

## Infrastructure, Planning and Natural Resources Committee

---

**From:** Bruce White  
**Sent:** Monday, 18 January 2016 2:23 PM  
**To:** Infrastructure, Planning and Natural Resources Committee  
**Cc:**  
**Subject:** FUNDAMENTAL LEGISLATIVE PRINCIPLES SUBMISSION 001: Regard for Aboriginal traditon?

Dear Research Director/ Dear Erin

### A. INTRODUCTION

It is noted and understood the Infrastructure, Planning, and Natural Resource Committee is inquiring into six Planning Bills currently before Queensland Parliament :

[see here: <https://www.parliament.qld.gov.au/work-of-committees/committees/IPNRC/inquiries/current-inquiries/PB2015>]

It is also noted and understood that in examining these Bills the Committee will be considering the level of regard the proposed Planning Bills will have for fundamental individual rights and freedoms outlined in the Legislative Standards Act, including whether the Bills have sufficient regard to Aboriginal tradition

[see here: [https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet\\_3.23\\_FundamentalLegislativePrinciples.pdf](https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_3.23_FundamentalLegislativePrinciples.pdf)]

### B. BACKGROUND

I make this submission as a Cairns based specialist cultural landscape anthropologist who has been working with Aboriginal land holding groups across tropical North Queensland to see local Aboriginal peoples systems of lore, heritage, and property rights recognized, respected and integrated into statutory plans and planning systems for more than 2 decades

This is a submission into which I have copied representatives for various Cairns regional locally indigenous groups (including native title determined prescribed bodies corporate) and native title representative bodies with whom I have been most recently working in relation to current drafting of Cairns and Yarrabah local government planning schemes plus associated statutory planning development assessment system/s

### C. OVERARCHING SUBMISSION

The purpose of this submission is to professional commend and recommend the *Planning Bill 2015* to the Parliamentary committee over the alternative *Planning and Development (Planning for Prosperity Bill) 2015* for the level of regard the Planning Bill 2015 has for Aboriginal tradition:

*s5 Advancing purpose of Act*

*(2) Advancing the purpose of this Act includes—*

*(d) valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition;*

where a search through the Planning and Development (Planning for Prosperity Bill) 2015 reveals that this Bill has an lesser regard for Aboriginal tradition than the existing Sustainable Planning Act 2009 it seeks to replace, amounting to almost no explicit regard at all for this fundamental Queensland Aboriginal peoples right and freedom (I refer, here, to the Legislative Standard Act's defined fundamental rights and freedoms)

There is a clear, increasing emergent need for increasing (not less) guidance and regard to be had for this fundamental right and freedom (ie Aboriginal tradtion) within Queensland's local government statutory planning legislation at a time when there ae increasing numbers of post-native title determined indigenou landholders who need their governing local authorities to better include, better plan, and better integrate their values, traditions, and rights into future development planning and assessment systems.

#### **D. FURTHER SUBMISSIONS**

This submission commends and recommends the *Planning Bill* 2015 for the level of regard it proposes to have for Aboriginal tradition .. and, in commending and recommending the Planning Bill for this reason, I also wish to ask the Parliamentary Committee if, in the process of examining the Planing Bills, they might please check and confirm that extent to which the Planning Bill 2015 intent to value, protect, and promote Aboriginal knowledge, culture and tradition as been fully, consistently, and properly vertically integrated into the remainder of the Planning Bill 2015 plus the accompanying Planning Bill establishing a Environment and Development Court, plus any future subordinate legislation, regulations etc being drafted to implement the legislation, including:

- i. reviewing the current definition of land owner which, for consistency and more, needs to be expanded beyond landowners able to charge rent to somehow include Aboriginal land ownership/property [particularly post native title determination] which can co-exist particularly in some leases, reserves, and otherwise unallocated lands etc ?
- ii. reviewing the current definition of cultural heritage which, for consistency and more, needs to be expanded beyond the current historical (non-Aboriginal) cultural heritage definition to somehow include Aboriginal cultural heritage??
- iii, somehow making it necessary that subordinate legislation (including development assessment rules etc) drafted to implement this proposed new Planing legislation explicitly and demonstrably value, protect, and promote Aboriginal knowledge, culture and tradition

[ie it is noted that a quick review of current draft subordinate legislation etc currently being consulted upon by the Department does not seem to explicitly integrate nor explicitly include the proposed statutory valuing, protecting and promoting Aboriginal knowledge, culture, and traditions into its future, proposed planning and development assessment rules, procedures, and systems]

#### **E. PRESENTING AND FURTHER SUBMITTING TO COMMITTEE HEARING/S IN CAIRNS - 27 JANUARY 2016?**

Finally ,, it is unfortunate that this Committee's inquiry has occurred over the Christmas and New Year break .. where I know and understand many of those included into this e-mail are also seeking to make submissions of the above kind (and I was to assist some make those submissions). and, under the circumstances where I note the Parliamentary Committee may be holding hearings in Cairns around the 27 January, I am hoping this submission may be sufficient and/o may assist enable some of these others to present and make their particular submissions for the 27 January hearings

With the kindest regards, hoping you are able to acknowledge receipt of this submission as a submission properly made?

Bruce White



## Infrastructure, Planning and Natural Resources Committee

---

**From:** Bruce White  
**Sent:** Monday, 18 January 2016 3:40 PM  
**To:** Infrastructure, Planning and Natural Resources Committee  
**Cc:**  
**Subject:** FUNDAMENTAL LEGISLATIVE PRINCIPLES SUBMISSION 002: Regard for Aboriginal cultural heritage & duty of care?  
**Attachments:** 20150929 REQUEST TO RE-INTEGRATE ABORIGINAL STATUTORY DUTY OF CARE INTO QUEENSLAND'S STATUTORY PLANNING SYSTEMS.pdf

Dear Research Director/ Dear Erin

### A. INTRODUCTION

This is my second submission today, where it is noted and understood the Infrastructure, Planning, and Natural Resource Committee is inquiring into six Planning Bills currently before Queensland Parliament :

[see here: <https://www.parliament.qld.gov.au/work-of-committees/committees/IPNRC/inquiries/current-inquiries/PB2015>]

It is also noted and understood that in examining these Bills the Committee will be considering the level of regard the proposed Planning Bills will have for fundamental individual rights and freedoms outlined in the Legislative Standards Act, including whether the Bills have sufficient regard to Aboriginal tradition

[see here: [https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet\\_3.23\\_FundamentalLegislativePrinciples.pdf](https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_3.23_FundamentalLegislativePrinciples.pdf)]

### B. SUBMISSION 002 - ABORIGINAL CULTURAL HERITAGE

The purpose of this submission is:

i. to recall the proposed intent of the Planning Bill 2015 to see the state, to see state agencies, to see Queensland local governments, and to see persons advancing the purposes of new statutory planning and development assessment legislation value, protect, and promote Aboriginal knowledge, culture and tradition

ii, to note the intent of the Planning Bill 2015 to @ s5 (e) "conserve places of cultural heritage significance" and the current unfortunate accompanying defining of the cultural heritage significance to be conserved as apparently limited to the essentially non-Aboriginal Queensland Heritage Act only as follows:

Schedule 2: "**cultural heritage significance** see the Heritage Act, schedule

iii. to ask that the Committee examine the Schedule 2 definition of cultural heritage significance against the fundamental legislative principle encouraging regard to be had for Aboriginal tradition, and consider whether it might be more consistent and better to upgrade the current definition [above] to also refer to the Aboriginal Cultural Heritage act 2004 in defining what constitutes 'cultural heritage significance

iv, to also ask that the Committee to also consider upgrading s5(e) or elsewhere transport and insert the existing cultural heritage statutory duty of care to protect, respect and preserve Aboriginal cultural heritage for all the reasons contained in the letter and submission written to Deputy Premier Jacky Trad and the Department attached

[it would be appreciated if this last referred, attached letter might be considered part of this submission]

### C. CONCLUSION

With kind regards ,, hoping you will be able to acknowledge receipt of this second submission as a submission properly made to the Committee's current inquiring into tabled Planning Bills

Bruce White

BioCultural ConneXions



**ATTACHMENT  
TO  
SUBMISSION NO. 084**



Bruce White <bruc3anthr0@gmail.com>

---

## REQUEST TO RE-INTEGRATE ABORIGINAL STATUTORY DUTY OF CARE INTO QUEENSLAND'S STATUTORY PLANNING SYSTEM/S

---

**Bruce White**

Tue, Sep 29, 2015 at 1:20 PM

To: treasurer@ministerial.qld.gov.au, deputy.premier@ministerial.qld.gov.au

Cc:

Bcc:

Dear Ministers

**NOTING** the Queensland Parliament has enacted the *Aboriginal Cultural Heritage Act 2003* to create a statutory duty of care upon anyone proposing to undertake activities on land within Queensland to have regard to the significance of areas to local Aboriginal peoples (particularly native title holders) .. see [here](#)

**NOTING** s89 of the *Aboriginal Cultural Heritage Act 2003* is clearly intended to enable the statutory duty of care, including some very practical and pragmatic Aboriginal Cultural Heritage Management Planning to be integrated into the State's Integrated Development Assessment System/s quoting as follows:

*"89 Cultural heritage management plan needed under Planning Act*

*(1) This section applies to a project if, under the Planning Act—*

- (a) a development application is made relating to the project; and*
- (b) the chief executive is a concurrence agency for the application.*

*(2) Without limiting the Planning Act, the chief executive may—*

- (a) require, as part of an information request under the Planning Act, that the applicant ensure a cultural heritage management plan for the project is developed and approved under this Act; or*
- (b) require to be imposed, as a condition of approval of the development application, a condition that a cultural heritage management plan for the project be developed and approved under this Act.*

*(3) In this section— Planning Act means the Sustainable Planning Act 2009"*

**NOTING** the administrative shifting of the Aboriginal Cultural Heritage Act 2003, and the shifting of the Registrar of Aboriginal Cultural Heritage out from under a chief executive who is a concurrence agency within the existing Integrated Development Assessment System (see s89(1)(b) above) would appear to have the probably unintended effect of thwarting the Queensland Parliament's original intent, and particularly, rendering s89 of the Aboriginal Cultural Heritage Act 2003 ineffective .. accidentally removing very practical and pragmatic Aboriginal Cultural Heritage Management Planning from the state's Integrated Development Assessment System

**NOTING** the Queensland Parliaments Aboriginal Cultural Heritage Act 2003 statutory provisions to warrant some degree of protection for areas significant to local Aboriginal peoples within their own lores and traditions are particularly significant to Queensland local governments' capacity under the Native Title Act 1993 future act regime (see s24KA of that Act) to put public infrastructure into areas within which native title subsists etc, and are perhaps too significant to local Aboriginal peoples to be probably accidentally rendered ineffective (see above) by the States more administrative shuffles and maneuverings

**REQUESTING** that, given the above likely unintended administrative rendering of s89 of the *Aboriginal Cultural Heritage Act 2003* ( ie Cultural Heritage Management Plan needed under Planning Act) as ineffective ...I am writing to you now in my capacity as a cultural anthropologist providing specialist participant action research services to a small number of local Yidinji et al native title holders in the Cairns and Yarrabah regions seeking to better secure underlying interests within statutory planning schemes, planning scheme policies, and the integrated development assessment system/s .. I am writing to you now to ask if the administrative arrangements etc rendering the Parliaments original intent be somehow remedied, please, perhaps as part of the State's own current Better Planning statutory planning reforms or in some manner?

Sincerely hoping you are able to positively respond, potentially assist, and potentially reintegrate and restore the Aboriginal duty of care protections for local Aboriginal peoples, and the associated Aboriginal Cultural Heritage Management Planning tool to the State's integrated development assessment system for the potential positive benefit of all concerned including particularly to the trustees of Aboriginal lands (including native title lands) and more enabling locally indigenous peoples to be acknowledged and included within local government regional growth and development into the future

Bruce White



BioCultural Connections