

QUANDAMOOKA YOOLOOBURRABEE ABORIGINAL CORPORATION

RNTBC

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Health and Community Services Committee

Sent via email – hcsc@parliament.qld.gov.au

RE: NATURE CONSERVATION AND OTHER LEGISLATION AMENDMENT BILL

Thank you for the opportunity to provide further information in relation to the transcript of the hearing held on 16 January 2013.

The information I provide here relates to pages 14, 15 and 16 of the transcript.

There are a number of international conventions which Australia has ratified, and introduced into various pieces of domestic legislation such as:

- International Convention on Biological Diversity (CBD), in particular Articles 8 (j) and 10 (c) and the international benchmark for implementation of the Akwe: Kon guidelines and Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable sharing of benefits arising from their utilisation ;
- International Covenant on Civil and Political Rights (ICCPR) , particularly Article 1 the right to self-determination;
- International Covenant on Economic Social and Cultural Rights (ICESR), and in particular Article 1 right to self-determination, and Article 15 (1)(a) right to a cultural life.

The International Convention on Biological Diversity ('CBD') importantly provides at Article 8(j) a requirement to:

“respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

Article 10 (c) of the CBD requires Australia to:

“Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements”

Each state in Australia, including QLD, committed to implementing Ecologically Sustainable Development, a key platform of the CBD, including importantly the principle of Intergenerational Equity on 1 May 1992.

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Australia was one of only four nations to vote against the adoption of the United Nations Declaration on the Rights of Indigenous Peoples ('DRIP') on 13 September 2007.

On 3 April 2009, the current Australian Government through Minister Macklin made a statement in support of the DRIP and formally endorsed the DRIP, but Australia has not yet legislated to implement DRIP.

Articles 11 and 12 are the most directly relevant and provide:

“Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Indigenous Peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to use and control of their ceremonial objects; and the right to repatriation of their human remains.

States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.”

Articles 11, 18, 19, 23, 27, 28, 29 and 31 are international benchmarks articulating best practice, and requiring free, prior and informed consent to any administrative or legislative act which affects Indigenous people, or their cultural heritage, or their traditional lands and waters. An analysis of the DRIP rights against Native Title rights and interests is contained in Appendix A.

An important element of DRIP are those articles requiring restitution where human remains, objects, cultural knowledge and information, art, practices, extinguishing acts have been taken without prior, informed consent.

One final comment on DRIP is that the rights are inherent to Indigenous people, and not limited to recognised owners of native title rights and interests.

If you require further information, please do not hesitate to contact myself on 0488 499 571.

Yours sincerely



Suzie Coulston
CEO QYAC
22 January 2013

Appendix A – Applicable Benchmarks

Benchmark/Principle	NT Act	International Law
Native Title rights and interests are grounded in the land as the centrepiece of Aboriginal Law and custom.	S 223, North J in <i>Western Australia v Ward</i> (2000) 99 FCR 316	DRIP Article 8 (2)(b), Article 9 Article 25, Article 26(1)
It is for the owners of those Native Title Rights and interests to define their rights and interests.	S 223	DRIP Article 9 Article 34
It is for the owners of those Native Title Rights and interests to protect, maintain and control their cultural heritage, including in natural resources, ecosystems and species	S 223 subject to extinguishment	DRIP Article 11(1) and 11(2) Article 12(1), Article 18, Article 24(1) Article 25, Article 26(1), Article 29(1), Article 31(1) Article 32 (1) Article 34 Article 36
Owners of Native Title Rights and Interests must maintain ownership and control of all intellectual property in their rights and interests	Not yet recognised	Article 31(1)
No act shall affect Native Title Rights and Interests without the owners free, prior and informed consent	Partial – future act regime triggers limited rights to negotiate, or to be consulted and is subject to extinguishment	DRIP Article 11(2), Article 18, Article 19, Article 28, Article 32(2)
Customary law and custom is able to be exercised utilising modern methods without losing its basis in law and custom	S 223, <i>Mabo v Queensland (No 2)</i> (1992) 175CLR 1 at 110 B ¹ Yanner v Eaton	Article 11(1)
Owners of Native Title rights and interests have the right to own, control, educate others internally and externally about their culture and restrict access to	S 223	Article 14 Article 18 Article 26(2)

¹ “The traditional law and custom is not, however, frozen as at the moment of establishment of a Colony provided any changes do not diminish or extinguish the relationship between a particular tribe or other group and particular land, subsequent developments or variations do not extinguish the title in relation to that land”.

their cultural information		Article 28 Article 31
Owners of Native Title Rights and Interests have the right to an economic interest in their lands, and the incidents of those lands, and a right to restitution where these lands have been confiscated, taken, occupied, used or damaged without their prior free and informed consent	S 223 subject to extinguishment and procedural rights	Article 20 Article 26(2) Article 28
Owners of Native Title may hold a diverse range of views on the above matters, and are able to determine the method, and time taken to determine their internal views	S 223, subject to 6 month appeal in RTN	Article 18