight of Parliament. All Australians must be governed without discrimination of any kind by a freely elected Parliament. There must be no ‘groups’ receiving special consideration. All Australians must be treated equally, with all laws and policies applied without favour.

No attempt must be allowed that would divide Australian society into separate classes by race, religion or by anything else. This includes the Cultural Heritage Acts.

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[redacted]

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