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**The Bureaucracy, the Law and Blacks Palace:  
A History of Management of One Site in the Central  
Queensland Highlands**

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**ISSN 1322-0314**

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*Ngulaig* 2001 Vol. 18

### **About the Author**

Luke Godwin (BA, PhD University of New England) has worked both as a cultural heritage consultant and in state government agencies in New South Wales and Queensland as a cultural heritage officer. He developed and, for the last five years, has collaborated on the Bowen Basin Aboriginal Cultural Heritage Project in Central Queensland. This project aims to document the Aboriginal cultural places and values of this region of 85,000km<sup>2</sup>, and to link cultural heritage more effectively into general land management planning processes. Currently, he is carrying out planning work for the Indigenous Land Corporation in Central Queensland as well as providing technical advice on cultural heritage management issues to many Aboriginal organisations and development proponents throughout Queensland. He is also completing an MA in anthropology at the University of Queensland, focussing on the construction of cultural landscapes in Central Queensland in the era of Native Title.

## **Introduction**

In two recent papers (Bowdler and Clune 2000; Smith 2000) the development of legislation to manage and protect cultural heritage has been cited as one of the major achievements of Australian archaeology in the last 30-odd years. It is also true that, in some states, legislation has acted more as a mechanism of last resort with innovative, extra-legal management policies and strategies being developed that go well beyond the strict terms of such legislation (Smith 2000:115).<sup>1</sup> One clear example of these extra-legal approaches is the general adoption of Cultural Heritage Management Plans in relation to Environmental Impact Statement (EIS) work in Queensland. Plans of this sort had their origin in 1994, when developed for the Teneco gas pipeline across southern Queensland.<sup>2</sup> There is no basis in Queensland legislation for these plans: they were developed and continue to be negotiated with little or no input from government agencies charged with managing cultural heritage. Yet they have proved remarkably successful as a management tool – to the point where they are an integral element of most EIS projects and have been appropriated by government as an element of proposed new Indigenous cultural heritage legislation in this state. Similarly, the liberal interpretation of cultural heritage legislation, and translation of this interpretation into policy in relation to things such as consultation with Indigenous parties, is perhaps another example.<sup>3</sup>

It is also true that, despite the advent of legislation and sophisticated management policies, there often exists a very significant lacuna between the *formal* provisions of the legislation and the *actual* policy direction and implementation of the legislation and policies. For instance, although it is an offence to damage, deface or destroy cultural places in Queensland, there has only been one successful prosecution of vandalism of a site in more than 30 years.<sup>4</sup> It would be marvellous to think this was

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<sup>1</sup> Of course, the *Aboriginal and Torres Strait Islander Heritage Protection Act, 1984 (Cth)* always was, and remains, legislation of last resort.

<sup>2</sup> These should not be confused with management plans or conservation plans as described in Kerr (1990) or Pearson and Sullivan (1995). The plans to which I refer are more of a contract between the principals to the process (developer and Indigenous groups) than a technical document prepared by a technical adviser.

<sup>3</sup> There have also been some very conservative interpretations. For instance in Queensland in 1994 the (then) Department of Environment and Heritage, apparently on advice from Crown Law, closed down access to the register of Aboriginal cultural sites because it was decided there was no express authority in the Act for access to be provided, along with questions about copyright and intellectual property rights. This had some other consequences – for instance it was also noted that there was no authority to demand copies of reports or site cards emanating from EIS surveys. Interestingly, these strict interpretations seem to have been eroded with the passage of years and change of senior personnel.

<sup>4</sup> I would be surprised if the figures were much different in other states.

because the legislation had been remarkably effective in shifting public attitudes (see Morwood and Kaiser-Glass 1991 for an expression of this view; cf. Godwin 1992b). In fact, the successful prosecution occurred only because of a complete admission of guilt by the parties involved. In this paper I will explore in more detail this issue of the gap between what legislation and policy could offer and what actually transpires on the ground by examining the management history of one art site in Central Queensland.

The Blacks Palace art site complex remains, nearly 90 years after the first dated visitation by Europeans, one of the largest art sites ever recorded in Australia.<sup>5</sup> Without doubt, it is the single largest collection of *stencilled* art anywhere in Australia (and probably the world). Its significance at both regional and national levels has been widely recognised (e.g. Morwood 1979a, 1979b; Flood 1990) and it is entered on the Register of the National Estate (RNE No. 008885) maintained by the Australian Heritage Commission as well as the Queensland state register of Aboriginal sites (FE:A01). It is one of the few Designated Landscape Areas that have been created in Queensland under the *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987*. An overview of the history of such an important site can serve as a useful case study of the trials and pitfalls in the management of an obvious treasure.

The paper is broken into three main sections covering the periods 1907 to 1967; 1967 to 1989; and from 1989 to the present. The first period reflects the early management history of the site before any cultural heritage protection legislation existed in Queensland. The second covers the years after which the *Aboriginal Relics Preservation Act, 1967* had been introduced and from which time the site was the responsibility of the Department of Aboriginal and Islander Advancement (DAIA) and its various incarnations. The year 1989 dates the bureaucratic responsibility for cultural heritage matters in Queensland moving to the control of the (then) Department of Environment and Heritage (now Environmental Protection Agency) and marks the third phase of management.

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<sup>5</sup> The author was initially appointed as the Regional Archaeologist for Central Queensland in the Department of Environment and Heritage (DEH) in October 1990. In 1992, he was appointed as Manager, Cultural Heritage, Central Coast Region and this region included Blacks Palace (those with a geographical bent will be interested to learn that the definition of coast in Queensland extends up to 600km inland from the sea). He remained in this position until early 1997, whereon he resigned from the Department of Environment. Since that time he has, as a consultant, provided technical services in cultural heritage management throughout Queensland. He has maintained an active interest, and role, in the management of this site, working closely with various Aboriginal organisations on this issue.

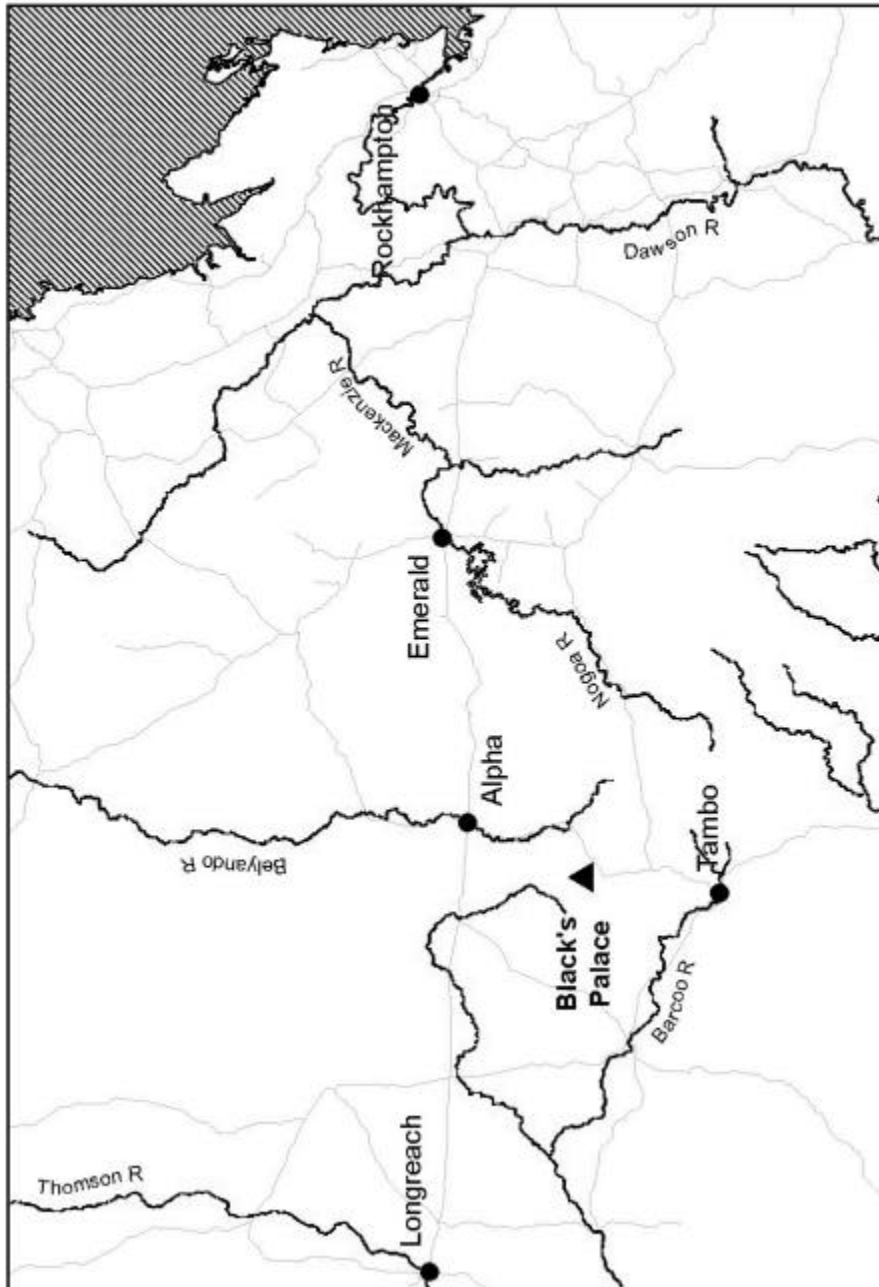


Figure 1. Central Queensland, showing the location of places mentioned in the text.

### **Site Description**

The Blacks Palace site complex is located to the southwest of the small town of Alpha on the western side of the Central Queensland Highlands (Figure 1) and is part of an area sometimes called the Sandstone Belt (Walsh 1984a). The Sandstone Belt contains literally thousands of rockshelters, art sites and burial crypts. These include Kenniffs Cave, the first definite Pleistocene site identified in Australia, which dates back some 19,000 years (Mulvaney and Joyce 1965). Blacks Palace is the single largest art site known to exist in the region.

The site sits in a small box canyon, with sheer cliffs of brilliant white sandstone between 15 and 20m in height. The floor of the canyon is flat and is dominated by ironbark woodland. The art is found in a series of shelters and cliff faces along the northeast and southwest sides of the canyon. It dominates the southwestern side in a near-continuous strip nearly 150m in length. The cliff lines of hilly country found in the immediate vicinity of the site also contain other art and burial sites.

The site was first recorded in any detail in 1976. In that recording, Morwood (1979a) identified a minimum of 9,471 motifs in the series of panels that comprise the site. Other detailed descriptions of the site can be found in Godwin (1992a) and Walsh (n.d.). There are at least 2,271 stencilled motifs, including composite stencils where several hundred individual stencils have been combined to create a single image. In addition there are at least 241 freehand painted motifs. While stencils are the more obvious art form, abraded engravings actually are numerically dominant, with 6,895 separate examples. Engraved motifs include simple abraded lines, animal and bird tracks, vulva motifs, grids, pits and zigzags. Walsh (n.d.) also describes examples of what he calls 'story panels', where a series of motifs have been arranged in such a way as to suggest an intent on the part of the artist to represent key elements in a story.

Hand motifs dominate the stencil art, but feet, axes and other items of material culture are also represented. There are also 50 examples of signal stencils (representations of a sign language known to be used in the region at contact; see Roth 1905). The single largest motif is a snake of over 9m in length created by the placement of 204 individual stencils. The freehand art includes depictions of bird-tracks, lizards, grids, zigzags and simple lines. Morwood (1979b, 1984) has argued, on the basis of absolute and relative dating from elsewhere in the Central Queensland Highlands, that all the art in this site post-dates 4,500 BP and continued through to the contact period.

The complex was also a burial site, perhaps one of the largest in Central Queensland. Numerous examples of the distinctive bark cylinder coffins found in burial crypts of this region were present. Although exact numbers of burials in the site are not available, it appears that at least 40 were present in 1918 (Drane 1918), and photographs taken at the site seem to indicate many more (M.J. Morwood, Division

of Archaeology and Palaeoanthropology, University of New England, pers. comm., 1998). There are also oral accounts dating to prior to 1920 of large racks, presumably for maceration of bodies prior to insertion in a bark cylinder coffin, along the cliff face of the site (R. Robins, Queensland Museum, pers. comm., 2000). The rough ladders hewn from the trunks of cypress pine used by vandals, thieves and the curious to access the higher solution tunnels containing burials were still in place at the site in the early 1990s.

The site is of great significance to all Aboriginal people living in Central Queensland, who are justly proud of it as a magnificent place that is of great cultural value. Some Aboriginal people have interpreted the site as a birthing place that was not always in the public domain on the basis of the presence of certain engraved motifs. It should be noted that those who hold this view have not seen this as a reason for banning public visitation although they do not want to share the details of why they hold this view in any interpretative program developed for the site.

#### **Management History: 1907-1967**

European visitation to the site dates back to at least the early years of this century, with some graffiti dated to 1907-1908 attesting to this. Europeans first settled the region in 1862, and some graffiti in a site nearby to the Palace dates to 1873. Therefore, it is likely that visits to Blacks Palace date back many years prior to the earliest graffiti in this site (Morwood 1979a).

This early graffiti heralded the beginning of damage to the complex that continued until at least 1986 (see Godwin 1992b). Other damaging activities that impacted on the complex included discharging firearms into the art and attempts to hack out motifs. Burial crypts were pillaged (Bergin 1935) with crude ladders fashioned from tree trunks placed against the cliff to facilitate access. Some families who still reside in the district attempted to rectify some of the graffiti damage by erasing the names of forebears, thereby often exacerbating the original damage (Walsh n.d.).

It was not until 1918 that any bureaucratic interest in the site was manifested. In that year a government surveyor, W.G. Drane, visited the site. He advised the Surveyor-General of this in a letter in that year, writing in part:

The place is merely of historic value. It is admitted that no one, even in the wildest thoughts of the imagination could discern the slightest trace of art. The blacks were a very primitive race and have left but few records of their existence. I feel sure that in the future this place will be of interest to many ... The government might consider it worth while sending a scientific team accompanied by a photographer to report on the matter with a view to reserving an area of say 160 acres. I am forwarding per parcel post a painting of a hand which may be of interest.

Drane's opinions and observations reflect all the then-current views of social Darwinism in which Aborigines were seen as a primitive race devoid of the higher qualities of humanity, such as a sense of art. There is also the reference to officially sanctioned vandalism of the site, with the prising away of a stencil by Drane as a souvenir for the Surveyor-General. But, almost apologetically, there is a recognition that the site did have some value both at that time, and with some prescience, was likely to be increasingly valuable in the future and that, therefore, the government should take some action to acquire it. Although the notion of some form of legislative action to protect Aboriginal relics as property of the Crown had been mooted as far back as the turn of the century (see Meston 1901), none had been set in place. It was not until 1967 that legislation was enacted to protect sites in Queensland; similar legislation in other states dates from much the same time. In the absence of any Crown prerogative over such sites and relics, the only means of asserting Crown authority was compulsory acquisition and gazettal as a reserve.

Drane's recommendation to reserve an area for protective purposes received official assent only one month later, in the form of an affirmative comment from the Surveyor-General to Drane noting that appropriate steps would be taken. It was to take 15 years for this assent to translate into action. In the final outcome, only 50 acres, and not the recommended 160, were excised from the pastoral holding in 1933 to create a reserve, noted as R39 on the relevant cadastral maps.

The complex was gazetted as a Reserve for Scientific Purposes, with the Minister for Lands as trustee. This did offer some opportunity to protect the site by official sanctioning of visits. As no mechanisms existed, however, for reviewing applications and issuing permits for visitation, and as there were no resources ever made available for policing the Act in regard to this site, the situation continued much as it always had. Uncontrolled visits, vandalism, theft and desecration of cultural material and burials persisted for the next four decades. No provision was made to guarantee access through the surrounding properties by gazettal of a road or right-of-way. Thus, access was always through negotiation with the owner of the land that surrounded the reserve, or by sneaking in through the back tracks without permission. This condition of access continues to the present day.

In a letter written in 1935 to the Secretary of the Land Administration Board, the Acting Land Commissioner (J.E. Bergin) observed:

The white tombs in the sandstone are picturesque; unfortunately, however, visitors persist in defacing the work by carving their names over the drawings and worse still by scattering the bones out of the caves.

His observations provoked no official action to proscribe such behaviour. His offence at the damage done to the burials was something of an advance: many of the major

burial sites in Central Queensland had already been disturbed, often in the name of science, by collectors such as Gaukrodger. In one case, he effectively destroyed 12 cylinder coffin burials in a site to the west of Springsure to obtain the skulls of the individuals. These were only repatriated from the Queensland Museum to the original site in 1993 (Godwin pers. obs.).

Interest in the site by rock art researchers dates from 1933 with the publication of the first semi-academic account of the site by Stark (1933). Prior to this, two brief mentions (and some photographs) of the site had appeared in the general press (Morwood 1979b), but no formal description of the site had been undertaken to that time. Stark (1933) provides some simple descriptions and general impressions of the site, along with two black and white plates of various panels. He noted that virtually all the formal burials had been removed or desecrated by that time, and specifically observed that there were no burial cylinders left in place – Drane indicated that there were at least 40 present when he visited the site 15 years earlier.

Stark's three pages of observations remained the definitive recording of the site until the mid-1970s. The site attracted only brief mention in the slowly growing literature on rock art: a total of five passing references between 1959 and 1974. Fred McCarthy, a pioneer of Australian rock art studies, is reputed to have undertaken an extensive photographic record of the site, but certainly never published this and only mentioned the site while discussing another major site nearby. Otherwise, brief mention of the site can be found in the following: Berndt (1964:Plate 4), McCarthy (1962:37, 1974:124), Mountford (1959:39), and Sutton (1967). Morwood (1979b:3) simply notes that "these references are never detailed and are sometimes misleading".

Meanwhile, public visits continued unabated. Vandalism increased in intensity to about twice its previous rate, in keeping with historical trends discerned across the whole of the Central Queensland Highlands, as measured by dated graffiti (Godwin 1992b; Morwood and Kaiser-Glass 1991).

#### **Management History: 1967 to 1989**

In 1967, the situation at the site had become so bad that a local service club, probably at the instigation of the property owner, took on the clean-up of the site. They collected the litter, constructed a shelter shed and dug a pit toilet. Unfortunately, to minimise inconvenience to visitors everything was built within 30m of the main art panels. One very useful step they took was to install a visitor's book in the shelter shed, pre-empting official use of this strategy by 10 to 15 years. Data from these books have proven extremely helpful in charting changing visitation patterns through to 1989 and plotting these against dated graffiti events.

Installation of these facilities seems to have precipitated a major increase of interest in, and visitation to, the site. Indeed, to judge from the visitor books it probably hit

an historical high. Most of this seems to have been local people who dominated visitation at a rate of 2:1 over non-locals. Over time this ratio changed so that by 1986-1989 non-locals outnumbered locals by 1.5:1. This change in visitation pattern represents a complex interaction of numerous factors, including: waning local interest; action by the land holder to limit visitation and transit across his land by locking gates and vetting visitors; and, increased outback tourism and the availability of 4WD vehicles that allowed non-locals to attempt a trip to the site previously only accessible by foot or horse (Godwin 1992b).

While the visitor books probably provided an outlet for some to express themselves, others still felt the need to vandalise the site. Although anecdotal evidence suggests a decrease, there are still 10 names found at the site post-dating 1967. Indeed, vandalism of sites as measured by dated graffiti doubled across sites in the Central Queensland Highlands for about five years after this date. Blacks Palace, with 10 dated examples between 1968 and 1984, contains 30% of all dated vandalism recorded in a sample of 12 sites for which such data have been collated (Godwin 1992b:136). It was five times more likely to have been vandalised than any other site in the Central Queensland Highlands. While numbers of local visitors have dropped since the mid-1970s, the numbers of non-locals have remained constant while the amount of graffiti has diminished. This suggests that graffiti and vandalism events are linked principally to local visitation, a general pattern that has been observed elsewhere (Jacobs and Gale 1994).

The year 1967 was an apparent watershed year in Queensland for cultural heritage management. It marked the enactment of the *Aboriginal Relics Preservation Act, 1967* which was the first attempt to protect Aboriginal material culture in Queensland, and one of the first in Australia (Bowdler and Clune 2000:31). Under this Act ownership of all relics, including art sites, was vested in the Crown. There was provision for sites to be gazetted as an Aboriginal Site, which carried a higher level of protection than simple listing of a relic. Provisions following gazettal as an Aboriginal Site included the need to obtain a permit to visit the site.

Blacks Palace was cancelled as a Reserve for Scientific Purposes on 25 July 1970, and instead gazetted as a permanent Aboriginal Site under Section 13 of the *Aboriginal Relics Preservation Act, 1967* with trusteeship vested in the Director of the Department of Aboriginal and Islander Advancement. This action followed an exchange of correspondence between that department and the Land Administration Commission over a period of 12 months prior to this date. The agreement of the Minister for Lands was required for this permanent declaration to be given assent. Prior to this, a temporary declaration had been achieved through an Order in Council dated 24 July 1969.

Few such sites were ever gazetted in Queensland. Reserves or other forms of Crown Land required the agreement of the appropriate head of department, meaning that it was essentially a bureaucratic action. Those on private property or leasehold land required the agreement of the landholder on a purely voluntary basis and at any point, including after gazettal, the arrangement could lapse because of withdrawal of this support. It seems likely that Blacks Palace passed through the maze because it was already a Crown Reserve and thus it was a relatively straightforward matter to simply transfer trusteeship from one department to another. (It is true, however, that some Aboriginal Sites were established on privately held land throughout Queensland but these are few in number). It is also possible that the site was viewed as an ‘albatross’ of which the Lands Department might have been well advised to divest itself.

Whatever the motivations for its creation as a declared Aboriginal Site, it was created as such, and with that came various legal requirements and obligations. Firstly, it was necessary to obtain a permit to enter an Aboriginal Site. Between the years 1967 and 1989, on evidence from the visitor books that could be freely examined at the sites, at least 2,500 people visited the site (Godwin 1992b), nearly all without any permit to do so. Archival research indicates the closest DAIA got to issuing permits for officially-sanctioned visits were two letters: one from the Archaeology Branch to an organisation wishing to visit and another from the relevant Minister to a private individual who had asked to visit the site (Holmes 1977; Porter 1978). (The letters authorising the visits did not contain any guidelines regarding acceptable behaviour or any conditions regarding visitation). Despite the clear evidence of the visitor books, no formal action was taken to limit visitation, no permanent presence was ever established at the site, no other management regime was put in place and uncontrolled/unauthorised visits continued. Thus, there were clear breaches of the law that were disregarded, with the evidence of the same simply ignored.

In 1971, the Department of Aboriginal and Islander Advancement established the Archaeology Branch. The Branch’s brief was to manage matters pertaining to the *Aboriginal Relics Preservation Act, 1967*. The Branch took limited action with regard to Blacks Palace. A Curator for Sites had been appointed within the Department of Aboriginal and Islander Advancement in that same year. The Curator visited the site in that year and met with the property owner, who, by virtue of his property surrounding the reserve, was able to control access. Empowered in this way, the property owner continued much as before, vetting those who asked to visit the site and generally keeping an eye on it. The property owner was accepting a role in no way sanctioned by the Act.

Various other honorary wardens and departmental officers visited the site a few times each year. Their effectiveness seems to have been fairly limited. In one instance, a warden claimed that the site had been vandalised between his visits. The Police were called in to investigate and did visit the site, as their signature of the visitor book

attests. Scrutiny of photographic evidence, however, demonstrated that the warden was mistaken, and that the damage had taken place much earlier. Ironically, there was no investigation of the dated graffiti, which often included the names of people, some of whom also signed the visitor book or had visited the site at the same time as others who had signed the book. While the reserve was surveyed, no attempts were made to fence it, or to formally police the permit requirements.

The site attracted renewed academic interest in the mid-1970s. One PhD student dug test-pits to a depth of 1.3m in the site and advised he found nothing. This led him to conclude that the area had not been used for camping or subsistence (Beaton cited in Morwood 1979a:260). A cursory examination of the large ironbark flat immediately adjacent to the art site reveals, however, a range of artefactual material including grinding equipment (Morwood 1979a; Godwin pers. obs.). It seems, therefore, that people did camp and forage in the immediate vicinity of the complex.

The first detailed census, survey and analysis of the site was undertaken in 1976 by Morwood (1979a) as part of his investigations of the age and context of Aboriginal art in the Central Queensland Highlands (Morwood 1979a, 1984). He prepared plans and cross-sections of every shelter and quantified the range of motifs, techniques and colours used. These data were used in a complex multivariate analysis of 92 art sites in this region, including Blacks Palace, from which he created a relative chronology of the art (Morwood 1979b). This was anchored to the few available absolute dates from Cathedral Cave and elsewhere to establish a chronology for the art of the region as well as a sophisticated study of superimposition of art styles from throughout the region. Morwood also examined the relationship of the art to other archaeological data, from which he concluded that the role of art had changed through time from being used in an open and unrestricted fashion to entering the realm of restricted access over the last few thousand years (Morwood 1984). Morwood (1979a, 1979b) also noted in passing that he had seen two of the bark cylinder coffins from the site in a local private collection.

In 1981 the site was recorded again, this time by Graham Walsh. The recording was undertaken as part of his monumental documentary work on the art of this region which was conducted from the late 1970s through to the mid-1980s for the Queensland National Parks and Wildlife Service (QNPWS). Walsh focused on a complete census of the motifs as well as documenting motifs and panels of particular interest (Walsh n.d.). He also used the site as an example of those containing what he termed composite stencils, in which many small stencils were arranged to create a single motif (Walsh 1983). In fact, he recognised that this technique had been used to create some of the largest and most complex motifs in the site, motifs that he believed Morwood had mistakenly classified as free-hand paintings. Walsh's census reduced the number of such free hand paintings by more than 100.

This spark of academic interest in the site did not provoke any sort of management response. This was despite the fact that both Morwood and Walsh were employed at this time by management agencies – Morwood by the Archaeology Branch, the trustees of the site, and Walsh by QNPWS, who then were engaged in a region-wide survey of sites as part of their management program in national parks. The QNPWS lack of response is perhaps the more understandable because the site complex was not on a national park and, therefore, technically outside their brief. Their interest was, at least initially, very much in the realm of compiling databases of sites on estate under their control and defining the nature of the issues. At a later stage, they did move to implement some effective measures to control visitation at selected sites (provided external funding was available – an issue to which I will return). The role of the Archaeology Branch might be characterised as lacking direction. Morwood left DAIA in early 1976 to pursue his PhD full-time, and so was not able to apply any internal pressure for action. It was not for another four years that some specific interest was taken. We might further note the lack of co-ordination of activity between the two agencies, although there were clear overlaps in interest and responsibility. The possibility that the personalities of various protagonists intruded in this can not be ignored.

The lack of co-ordination can be seen in the development of management policy through exchanges between these agencies in newspapers rather than a more formal bureaucratic setting. In the late 1970s, the condition of sites in the region came to public attention in various newspaper articles. Ironically, in at least one of these, the Archaeology Branch, DAIA, was quoted as arguing against declaration of Blacks Palace as a national park as a protective measure on the grounds that this would result in a loss of control over those who visited the sites (Anon. 1979). Indeed, they went further, claiming that the art in some national parks was being destroyed by this uncontrolled visitation. In their view, the solution was to have a permanent presence on the site and to prevent visits until this was in place. In the same interview, and perhaps somewhat curiously in light of concerns about visitor impact, they went on to add that the sites had ‘first rate tourist potential’. In response to the claims of the Archaeology Branch, QNPWS stated it was not interested in pursuing the suggestion of establishing a national park over the site.

The inconsistencies between stated views and practise are readily apparent. While the situation in the national parks of the region was far from ideal, there were and are both anecdotal and quantifiable data that sites with far higher levels of visitation in the park system were suffering far less from deliberate vandalism than was Blacks Palace (Godwin 1992b:136). Moreover, QNPWS was also taking definite steps to minimise visitor impact on a number of sites in Carnarvon Gorge, easily the most frequently visited park in the region. Various techniques were used to achieve this, including establishing boardwalks at some of these sites, removing signage and disguising tracks to reduce visitation (Walsh 1984b). The boardwalks installed in

Carnarvon Gorge have become a benchmark in terms of the quality of design and the sensitivity to the art they sought to protect. Their success as management devices can not be denied.

In late 1979, the Blackall District Land Commissioner wrote to the Secretary of the Land Administration Commission (Land Administration Commission 1979) suggesting that Blacks Palace be declared an Environmental Park (which would have placed it under the authority of QNPWS). He noted that the landowner had expressed a positive attitude to this and was prepared to relinquish some more land at no cost for this purpose (Cobb 1979). This suggestion was not discussed with the Archaeology Branch prior to it being outlined in official correspondence. The Board of the Commission was of a view that they did not need to take any action in this matter and anyway the responsibility for the site lay with DAIA and QNPWS (annotation, Cobb 1979). Consequently, no subsequent moves were ever taken in relation to this suggestion by any party involved.

In 1981, the Archaeology Branch decided to take some steps to actively manage Blacks Palace. An internal report was prepared, apparently based on the presumption that formal presentation of the site as a tourist location was the ideal management option: "inspection ... was made as a preliminary study for development proposals" (McQueen 1981). These development proposals included the installation of new toilets, barbecues, hardening of vehicle tracks and a vehicle parking area. A pedestrian trackway was to be developed at the top of the talus slope near the art panels and running parallel with those panels for their entire length, with concrete and rock to be used in hardening it. Interpretive signs were also to be erected on the way to the site and at various locations along the trackway.

Other staff with an intimate knowledge of the complex objected to many of these suggestions (Morwood 1981).<sup>6</sup> In spite of these objections, and in the absence of any further advice or formal plans, the development proposals were approved with a request that the matter be expedited within three days of receipt of the report. Costings of the proposals were to be submitted as soon as possible (annotation, McQueen 1981).

Some questions that today would be of considerable import, including formalising access arrangements, operation of a permitting system for tours/visitors, fencing of the reserve and the individual sites to prevent stock damage, along with consideration of more general conservation problems, received limited attention at that time. Interestingly, there was no attempt to explore the relative merits of various options

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<sup>6</sup> Morwood had returned from completing his PhD to hold a position in the Archaeology Branch until taking an academic position at the University of New England.

or to formalise the proposed arrangements through the development of a management plan or to set them in the context of issues raised in documents such as the Burra Charter. These now would be commonplace via the formulation of a conservation or management plan, guided by the principles enunciated in the Burra Charter. This was adopted by Australia ICOMOS in 1979, in part based on the Venice Charter of 1966 (Marquis-Kyle and Walker 1992:8). The principles that underwrote the Burra Charter had been debated over a period of three years prior to its adoption by Australia ICOMOS.

Also, the innovation of creating Aboriginal site rangers (Bowdler and Clune 2000:31) did not translate into the direct involvement of either the rangers or other Aboriginal people as traditional owners in management decisions, either at that time or until 1991. As it transpired, with the exception of placement of various signs at or near the site complex, the above plans were never put into effect. There is little further evidence of any substantial management plans or strategies being developed, let alone implemented between 1980 and 1990.

In 1987, the *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987* was passed to replace the *Aboriginal Relics Preservation Act, 1967* which was repealed in its entirety. Transitional provisions of this new Act made Blacks Palace a Designated Landscape Area (DLA) under Section 17 of the new Act. Responsibility for the site remained with the Archaeology Branch. In spite of the clear requirement under the legislation for permits to be obtained prior to entering a Designated Landscape Area there is no evidence of any formal permits having been issued. There was continued visitation and some vandalism, but no formal management action was taken for at least two years to protect the site.

### **Management History: 1989 to the Present**

In 1989, following a change of government, the Archaeology Branch, having been moved between various departments<sup>7</sup> was finally transferred to the Department of Environment and Heritage (DEH). Ironically, in light of previous events, DEH included QNPWS, and the Archaeology Branch staff and legislative responsibilities for cultural heritage were incorporated into this agency<sup>8</sup>. The Aboriginal rangers were not, however, transferred and stayed with the Department of Family Services and Aboriginal and Islander Affairs. They slowly withered on the vine, and so eventually disappeared as a group.

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<sup>7</sup> Including Attorney General's – the reasoning behind locating the Archaeology Branch there is opaque.

<sup>8</sup> Under a restructure of DEH in 1991, a sub-program known as Cultural Heritage was established as a distinct entity in the Conservation Program in that department, separate from QNPWS.

Upon assuming responsibility for the site in 1989, DEH prevented all public visitation by advising the landowner that the site was closed. All requests for access were referred to the department for consideration. The few requests received were denied and no permits issued. No steps, however, were ever taken to transfer the trusteeship of the site from the Department of Family Services and Aboriginal and Islander Affairs, to DEH. Consequently, DEH had responsibility for the site under legislation while another department remained trustee. This remains the case to the present.

In early 1990, a QNPWS officer with an interest in site management obtained a National Estate Grant to develop visitation facilities at the site, including fencing, boardwalks and interpretive material. In the absence of an approved conservation plan this seems to have placed the cart somewhat before the horse. The grant approval, however, did call for the preparation of a plan before initiation of any physical protection program.

Before these plans could be implemented, I was appointed as a regional officer with responsibility to oversee cultural heritage issues in Central Queensland. An holistic management program for Blacks Palace was deemed to be a priority and primary to this purpose was the preparation of formal management plan. In the course of drafting this plan I sought advice from various people with a deep knowledge of the site.

The involvement of Aboriginal people in the development of this plan, and in the ongoing management of the site, was viewed as critical. While there can be few ethical or moral arguments with this precept, legally it was, and currently remains, a complex issue in Queensland. The *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987*, with few very specific exceptions, vests ownership of Aboriginal cultural heritage items in the Crown. The responsible Minister is delegated all responsibility under the Act, with no requirement to refer decisions to any independent committee or arbiter, or to seek any advice at any level before implementation. There are, however, provisions under Section 12 of the Act to establish committees to advise the Minister in the preservation of items and places of cultural heritage significance. These committees can, under Section 13 of the Act, assume a proactive role in management by referring to the Minister any matters they think warrant ministerial attention. At first blush, a management plan for a major art site complex, which is also a Designated Landscape Area under this same Act, would seem to fall within this category. The draft Management Plan for the site recommended the formation of such a committee but this was resisted by others within DEH. The establishment of such committees requires ministerial assent, and this would generally be expected to occur on advice from senior departmental staff. No Section 12 or Section 13 committees have yet been established in Queensland.

Consequently, the decision was taken that it would be better to initiate some action to protect the site, rather than become bogged down in the bureaucratic complexities

of establishing formal committees and miss the opportunity for any movement in this direction. Direct involvement of relevant Aboriginal people from the region was sought in the formulation of the management plan via an *ad hoc* and informal committee convened for this purpose.

A formal management plan was then drafted and sent for peer review. The primary conclusions were that the major impacts on the site were, in order of impact, human, animal (feral, domestic and native) followed by a range of natural processes, some of which could be mitigated. All management decisions were to be predicated on the view that the value of the site was such that conservation both of the art and the spiritual significance must remain the guiding principles of any final strategy.

It was decided that the only effective control of people was to restrict access to the site. Only after this had been achieved could we then look to control the behaviour of humans and animals at the site. Thus, the permit system needed to be made to work, and some rigour had to be injected into the assessment process for permit applications. It was also decided that, with few exceptions for research purposes, all visits to the site would be formal guided visits under a permitted tour operator. Conditions on the behaviour and control of visitors were also formulated, along with guidelines on numbers of visitors permitted on any one visit to the site. An Aboriginal person was to be present on all trips, and was paid for this service. Continued access was contingent on meeting the permit conditions. Only one permit for access to the site was issued, considerably easing possible problems with policing of these conditions.

It was also a condition of access that proof of agreement on the part of the landowner of the surrounding country to traverse his property had to be provided prior to issue of a permit. This reflected the continuing situation of lack of formally gazetted access, and the need to use private tracks maintained at the landowner's expense. Moreover, there were (and are) significant public liability issues for the landowner, who is at risk of legal action from persons who might injure themselves on his property while accessing the site. Clearly, these conditions were not ideal, either for the landowner or for those wishing to visit the site. On the other hand, the lack of formally gazetted access could be seen as a positive management tool in that it does severely restrict opportunities for unauthorised visits.

Various physical protection measures were also implemented as part of the management plan. The reserve and individual sites were fenced to prevent stock and native animals damaging the site (requiring a survey of the site to identify boundaries). Visitor controls in the form of gates to designate formal access points to various art panels, and viewing points for the art were also installed. The latter consisted of treated timber arranged to define the area where visitors could stand to view the art. They prevented touching of the art but did not inhibit its viewing. They

were cheap to install, did not have any physical impact on the site, but provided the same degree of psychological barrier accorded by formal boardwalks. Relatively low numbers of visitors meant there was little dust problem. The defined viewing areas obviated the need for an expensive maintenance program and they also posed a limited threat to the art in the event of bushfire. The old pit toilet and barbecue were removed and the site generally tidied.

The site was included in a recent travelogue of famous and important Aboriginal heritage sites found throughout Australia (Flood 1990). Some descriptions of the site, its size and significance are provided, along with details on access. It is also included on a range of tourist maps available for the region. This advertising did not seem to result in an upsurge of requests from the public to visit the site.

The then Department of Family Services and Aboriginal and Islander Affairs (and now, after many name changes, the Department of Aboriginal and Torres Strait Islander Policy and Development<sup>9</sup>) has maintained an interest in the site through their continuing trusteeship of the reserve (see above). In 1991, they prepared a briefing note in response to a request from the Department of Lands with respect to changes in land tenure for the surrounding property. Significantly, they requested that no formal access to the site be gazetted as they saw this as one means of restricting unauthorised visits. It is also interesting to note the spin put on various points about the management of the site. Thus, the briefing also notes that DEH (incorrectly referred to as the Department of National Parks and Wildlife) stated it had been having problems with management of the area, and particularly with control of access. Of course, this was not quite the case as all visits to the site had been proscribed in 1989, with funds secured and steps taken to develop and implement a comprehensive management strategy at the site.

Over the last few years, Aboriginal people of the general area have had considerable difficulty accessing the site. One Aboriginal person who applied for access had to wait for over a year to secure a permit to visit the site. Various organisations such as the local Representative Body and the Department of Aboriginal and Torres Strait Islander Policy and Development (DATSIPD) have, over the last few years, all made some preliminary moves towards resolving various management matters, particularly this question of access.

In the last year, the Environmental Protection Agency (EPA) has also taken some action aimed at furthering development of solutions to some of the ongoing

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<sup>9</sup> Yes, the rapidity of change in names of Queensland Government departments is confusing. One of the growth areas in the Queensland economy seems to be printing government letterhead.

management issues surrounding the site by reconvening the informal committee initially established to oversee development of the management plan. They have sought to give this committee a structured role but still there has not been a high-level commitment to establish a Section 12 committee. Consequently, while the intentions within the EPA may be worthy, the situation is largely unchanged from that which existed from 1990 to 1996 – the committee has no formal standing sustained by Ministerial decree. Thus, their advice can be dispensed with at any time it is seen as being inconvenient. There is also a certain irony in that although there were several Aboriginal corporations and organisations that could accept financial responsibility, the EPA assumed responsibility for managing a grant from DATSIPD for ongoing management of the site while at the same time seeking to develop a position of direct Aboriginal control of the management process for the site.<sup>10</sup>

The question of funding the management of this site is worthy of some attention because it highlights certain issues that are common not only in Queensland but other states as well. I noted earlier that QNPWS had taken some significant steps to initiate protective measures at sites under its control. In nearly every case of which I am aware, however, these steps were only taken after external funds had been obtained for the exercise. That is, no action was taken until some other agency had provided funds for the purpose, although the places sit on estate under the control of QNPWS, for which they have a duty of care under their own legislation, and despite the fact that they are able to fund other capital works on their estate (such as walking tracks, toilets and viewing platforms).

This situation is not limited to QNPWS; it is one that still bedevils the EPA, and before it the DEH, and the Archaeology Branch. There was not, and to my knowledge this is still the case, any recurrent or special allocation in DEH or EPA budgets for management of places that are identified by government or the agency as warranting particular or ongoing attention. Thus, the work undertaken at Blacks Palace, and in Carnarvon Gorge and elsewhere, on places recognised as of outstanding significance has been initiated using funds from external sources.<sup>11</sup> Many of the basic tasks of management were, and continue to be, similarly funded. For instance, creation and maintenance of databases, regional assessments to varying degrees of detail (e.g. Border and Rowland 1990; Godwin *et al.* 1999; L'Oste-Brown *et al.* 1998), special conservation studies (Godwin in prep.; McNiven 1996), conservation projects such

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<sup>10</sup> This has now been changed. At a recent meeting of the committee, it was agreed (at the instigation of the Aboriginal members of the committee) for the funds to be transferred to Aboriginal control.

<sup>11</sup> The preferred sources were funds from either the National Estate Grants through the Australian Heritage Commission or grants from Australian Institute of Aboriginal and Torres Strait Islander Studies.

as site protection at Corroboree Beach on Fraser Island (inscribed on the World Heritage list) among many others, were all funded using external resources. The EPA's seeking funds from DATSIPD for Blacks Palace is only the continuation of a well-established tradition of external subsidy of agency core business.

It might be suggested that this is only reasonable: no department has resources for everything it is required to do. This is true to an extent. It must be asked, however, whether there is some duty of care on a department or agency to ensure funds for a place that it, and the government by order of the Governor in Council, have deemed to be so special as to warrant declaration as one of the nine Designated Landscape Areas in the entire state. This would remove the uncertainty that should not be part of any management regime for such important places.

Over the last few years, the EPA has offered grants specifically for the management of Indigenous heritage. This is a worthy initiative. It might be suggested that this addresses the issue of funding I have raised and provides a fair means of allocating scarce resources. To my mind, however, this approach has more in common with a raffle than a management policy. Irrespective of the criteria set, the process is subject to the vagaries of political serendipity and ill-conceived notions of fairness, where the amount available is divided into tiny sums in order to offer something to as many projects as possible. A more appropriate analogy for Blacks Palace and other places deemed of outstanding value by the State is that of prized exhibits in a state or national art gallery. These receive the curatorial treatment they deserve, no matter the shifting sands of style and public taste.

Trusteeship, traditional custodianship or indeed ownership under Native Title, provision of gazetted access and provision of resources for on-going management are matters that still need resolution. The *Queensland Aboriginal Land Act, 1991* makes various provisions for the return of land to Aboriginal people. Apposite to the management of Blacks Palace is the fact that reserves such as Blacks Palace can be returned to Aboriginal people without the need for formal and lengthy hearings before the Land Claims Tribunal established under this Act. The Department of Natural Resources, charged with responsibility in this area, has recently commenced investigations to determine the feasibility of this option. At the time of writing, however, only one block of approximately two hectares near Duinga has been returned to Aboriginal control in Central Queensland in the eight years of operation of this Act. Apart from bureaucratic rigidity, questions of Native Title, traditional ownership and custodianship inevitably remain to be resolved. There are currently two Native Title claims asserting an interest in the area.

Mention has been made of the creation of Aboriginal committees under provisions of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987*, as well as Aboriginal people being required to obtain permits to access the site. These

and questions of Aboriginal ownership and management of cultural places and the issue of access fall directly within the province of Native Title, and I now consider this in a little more detail.

### **Native Title and Management of Cultural Places**

In a recent decision (*Yanner v Eaton 1999*), the High Court of Australia found, in a majority judgement, that the provisions of the *Fauna Act, 1974 (Qld)* and the *Nature Conservation Act, 1992 (Qld)* did not extinguish Murandoo Yanner's usufructuary rights under Native Title. The High Court found that while the *Nature Conservation Act, 1992* sought to regulate the hunting and use of native fauna, it did not confer a full beneficial, or absolute, ownership on the Crown. They noted that neither of these Acts expressly sought to extinguish Native Title, that earlier legislation had actually recognised this right and that Section 211 of the *Native Title Act* specifically provided for the continuation of Native Title in precisely these circumstances. Murandoo Yanner was, therefore, entitled to enjoy his Native Title rights to hunt crocodile without the need to obtain a permit, certificate, licence or other authority for the purpose from the relevant agency even though the Act specified that he should. The High Court consequently allowed his appeal against a judgement of the Court of Appeal (Qld) that he had breached the provisions of the *Nature Conservation Act, 1992*.

This case raises some important issues with respect to Aboriginal cultural heritage in Queensland, and possibly elsewhere. It is often noted that Section 33 of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987* confers on the Crown an absolute ownership of Indigenous cultural heritage (or at least those elements that meet the definition of Items of the Queensland Estate). This section of the Act states:

All parts of the Queensland Estate –

(a) that constitute evidence of occupation of any part of Queensland by indigenous persons ... are and shall be deemed to have always been the property of the State.

This section, however, is usually read in isolation to Section 32 of the same Act that states:

No provision of this Act shall be construed to prejudice –

(a) rights of ownership had by a traditional group of indigenous people or by a member of such a group in a part of the Queensland Estate that is used or held for traditional purposes; or

(b) free access to and enjoyment and use of a part of the Queensland Estate, where such access, enjoyment or use is sanctioned by traditional custom relating to that part, by a person who usually lives subject to the traditional custom of a group of indigenous people.

It seems, therefore, that Section 32 significantly moderates the provisions of Section 33. At face value, it would be extremely difficult to mount an argument that there is a clear and unequivocal intention to extinguish Native Title in this Act. Indeed, Section 33 perhaps might be seen as conferring only a regulatory right or duty of care on the Crown to, in part at least, ensure the opportunities provided by Section 32, rather than full beneficial ownership to the Crown, as is usually presumed in the operation of this Act.

In light of Yanner and Section 32, it might also be the case that provisions such as those specified in Sections 24 and 27 of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987*, respectively requiring a permit or authorisation to enter a Designated Landscape Area or a permit to undertake 'systematic field exploration to establish the existence of the Queensland Estate', do not apply to Aboriginal people exercising their traditional rights and customs in respect of a site such as Blacks Palace. It may also allow the exercise of usufructuary rights in places such as ochre or stone quarries to satisfy personal, domestic or non-commercial communal needs and in exercise or enjoyment of their Native Title rights and interests.<sup>12</sup>

Other questions that also arise include: does the management agency have the right to take unilateral action with respect to indigenous cultural heritage where this might contravene provisions of Section 32 and possibly infringe the Native Title rights of an individual or group, and what liability would they assume in doing so? Taking management actions at a site constitutes a future act as defined within the *Native Title Act*. Recent decisions from the Federal Court (e.g. *Harris v Great Barrier Reef Marine Park Authority 2000*) make clear that the need to consult and negotiate in relation to future acts is case-dependent: the more immediate and substantial the

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<sup>12</sup> To my knowledge there is no comprehensive opinion of the implications for the interpretation of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987* in terms of various court decisions that have been circulated to EPA staff. I also note that draft versions of proposed cultural heritage legislation draw a distinction between Interested Indigenous Parties (including determined holders of Native Title and Native Title claimants) and others with respect to the need to obtain a permit to undertake various activities under provisions of the Act: Interested Indigenous Parties are not required to obtain a permit. Formal legal opinion is, however, needed on the issues raised. I have circulated this section to various lawyers involved in Native Title. They have raised no objections to this interpretation: one has observed that these arguments warrant pursuit in formal legal settings.

nature of the future act, the greater the requirement for more sophisticated and comprehensive negotiations with those who have a Native Title interest to be affected by the future act.

Provision of fencing, installation of interpretive material, issuing of permits to third parties to visit a place and derive profit from this and allowing access to areas that, from the traditional owners' perspective are subject to gender or other cultural restrictions, would constitute future acts. Russell and McNiven (in prep.) have cogently argued that we should not suppose a congruence of interests existing between cultural heritage managers and Native Title claimants or holders (contra Davidson 1999:5). The possibility of managers intruding on the Native Title rights of others is real, and it carries significant legal implications. In such circumstances it seems to me that the precautionary principle would suggest that endorsement by Native Title owners or claimants of any management decision made should be considered a legal essential, as against a polite invitation that can be withdrawn whenever it proves inconvenient. Certainly, this would at least be consistent with other policies of the EPA, notably the requirement that there be the formal authorisation of determined Native Title holders or registered claimants before the issue of a permit by the EPA for the collection or excavation of sites. Consequently, the question of whether a committee should be constituted under Section 12 of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act, 1987* is a moot point: the traditional owners, through their Native Title interests, are likely to have a legal right to be directly involved in any and all management decisions.

### **Concluding Comments**

It is often said that the wheels of government turn slowly and certainly this holds true with respect to Blacks Palace. It has only taken 80-odd years to summon the will to control the single biggest conservation threat to the site: human visitation. The very limited role that academic interests took in seeking to force management changes also might be noted. Balanced against this, the data on dating, site distribution and form, and general significance of the site, derive from the detailed recordings and analysis undertaken by Morwood and Walsh, and have served to change public perceptions of this body of art.

It is clear that there are no obvious or simple solutions to the various management issues that still beset this site. The question of control may be resolved in part by granting the reserve to Aboriginal people under the *Queensland Aboriginal Land Act, 1991* though with what speed this might eventuate we can only speculate. Determining rightful owners or who should act as trustees would almost certainly be the cause of some intense disputes. But these sorts of things are ultimately resolvable and should not be seen as more than a short-term issue, and should not serve as a deterrent to the exploration of this avenue as one possible means of ensuring Indigenous ownership of the reserve and involvement in its management.

Of course, a successful Native Title claim that included the site could see ownership vested in a group of Aboriginal people. This would precipitate an entirely new suite of management questions that as yet have not been explored in any depth. At this stage I am not aware that any detailed examination of the tenure history of the surrounding property has been undertaken to ascertain whether or not Native Title has been extinguished through earlier conditions attached to the pastoral leases that previously covered the reserve.

Whatever happens, traversing private (albeit leasehold) property using ungazetted tracks will remain a vexed question unless a broader solution is developed that secures some better form of access. The problems this poses are to some extent offset by the security offered by limited access, but it is clear that it suits neither the property owner nor all other interested parties to leave this matter in the air. Purchase of all or part of the property by the Indigenous Land Corporation (ILC) is one possible means of resolving this matter. Whether it is a valid function of the ILC to use its limited resources to dig other elements of the bureaucracy out of cultural heritage management holes is one question that needs to be answered in respect to this strategy. From this jaundiced perspective, it seems little more than a continuation of seeking external solutions and subsidy for issues that the state government should reasonably seek to resolve through provision of adequate and ongoing resources. On the other hand, Aboriginal people are supportive of some role for the ILC in assisting resolution of this problem.

We should not be blind to the fundamental goodwill that the great majority of interested parties at all levels (public, landowner, Aboriginal, bureaucratic, tourist operator) evince towards this site. There is a common view that this place must be preserved for posterity. It is equally clear, however, that to rest on the provisions of cultural heritage management legislation will not necessarily deliver any effective outcomes. Of itself, 30 years of legislation have not created the conditions that automatically ensure the protection, effective management of this magnificent site or Aboriginal involvement in management of this place. Aborigines and cultural heritage managers need to explore a wide range of legislation, and apply the provisions of these Acts in creative ways, if they are to achieve the desired goal of protecting and conserving treasures such as Blacks Palace.

#### **Acknowledgements**

Firstly, it has always been a pleasure to work with many Bidjara people over the years on this and other cultural heritage issues. Comments and suggestions from Richard Robins, Scott L'Oste-Brown, Mike Morwood, Anne Ross, Ian McNiven, Daniel Lavery, Sean Sexton and Sean Bowden were greatly appreciated and improved the paper. I remain responsible for any errors or omissions.

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