

# LAND COURT OF QUEENSLAND

CITATION: *Watson v State of Queensland* [2019] QLC 19

PARTIES: **Sam Watson**  
(applicant)

v

**State of Queensland**  
(respondent)

FILE NO: LCA013-19

DIVISION: Cultural Heritage and Indigenous Land Use Agreement  
Division

PROCEEDING: General Application

DELIVERED ON: 29 March 2019

DELIVERED AT: Brisbane

HEARD ON: 15 February 2019 & 20 March 2019

HEARD AT: Brisbane

MEMBER: PG Stilgoe OAM

ORDER: **The originating application filed 1 February 2019 is dismissed.**

CATCHWORDS: ABORIGINAL AND TORRES STRAIT ISLANDER  
PEOPLES – HERITAGE PROTECTION – OTHER  
STATES AND TERRITORIES – where the applicant sought  
an interlocutory injunction preventing development works –  
where the respondent sought to have the application struck  
out for lack of standing – where the application was not  
brought by an Aboriginal cultural heritage body for the area  
– where the application was dismissed for lack of standing

ABORIGINAL AND TORRES STRAIT ISLANDER  
PEOPLES – HERITAGE PROTECTION – OTHER  
STATES AND TERRITORIES – where the applicant sought  
orders that the State enter into a cultural heritage  
management plan with the new corporation – where the State  
had entered a Cultural Heritage Agreement with the existing  
Aboriginal cultural heritage body for the area – where the

applicant submitted it was likely that the Aboriginal cultural heritage body be registered as a new corporation for part of the area for the purposes of the project – where it was held the Court did not have the jurisdiction to make orders requiring parties to enter into a cultural heritage management plan

*Aboriginal Cultural Heritage Act 2003* s 4, s 5, s 6, s 14, s 23(3), s 24(2), s 25(2), s 26(2), s 36(3), s 161  
*Land Court Act 2000* s 32H

*Carr on behalf of the Yuggera Ugarapul People v Frasers Deebing Heights Pty Ltd* [2019] QLC 14, followed

APPEARANCES: S Watson, the applicant (self-represented) and J Bell (agent, for a limited purpose)  
MD McKechnie of Counsel (instructed by Crown Law) for the respondent

- [1] The Queensland Academy for Science, Mathematics & Technology in Toowong is going to expand its curriculum for high achieving students. In addition to years 10 to 12, from 2020 the academy will also offer schooling to years 7 to 9. Necessarily, that means that the campus must expand. Plans have been drawn up, a contractor has been engaged and, importantly for this case, the State of Queensland has entered into a Cultural Heritage Agreement with Maroochy Barambah on her own behalf and on behalf of the Turrbal People, and the Turrbal Association Inc..
- [2] Samuel Watson isn't satisfied that the State of Queensland has appropriately dealt with Aboriginal cultural heritage issues on the campus. He has filed an originating application, seeking an injunction to restrain the State from starting works until it has entered into a cultural heritage management plan with "the endorsed party". In particular, Mr Watson is concerned to preserve an iron bark tree which appears to be a scar tree.
- [3] There are two threshold questions before Mr Watson's originating application can be considered:
1. Does Mr Watson have standing to bring the application?
  2. Does the Land Court have jurisdiction to entertain the application?

## **Does Mr Watson have standing to bring the application?**

- [4] Division 6B of the *Land Court Act 2000* sets out the Court’s jurisdiction in its cultural heritage division. Section 32H provides that a group, or a member of a group may apply to the Land Court for an injunction to stop the doing of an act.<sup>1</sup> The Court may grant the injunction only if it is satisfied that the applicant has standing to make the application.<sup>2</sup> A group or member of the group has standing to make an application if the group has a traditional, historical or custodial interest in the Aboriginal cultural heritage to which the contravention relates.<sup>3</sup>
- [5] The State submits that Mr Watson cannot establish that he is a member of a group that has a traditional, historic or custodial interest in the relevant Aboriginal cultural heritage.
- [6] In its submissions, the State went to some effort to identify what a “group” may be. I do not need to decide that question here as Mr Watson is a member of the Wangerriburra Aboriginal Corporation and there is no dispute that this Corporation is a group that has a traditional, historical or custodial interest in Aboriginal heritage.
- [7] But Mr Watson has not been able to demonstrate that he meets the second requirement of standing in this Court: that the Wangerriburra Aboriginal Corporation has a traditional, historical or custodial interest in the Aboriginal cultural heritage of this site at Toowong.
- [8] It was argued on behalf of Mr Watson that he can rely on section 36(3) of the *Aboriginal Cultural Heritage Act 2003* (ACHA) to support a submission that he is a member of a group that is connected with the subject land. That section provides that the Minister may register a corporation as an Aboriginal cultural heritage body for an area even though there is currently another corporation registered as an Aboriginal cultural heritage body for the area if:
1. the new corporation’s registration is only for the purposes of a particular project; and

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<sup>1</sup> *Land Court Act 2000* s 32H(1).

<sup>2</sup> *Land Court Act 2000* s 32H(2)(c).

<sup>3</sup> *Land Court Act 2000* s 32H(3).

2. the original registered corporation has given its written agreement to the registration of the new corporation.

[9] I received advice from the bar table that, on 19 March 2019, Mr Watson posted a request that the Turrbal Association consent to the registration of the Wangerriburra Aboriginal Corporation. Not surprisingly, the Turrbal Association had not received the request by the time of the hearing on 20 March 2019.

[10] Clearly, at the time Mr Watson filed his originating application, the Wangerriburra Aboriginal Corporation was not a registered Aboriginal cultural heritage body for this area pursuant to section 36 of the ACHA. Nor was the Wangerriburra Aboriginal Corporation a registered Aboriginal cultural heritage body for this area at the time of the hearing. I am not prepared to accept Mr Watson has standing on the basis of what might happen in the future, particularly when registration depends upon two things, agreement from the Turrbal Association and the decision of the Minister, neither of which is assured.

[11] Indeed, Mr Watson's action in seeking to secure an interest for Wangerriburra Aboriginal Corporation through section 36 is, in my mind, an acknowledgement that he presently does not have standing.

[12] Mr Watson made submissions questioning the appropriateness of the Turrbal Association's status as the native title party or Aboriginal party for this area. There was no evidence before me about these matters. This court has no jurisdiction to decide those matters and the fitness or otherwise of the Turrbal Association does not alter the fact that Mr Watson presently has no standing, and the Wangerriburra Aboriginal Corporation is not a registered Aboriginal cultural heritage body for this area.

### **Does the Land Court have jurisdiction?**

[13] The State submits that the Land Court can only grant the proposed injunction if I am satisfied that the "act" that is the subject of proceedings is an act which would contravene sections 24(1), 25(1) or 26(1) of the ACHA.

- [14] A person does not contravene any of the sections if they are acting under a native title agreement or other agreement with an Aboriginal party.<sup>4</sup>
- [15] There is a Cultural Heritage Agreement between the State and the Turrbal People which is “another agreement” within the meaning of the ACHA. The inescapable conclusion is that the State is acting under an agreement with an Aboriginal party.
- [16] Clause 12 of that agreement allows for tree clearing as mapped. The ironbark that is the focus of Mr Watson’s application is within that mapped area. Therefore, the act Mr Watson wants to restrain does not contravene any of the sections referred to above and cannot be the subject of a successful application for injunction. Similarly, the removal of Aboriginal material is permitted under the Cultural Heritage Agreement.
- [17] Mr Watson argues that there will be an act in breach of the ACHA if the Wangerriburra Aboriginal Corporation becomes a party because there will be no agreement with that organisation. As I have previously indicated, and as the President has articulated,<sup>5</sup> this Court cannot act on possibilities. Section 32H gives the Court jurisdiction only if it is satisfied that there are reasonable grounds for concluding that a person is likely to do the act. That test is not satisfied by a submission that a number of things might occur which might result in an act. Mr Watson’s submission depends on: agreement from the Turrbal Association that Wangerriburra Aboriginal Corporation can be registered as an Aboriginal cultural heritage body for this area; the Minister consenting to the registration of Wangerriburra Aboriginal Corporation as an Aboriginal cultural heritage body for this area; that no agreement will be made or cultural heritage management plan approved; the Wangerriburra Aboriginal Corporation will have a different view about what is required for the cultural heritage management plan; and/or that there will be a breach of any agreement made. None of these events is certain; therefore I cannot say that Mr Watson’s scenario is “likely”.
- [18] Mr Bell, on behalf of Mr Watson, impressed upon me that the purpose of the ACHA was to preserve and protect Aboriginal cultural heritage. Of course that is true, as sections 4, 5, 6 and 14 of the ACHA make clear.

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<sup>4</sup> *Aboriginal Cultural Heritage Act 2003* s 23(3)(a)(iii), s 24(2)(a)(iii), s 25(2)(a)(iii), and s 26(2)(a)(iii).

<sup>5</sup> *Carr on behalf of the Yuggera Ugarapul People v Frasers Deebing Heights Pty Ltd* [2019] QLC 14 [26].

- [19] Mr Bell referred me to section 161 of the ACHA to confirm Mr Watson’s connection to the land.<sup>6</sup> Section 161 does not assist Mr Watson, as he has not been able to demonstrate ownership of Aboriginal cultural heritage over this area. It is not enough to be a young boy growing up in the area and hearing stories told by or about the traditional owners of the land. It is not enough to travel extensively through the area. Mr Watson must demonstrate traditional or familial links to the land,<sup>7</sup> and he has not been able to do so.
- [20] I accept that there is a risk Aboriginal cultural heritage may be lost in the expansion of the Academy campus. The existing Aboriginal party accepts that possibility.<sup>8</sup> I also accept that this may cause distress to some parties. Specifically, Mr Watson told me that this area is important to the Wangerriburra people because it lies on a song line from their country to Mount Coot-tha. Unfortunately for Mr Watson these factors, although important to him, do not satisfy the test for whether or not the court has jurisdiction.
- [21] Mr Watson has criticised the State’s conduct in this application. He says that he received “voluminous” material which was only marginally relevant. He says that his examination of the material distracted him from the consideration of the issues before me today. He says that he received unsworn affidavits and that his copy of the Cultural Heritage Agreement between the State and the Turrbal People was unsworn. He says he deserves extra time to address this material and seek legal advice.
- [22] The issues of Mr Watson’s standing and the Court’s jurisdiction have been flagged since 7 February 2019. I made directions for the filing of material that addressed his standing. I have already adjourned the hearing of this application once. A person who comes to the Court seeking urgent, discretionary relief must be ready to argue the case when called upon to do so. The State has filed an affidavit<sup>9</sup> showing that it properly served Mr Watson. I have a copy of the signed Cultural Heritage Agreement. None of Mr Watson’s submissions alter the fact that I have no evidence to support a finding that he has standing and I have no evidence that the State is likely to do an act that breaches the ACHA.

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<sup>6</sup> T2-14; lines 9 – 13.

<sup>7</sup> *Aboriginal Cultural Heritage Act 2003* s 14.

<sup>8</sup> Affidavit of Ms M Barambah, sworn 6 February 2019, filed 7 February 2019, paras 6-7.

<sup>9</sup> Affidavit of Ms PP Freeleagus, sworn 20 March 2019, filed 20 March 2019.

[23] Mr Watson has no standing and this court has no jurisdiction to entertain the application for injunction. The application to strike out the proceeding must succeed. The originating application filed 1 February 2019 is dismissed.

**Order**

**The originating application filed 1 February 2019 is dismissed.**

**PG STILGOE OAM  
MEMBER OF THE LAND COURT**