

RESPONSE BY TURNSTONE ARCHAEOLOGY TO PROPOSED CHANGES TO HERITAGE LEGISLATION

15 July 2013

DRAFT RECOMMENDATION 5.1

Until concerns with state and territory legislation have been fully addressed, the Commonwealth should retain the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) and amend it to allow state and territory regimes to be accredited if Commonwealth standards are met. Once all jurisdictional regimes are operating satisfactorily to Commonwealth standards, the Commonwealth should repeal the ATSIHP Act.

RESPONSE: My first concern is political changes at state or territory level may reduce the value and protection given to Aboriginal cultural heritage. While there is a two tier legislation in place, it provides a safety net to which Aboriginal people can claim redress if the state system has adequately failed to protect sites considered significant. Although currently there appears to be sound cultural heritage protection available in Queensland, there are glaring deficiencies in the Act. The most obvious of these is the limited prosecution for destruction of sites even when they have been clearly identified; the lack of suitable inspectors to investigate destruction of sites and the lethargy of inspectors to support or investigate reported breaches of the Act.

A second concern is that even with some government departments there are different degrees of adherence to the spirit of the Act. Thus you can have a State Minister declaring that the role of Main Roads is to build roads, not to worry about cultural heritage, a statement made to a group of state archaeologists employed by Main Roads after a recent change in political government in Queensland. Since then the number of archaeologists employed by that department has been slashed.

Having a second tier of recall for Aboriginal people is in some ways like being able to appeal to the Supreme Court. The limited number of times that this appeal is made surely does not impose more than a moral burden on explorers.

DRAFT RECOMMENDATION 5.2

Governments should ensure that their heritage authorities:

- require that resource explorers or other parties lodge all heritage surveys with that authority**
- maintain registers which map and list all known Indigenous heritage**
- adopt measures to ensure that sensitive information collected by a survey is only provided to approved parties (and only as necessary for the purposes of their activities), on the basis of agreed protocols.**

I agree that mandatory lodging of all surveys, archaeological reports and site locations (even if the information is given levels of security) should be part of Queensland cultural heritage legislation, if only to ensure for the future that the information collected is preserved safely in a central state repository.

Likewise all sites should be registered. However, one drawback is that many developers and explorers appear to consider that empty spaces on the state register of sites infers that there are no sites within that tenement when it may simply be a case that no survey has been conducted or the conditions were not right (i.e. dense ground cover).

There should be a standardized reporting process and reports that do not meet compliance should be rejected. Each survey should follow at the very least the West Australian model. Unfortunately reporting standards vary considerably, even those undertaken by Aboriginal communities. Without a clear understanding of what has been located and its context and significance, no rational decision can be made on the retention or otherwise of a site. Regrettably in southeast Queensland, where connection has largely been lost through historical forced dispossession, it is difficult for Aboriginal people to denote significance to many sites and they rely on technical advice from archaeologists and anthropologists for support.

DRAFT RECOMMENDATION 5.3

State and territory governments should manage Indigenous heritage on a risk assessment basis.

- **Where there is a low likelihood of heritage significance in a tenement and the exploration activity is low risk, a streamlined ‘duty of care’ or ‘due diligence’ process should be adopted.**
- **Where there is a high likelihood of heritage significance and the exploration activity is higher risk, models of agreement making should be adopted rather than a government authorisation system.**
- **When negotiated agreements cannot be reached, governments should make decisions about heritage protection based on clear criteria, transparency and consultation with all parties that have a direct interest.**

This recommendation is the one that causes the most concern. Queensland’s Duty of Care guidelines fall woefully short of protecting cultural heritage. Who determines whether there is a low likelihood of heritage significance? Who determines what is considered significant? (something that the *Queensland Aboriginal Cultural Heritage Act 2003* does not satisfactorily address). Applying western standards of significance such as the ICOMOS Burra Charter criteria for heritage significance may not have any relevance to Aboriginal people. Turnstone Archaeology uses a second tier of questions to determine significance for visible sites.

- Is the site considered important by the Traditional Custodians?
- Does the site contain recognisable formal tool types?
- Does the site contain features such as knapping floors, reduction sequences, scars, grinding grooves, earth ovens, etc?
- Does the site provide evidence of occupation of the area?
- Is there a concentration of artefacts?
- Does the site have potential to provide additional archaeological or cultural information once recorded?
- Has the site retained integrity and to what degree?
- Are there environmental factors that make the site more significant in the broader landscape (i.e. association with stream junctions, waterholes, rock outcrops, etc.)?
- Is the site representative of other sites in the area?
- Is the site rare or does it contain unusual or unique items?

However, there are also non-visible sites to contend with. Many of these have greater significance for Aboriginal people than visible sites.

Numerous examples could be quoted of the loss of heritage that can occur if a self assessment as to levels of significance without a substantial predictive model being in place is adopted.

One example was for a sewer pipeline development in a suburban city creek environment. The route had been assessed as having low level cultural potential. Fortunately the company decided to undertake a predictive model which determined sub surface potential. Although no visible evidence was present (meaning that under usual survey processes the site would have been classed as having little significance) more than 2000 stone artefacts and earth ovens were located within a small radius, including a blade manufacturing site. While this may not have the significance of a decorated art site or ceremonial grounds, it has major significance for the local Aboriginal community whose heritage was largely destroyed by early historical settlement.

The *Queensland Aboriginal Cultural Heritage Act 2003* currently excludes ploughzone as requiring assessment although these areas are frequently the most productive in providing Aboriginal people with knowledge and information about past land uses, ancestral camps and lifeways. An example occurred recently in Wandoan where a mining company proposed an extensive coal mine. The areas had been largely blade ploughed and was not expected to provide significant cultural heritage. The study produced 228 sites, including quarries, stone artefact concentrations and earth ovens, providing crucial knowledge of camps, pathways, resource areas and manufacturing sites in a tract of land for which Aboriginal people had no information. It should be noted that the survey findings did not prohibit the mine's development; rather the careful analysis of data provided an undisputed process of development compatible with the Traditional Owners.

A major issue is who determines significance? In most cases Aboriginal people are best qualified to provide levels of significance. However, explorers have not always been respectful of what Aboriginal people consider significant. In defence, there have also been cases where Aboriginal people themselves have failed to store information from previous surveys possibly because of a lack of resources to maintain datasets. There is also a case in Queensland where one Aboriginal claimant with a failed claim has usurped the rights of other families and simply gives away greenfield sites with minimal concern for their potential for heritage in exchange for payments.

There are cases where Aboriginal people have requested duplication of surveys because of a lack of confidence in the archaeologist appointed by an explorer. A recent case was where a company-appointed archaeologist located 4 stone isolates and produced a 15 page report whereas a subsequent survey by an archaeologist chosen by the Aboriginal Party located 228 sites and a report that documented all sites, context, significance and proposed mitigation and provided an accurate predictive model for areas that had poor surface visibility. While this may be expensive and there needs to be clear guidelines as to content, I would contend that accurate and informative reporting saves development explorers time and money in the long run.

While the Queensland Government may consider its legislation reduces unnecessary government involvement, the very lack of compliance strictures means that developers can impact on heritage

through self assessment. Encouragement of 'flexible' non prescriptive approaches gives explorers more flexibility in evading responsibilities. There is little point in empowering Aboriginal and Torres Strait Islander peoples to determine the significance of cultural heritage unless adequate protection or mitigation strategies are accepted.

Native Title and heritage

While this area lies outside the scope of the Commission it is so interwoven with cultural heritage that a comment should be made about the effect of native title on cultural heritage in Queensland.

In my view, there has been a process of imposing native title boundaries on groups that may traditionally have had contested boundaries for the sake of political outcomes or to provide a point of reference for exploration and development. The blame is largely a result of Land Councils that have been slow to make determinations based on traditional boundaries for the sake of larger amalgamations. The Port Curtis Coral Coast claim is one such example where disparate groups from Bundaberg to Gladstone have been forcibly amalgamated without recognition of prior core country. This strikes at the very concept of traditional connection to cultural sites that have spiritual and social significance.