Planning Institute of Australia
Indigenous Planning Working Group

Improving Planners’ Understanding of
Aboriginal and Torres Strait Islander Australians
and
Recommendations for Reforming Planning Education Curricula for
PIA Accreditation

A Discussion Paper
prepared by
PIA’s Indigenous Planning Working Group

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Contents

EXECUTIVE SUMMARY AND RECOMMENDATIONS ................................................................. 3

1. BACKGROUND .................................................................................................................. 6

2. PLANNING EDUCATION AND ABORIGINAL AND TORRES STRAIT ISLANDER
   PEOPLE AND COMMUNITIES ....................................................................................... 7

3. PLANNING PHILOSOPHY AND PRACTICE: RATIONALE FOR CHANGE ............. 11

4. PLANNING EDUCATION ................................................................................................. 13
   4.1 PLANNING THEORY AND METHODOLOGY ...................................................... 13
   4.2 NORMATIVE VALUES AND PROCESSES ....................................................... 14
   4.3 THE ADMINISTRATIVE AND LEGAL CONTEXT ............................................... 15
   4.4 COMMUNICATION SKILLS AND ETHICS ......................................................... 16

5. CODE OF PROFESSIONAL CONDUCT .......................................................................... 18

6. CONCLUSION AND RECOMMENDATIONS .................................................................. 19

REFERENCES ....................................................................................................................... 20

LEGAL AUTHORITIES ........................................................................................................ 20

 LEGISLATION ................................................................................................................. 20

 BOOKS, REPORTS, JOURNALS, ETC ............................................................................. 20

ATTACHMENT A – USE OF THE TERMS ‘ABORIGINAL AND TORRES STRAIT
ISLANDER PEOPLES’ AND ‘INDIGENOUS PEOPLES’ .................................................... 25

ATTACHMENT B – THE SPECIAL NATURE OF ABORIGINAL AND TORRES STRAIT
ISLANDER PEOPLE’S RELATIONSHIP TO LAND AND WATERS ..................................... 26

ATTACHMENT C – THE RELATIONSHIP BETWEEN ABORIGINAL OR TORRES STRAIT
ISLANDER CULTURAL HERITAGE AND NATIVE TITLE .................................................. 28
Executive Summary and Recommendations

Several events in recent history have raised the profile of the rights, interests, needs and aspirations of Aboriginal and Torres Strait Islander people and communities in Australia and internationally.

The rights and interests of Aboriginal and Torres Strait Islander people relates to their human rights arising from international treaties, covenants, conventions and declarations to which Australia is a signatory and to their rights and interests relating to land arising from native title claims and determinations and the land rights laws passed in the different jurisdictions around Australia. The needs and aspirations of Aboriginal and Torres Strait Islander people and communities relates to their well-being as citizens of Australia. Throughout this paper therefore, references to the rights of Aboriginal and Torres Strait Islander people and communities embraces the four elements of rights, interests, needs and aspirations.

Aboriginal and Torres Strait Islander issues are becoming increasingly important at the national, State/Territory and local levels (for example, in a very broad sense through the Closing the Gap agenda adopted by COAG and through various National Partnership Agreements, but also in the context of preparing cultural and natural resource management plans for particular areas that may be in Aboriginal or Torres Strait Islander ownership or control). As a result of these activities, planners are increasingly working directly and indirectly with Aboriginal and Torres Strait Islander people and communities in a range of planning contexts.

In light of these developments, the rights of Aboriginal and Torres Strait Islander Australians should be embedded in all planning practice by planning professionals. The reality is that planning is not keeping up with current policy and practice and there is a shortage of trained educators, especially in this field.

The purpose of this paper therefore is to stimulate discussion within the planning profession and more importantly within the Planning Institute of Australia (PIA), about the knowledge and skills planners require and what the minimal thresholds for planning education may be for planners working with Aboriginal and Torres Strait Islander people and communities.

PIA has adopted a Reconciliation Action Plan which commits the PIA to developing a better understanding of the need to recognise and accommodate the rights of Aboriginal and Torres Strait Islander people and communities in contemporary planning processes. PIA is also currently (2010) undertaking a review of its Education Policy and this presents an important opportunity to reflect on the extent to which PIA’s planning education accreditation requirements require members to be better educated in this field. (Part 1)

Recent research by Oberklaid (2008:1) examines the moral and practical imperatives for planning students to be informed of Aboriginal and Torres Strait Islander issues. Oberklaid found that there is a great deal of variety in the approach to incorporating Aboriginal and Torres Strait Islander issues into the curricula of urban and regional planning courses in
Australia, and that Aboriginal and Torres Strait Islander issues are considered “marginal” compared to “mainstream” planning subjects in University planning courses accredited by PIA. Oberklaid also found that a focus on skilling and obtaining experienced educators in this field is required and that course convenors raised questions about what skills and knowledge the educators need. Oberklaid concluded that further research is required to ascertain the knowledge and skills required by planners to work in this field. (Part 2)

Since the High Court’s landmark decision in the Mabo case in 1992, there are several imperatives for planners to be better educated and appropriately trained and skilled in including Aboriginal and Torres Strait Islander people’s rights, interests, needs and aspirations in conventional and contemporary planning processes. The imperatives include Aboriginal and Torres Strait Islander people’s long connections with country, the High Court’s rejection of the notion of terra nullius, and that Aboriginal and Torres Strait Islander people will always retain their special relationship with and responsibility for land and sea country. (Part 3)

Formal planning education for new entrants into the profession as well as for those already working in the profession is in need of reform. Four areas require urgent attention:

- **Planning theory and methodology.** New theories of planning need to be devised that are more sensitive to cultural differences and which facilitate greater recognition of the important role that Aboriginal and Torres Strait Islander law, lore and custom play in their lives.
- **Normative values and processes.** Current normative values and processes are, in certain situations, no longer relevant, and new values and processes of planning need to be devised that records, interprets and absorbs Aboriginal and Torres Strait Islander people’s intrinsic knowledge of country and the environment.
- **The administrative and legal context.** Administrative processes need to change to enable Aboriginal and Torres Strait Islander people to be involved in planning processes at least to the same extent as other interested parties and to have more control over the planning of their communities and traditional lands and waters.
- **Communication skills and ethics.** Aboriginal and Torres Strait Islander people have different ways of making decisions and different community structures, and it is important for planning processes to take account of these cultural differences in ensuring effective community engagement. (Part 4)

PIA’s Code of Professional Conduct also requires updating to accommodate the imperatives for planners to be better educated and appropriately trained and skilled in including Aboriginal and Torres Strait Islander people’s rights, interests, need and aspirations in conventional and contemporary planning processes. (Part 5)

The Indigenous Planning Working Group (IPWG) of PIA therefore recommends (Part 6) that:

1. PIA give consideration to requiring a minimum content on Aboriginal and Torres Strait Islander peoples’ rights, interests, needs and aspirations for accreditation of University planning courses. This could include for example, guidelines on the best approach to developing the content, including collaboration with Aboriginal and Torres Strait Islander people/organisations.
2. The scope of the minimum content on Aboriginal and Torres Strait Islander matters embrace the four critical areas of planning education, namely:
   - Planning theory and methodology;
   - Normative values and processes;
   - The administrative and legal context; and
   - Communication skills and ethics.

3. These matters be discussed openly with University planning schools and PIA members, and with Aboriginal and Torres Strait Islander people and organisations to ensure any approach developed by PIA is relevant, engaging, inclusive and accurate.

4. PIA makes a commitment to giving Aboriginal and Torres Strait Islander people and communities a key role in the preparation of relevant subject matter and key decision making capacity in the approval of the content of relevant educational courses.

5. PIA give consideration to developing a unit on Aboriginal and Torres Strait Islander people and communities as part of for its Certified Practicing Planner Course to bring existing practitioners up to date with these issues. As with the previous recommendations, the course content should be developed in collaboration with Aboriginal and Torres Strait Islander people/organisations where possible.

6. PIA give consideration to holding forums on Aboriginal and Torres Strait Islander issues as part of PIA’s Continuing Professional Development Program for existing PIA members.

7. PIA give consideration to enhancing resources available to members, particularly online, concerning matters such as reconciliation, measuring Indigenous well being, native title rights and interests, land rights, cultural heritage protection and management, Indigenous Land Use Agreements, and joint management of reserves, national parks and conservation areas.

8. PIA give consideration to amending its Code of Professional Conduct to include a clause encouraging members to use their best endeavours to take account of Aboriginal and Torres Strait Islander connections to country wherever possible.

9. PIA give consideration to providing scholarships to Aboriginal and Torres Strait Islander students to study urban and regional planning.

Consideration of these matters will assist the planning profession in adopting better approaches to involving Aboriginal and Torres Strait Islander people in contemporary planning processes.
1. **Background**

In PIA’s Planning Education Discussion Paper (PIA 2008a), the Education Review Committee acknowledged the Indigenous Planning Working Group’s (IPWG) views that there is a need for some fundamental changes in the way in which Australian planning education addresses Aboriginal and Torres Strait Islander perspectives and interests.

In response to the IPWG’s submission to the Review, the Discussion Paper posed the following question:

- How should Indigenous interests in planning, land and environmental management be incorporated and addressed through planning education in Australia?

This paper has been prepared by the IPWG as a discussion starter about the need for changes to planning education generally and to PIA’s Education Policy. The following views are not intended to detract in any way from the many other important issues raised in the Education Review Committee’s Discussion Paper, but rather to contribute to the discussion and the development of policy which gives greater recognition to the inherent rights, interests, needs and aspirations of Aboriginal and Torres Strait Islander Australians in conventional and contemporary planning and land management processes. Whatever may result from this review, the IPWG believes the need for changes in planning philosophy, planning discourse, planning systems and processes and most importantly, planning education around respect and recognition for Aboriginal and Torres Strait Islander rights could not be more urgent than now.

The PIA Reconciliation Plan highlights the need for better training of planners in Aboriginal and Torres Strait Islander issues. The IPWG also notes that whilst there is a demand for trained planners in this area, there are insufficient skilled practitioners. Furthermore, the awareness and incorporation of Aboriginal and Torres Strait Islander rights should be embedded in all planning practice by planning professionals.

The early parts of this paper draw on recent research undertaken by Sarah Oberklaid, a Masters student at Melbourne University, who undertook research into the extent to which urban and regional planning courses in Australia that are accredited by PIA incorporate Aboriginal and Torres Strait Islander issues into their course curriculum. The IPWG is indebted to Ms Oberklaid for permission to draw on her invaluable research. The latter parts of this paper reflect the views of the IPWG about how Aboriginal and Torres Strait Islander matters can be incorporated into planning education and in particular into university curriculum for PIA accreditation and into PIA’s Certified Practicing Planner (CPP) and Continuing Professional Development (CPD) programs.

Also accompanying this paper are three Attachments.

- Attachment A provides an explanation of the use of the terms ‘Aboriginal and Torres Strait Islander people’ and ‘Indigenous people’.

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1 See Attachment A on an explanation of the use of the terms ‘Aboriginal and Torres Strait Islander’ and ‘Indigenous’.
Attachment B provides an outline of the special nature of Aboriginal and Torres Strait Islander people’s relationship to land and waters.
Attachment C discusses the relationship between Aboriginal cultural heritage, native title rights and interests and the statutory systems of land rights grants devised by governments in Australia.

2. Planning Education and Aboriginal and Torres Strait Islander People and Communities

Several events in recent history have raised the profile of the rights of Aboriginal and Torres Strait Islander people and communities in Australia and internationally.

These events include for example, the 1967 Constitutional referendum which approved amendments to remove the constitutional discrimination against Aboriginal and Torres Strait Islander people and extend Federal powers to legislate on their behalf, in 1992 the High Court’s deliberations in the Mabo case which resulted in a recognition by the Australian legal system that the Meriam people hold rights to their land under their own system of law, those rights should enjoy the protection of the Australian law and that the concept of native title at common law was also applicable to mainland Australia, and the Prime Minister’s apology to the Stolen Generations in February 2008.

In 2007 the General Assembly of the United Nations endorsed the Declaration on the Rights of Indigenous Peoples. Under Article 19 of the Declaration, Aboriginal and Torres Strait Islander people have the right to be consulted in good faith in order for governments to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. Under Article 23, Aboriginal and Torres Strait Islander people have the right to determine and develop priorities and strategies for exercising their right to development. And under Article 32, they have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

The UN Habitat has played a major role in advocating for the rights of Indigenous peoples worldwide, and has recently produced guidelines for all governments on indigenous housing rights (UN 2005). The 2008 World Urban Forum in Nanjing included a Round Table on Indigenous Housing. There would be considerable international interest in progressing this work into the planning arena, and PIA could offer to participate in a Round Table on Indigenous Planning at the 2012 World Urban Forum. This would enable any work carried out in the interim to be tested against international best practice, and hopefully to achieve UN Habitat endorsement. This could be useful in the context of UN Habitat Universities, a network of universities who support UN Habitat’s agenda of promoting pro-poor policies and practices.

These and many other developments have a number of implications for planners in Australia. Aboriginal and Torres Strait Islander issues are important at the national, State/Territory and local levels (for example, through the Closing the Gap agenda adopted...
by Council of Australian Governments (COAG) and through various National Partnership Agreements endorsed by the Australian and various State/Territory Governments through COAG). As a result of these activities, planners are increasingly working directly and indirectly with Aboriginal and Torres Strait Islander people and communities in a range of planning contexts. The reality is that planning is not keeping up with current policy and practice and there is a shortage of trained educators, especially in this field.

Research work has also been undertaken on the level of Aboriginal and Torres Strait Islander content in existing planning education courses in our Universities which underpins the need to better address these issues in planning education (Oberklaid 2008, Margerum et al 2003, Gurran and Phibbs 2003, 2004).

Oberklaid’s (2008:1) thesis discusses the moral and practical imperatives for planning students to be informed of Aboriginal and Torres Strait Islander issues.

As a precursor to her survey of PIA accredited planning courses, Oberklaid found that:

- The recognition of Aboriginal and Torres Strait Islander peoples’ inherent rights and interests in land have only recently been formally incorporated into Australian legislation through the Native Title Act 1993 (Cth) and that approaches to planning are only just beginning to take account of these developments (Porter 2006:384).
- Many planning practitioners and academics argue Australian contemporary land use planning and development processes have neglected to adequately involve Aboriginal and Torres Strait Islander people or consider their rights (Wensing 2007, Lane and Corbett 2005:148, Jackson 1997a).
- While planners and planning approaches in a variety of contexts are inclusive and adaptive in response to the recognition of Aboriginal and Torres Strait Islander people’s rights and interests, research indicates that the complex layers of legislation imposed by the various jurisdictions and their relationship to planning and land management tools, policy and State/Territory planning Acts, presents challenges for urban and regional planners (Margerum, Hart and Lampert 2003, Kliger and Cosgrove 1996, Baker, Davies and Young 2001).3
- Many aspects of contemporary land use planning ‘remain unquestioned’ in their approach and planners are often unaware of the impact of biases of Australian planning history, theory and methodology on planning policies and outcomes for Indigenous people and communities, nor the implications of recent legislative recognition of Indigenous land rights (Sheehan and Wensing 1998:34, Margerum, Hart and Lampert 2003).
- Planning education has a role to play as a mechanism for improving planners’ understanding of Aboriginal and Torres Strait Islander culture, rights and interests, and the role of legislative frameworks concerned with Indigenous issues and planning approaches (Sheehan and Wensing 1998:37, Porter 2007:475, Margerum, Hart and Lampert 2003, Lane and Hibbard 2005:172).

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2 For example, the Native Title Act 1993 (Cth) and complementary State and Territory Native Title Acts, the various Aboriginal and Torres Strait Islander heritage protection Acts enacted by all jurisdictions, and the various Land Rights Acts, also enacted in most jurisdictions in Australia.

3 See attachments to this paper for further discussion of these complexities.
There is limited research into planning discourses, planning systems and the education of the profession indicating the need for planners to ‘re-tool’ their knowledge and skills (Margerum, Hart and Lampert 2003, Gurran and Phibbs 2003, 2004).

After surveying PIA accredited planning courses, Oberklaid found that overall, Aboriginal and Torres Strait Islander issues are considered “marginal” compared to “mainstream” planning subjects. Oberklaid concludes that to further include Aboriginal and Torres Strait Islander components in planning courses, a focus on skilling and obtaining experienced educators is required. Other options for obtaining a reasonable level of education about Aboriginal and Torres Strait Islander issues may be to include subjects run by other faculties or by bringing selected individuals with the right expertise into the University. Planners often work across a range of disciplines, including for example housing, environmental management, social issues, transport, heritage and political science.

Oberklaid (2008) examined the literature concerning planning and Aboriginal and Torres Strait Islander issues in Australia. This included an exploration of the impacts of the conceptualisation of planning theory, history and methodology by the planning profession on understanding Aboriginal and Torres Strait Islander perspectives of land and land management. It also included an exploration of the key impediments to greater inclusion of Aboriginal and Torres Strait Islander issues in practice as reflected in the current literature. Oberklaid (2008:26-27) concludes with some observations on gaps in practitioner knowledge and approaches to planning education in this important area.

Oberklaid also undertook a survey of course convenors of all PIA accredited planning courses that sought to establish whether Aboriginal and Torres Strait Islander issues feature in any subjects offered to planning students, the types of issues students should be aware of and the manner in which they should be conveyed. The survey was conducted in the first half of 2008 and a total of thirteen (13) universities responded. Twenty-two (22) courses were surveyed which included nine (9) undergraduate bachelor degrees, three (3) graduate diplomas and ten (10) master degrees. Responses were received from universities located in each state, including courses offered at four universities in New South Wales, three universities in both Queensland and Victoria, and one university in the states of Western Australia, South Australia and Tasmania (Oberklaid 2008:34).

All accredited courses indicated that students have the option to enrol in a subject that deals with Aboriginal and Torres Strait Islander issues, and that across the thirteen universities, a total of thirty-five different subjects were identified to specifically cover Aboriginal and Torres Strait Islander issues to some extent:

- nine subjects were considered to have a sustainability and environmental management focus;
- eight had a social and community planning focus;
- another eight had a land use planning practice and law focus;
- four were concerned with general Australian studies which were offered as interdisciplinary subjects;
- three were concerned with planning theory and methods;
two were specifically concerned with Aboriginal and Torres Strait Islander land use; and one was concerned with heritage.

The survey results show there is a great deal of variety in the approach to integrating Aboriginal and Torres Strait Islander issues into the curricula of urban and regional planning courses in Australia (Oberklaid 2008:61). The subjects vary significantly in their focus and approach to Aboriginal and Torres Strait Islander issues in terms of time, consultation, engagement with Aboriginal and Torres Strait Islander people and their relative strengths and depth of the material covered. Some course convenors indicated that Aboriginal and Torres Strait Islander issues were more integrated into the mainstream planning curriculum while others suggested they were peripheral to core areas. Many of the convenors indicated they were enthusiastic about improving their approach but PIA needs to be aware of the limitations on course convenors and the respective universities.

The limited inclusion of Indigenous issues in planning curricula in Australia is reflective of International experiences. Gurran and Phibbs (2004:7) conducted a review of course descriptions offered within 106 planning courses accredited in Australia, New Zealand, Canada and the United States and found that Indigenous issues were marginal to ‘mainstream’ planning studies in the majority of planning schools, with only 10 courses found to specifically address Indigenous issues. Four of the ten courses offered in New Zealand featured Indigenous issues more prominently in their curricula and mission statements. Gurran and Phibbs (2004:7) suggest that these differences may reflect the different requirements of the professional bodies, as neither the American, Canadian or Australian educational accreditation guidelines contain specific references to Indigenous issues, while New Zealand’s planning schools are required to understand and manage the built environment with respect to the Treaty of Waitangi4. Gurran and Phibbs’ (2004) study suggests that planning institute guidelines encourage the inclusion of Indigenous knowledge and perspectives in planning processes.

Oberklaid (2008:61) maintains that because Aboriginal and Torres Strait Islander issues are place and people specific, the localised nature of knowledge cannot be universalised. There are vast geographical, political, cultural and linguistic differences across Australia and planning’s approaches to incorporating Aboriginal and Torres Strait Islander rights are still evolving. These factors would make it problematic to suggest one pre-eminent approach or to suggest there is an immediate remedy. Nevertheless, the IPWG notes there is still a need to provide some guidance on minimum content for accreditation because there are (to differing degrees and depending on local circumstances) moral, ethical and legal imperatives for accommodating Aboriginal and Torres Strait Islander people’s rights into land use planning and development decision making.

Interestingly, Oberklaid (2008:61, 62) also found that course convenors raised the question as to what skills and knowledge the educators, rather than what the students need; that the

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4 This may be due to the fact that since the Resource Management Act 1991 (NZ) was enacted in 1991, S.8 of the Act requires that all powers and functions exercised under the Act are to take account of the principles of the Treaty of Waitangi.
various planning schools require guidance on how the issues should be presented; how linkages with Aboriginal and Torres Strait Islander communities could be established; and how relevant resources could be accessed.

Oberklaid (2008:62, 63) also suggests that further research be undertaken:
- to ascertain the range of knowledge and skills required by planners to work in this field,
- how effective current planning courses have been in equipping practitioners and what further knowledge and skills are required, and
- the views of Aboriginal and Torres Strait Islander communities about whether planning processes are adequately accommodating their rights.

These are worthy suggestions.

3. Planning philosophy and practice: Rationale for change

For several important ethical, political and legal reasons, planners and land managers must engage with Aboriginal and Torres Strait Islander people and their relationships and aspirations for their land and waters (SAMLIV 2003).

Firstly, because Aboriginal and Torres Strait Islander people have maintained strong links with their country as well as core elements of their spiritual association with their land and waters. Aboriginal and Torres Strait Islander people have, for several decades through their land rights campaigns, been most vociferous about trying to secure a future that acknowledges their complex and continuing relationships between them and their environment. For their culture to survive, Aboriginal and Torres Strait Islander people must be able to access, protect and revitalise their country, sites and objects through rituals and customary practices. Through various means over recent decades, Aboriginal and Torres Strait Islander people and communities now own or manage approximately 25 per cent of Australia’s land mass (Pollack 2001 and Altman et al 2007). Therefore, they have a crucial and legitimate stake in planning processes affecting their lands and waters (SAMLIV 2003:15).

Secondly, the High Court’s rejection of the notion of terra nullius forces an acknowledgement of the special land rights and interests of Aboriginal and Torres Strait Islander people. Such acknowledgment leads in turn to the recognition of past wrongs. This recognition is essential for moving on to more positive forms of planning and community-building (Gurran and Phibbs 2004:2 and Jackson 1997a and b, Guest 2009:13). For example, it is worth noting that the Miriuwung and Gajerrong people, the recognised Traditional Owners of the lands in and around the Ord Irrigation Scheme in the Kimberley region in Western Australia, made it a threshold requirement for entering into any discussions about Ord Stage 2 that the State fund an Aboriginal social and economic impact assessment (ASEIA) of Ord Stage 1 and that any Ord Stage 2 negotiations include reparations for impacts identified by this assessment. The ASEIA Report, ‘Fix the Past – Move to the Future’, was finalised in March 2004 at the commencement of the Ord Stage 2
negotiations and its recommendations have been a key part in the resolution of how Ord Stage 2 could proceed (Guest 2009:13-16).

Thirdly, declarations by government that the extinguishment of native title has occurred (partly or wholly) will not make the laws and customs of Aboriginal and Torres Strait Islander people disappear. The term ‘extinguishment’ is just a metaphor for placing limits upon the extent to which recognition will be accorded to Aboriginal and Torres Strait Islander people under Australian law. Traditional owners throughout Australia will always retain their special relationship with and responsibility for land and sea country (Rose 1996, Dodson 1998:209).

Finally, good planning is persuasive storytelling about the future (Throgmorton 1992). Any future narrative must be a new story, not the kind of fiction which legitimised *terra nullius* and rationalised unjust and racist land use decisions (Jackson 1997b:226). As professional practitioners, planners have an ethical and moral responsibility to ensure past wrongs are not repeated.

To recognise and better accommodate the rights of Aboriginal and Torres Strait Islander people and communities, some fundamental changes to contemporary land use planning and decision-making processes are required, such that:

- Aboriginal and Torres Strait Islander people’s rights and interests are properly recognised and protected in no lesser way than anyone else’s property rights and interests, and that
- Aboriginal and Torres Strait Islander people are able to be meaningfully involved in planning processes in the same way that other people are able to participate in planning processes.

This means that planners as key players in land use planning, land management and development decision making will need to understand the contextual history of Aboriginal and Torres Strait Islander people and communities in the location they are working in, as well as how to engage constructively with the relevant people and understand how they absorb information and make decisions.

PIA’s Education Policy for Recognition of Australian Planning Qualifications (PIA 2002a) establishes the criteria for the recognition of urban and regional planning qualifications. It also outlines PIA’s role in providing advice to planning education programs offered at Australian Universities and its commitment to “achieving and maintaining high standards in the knowledge, skills and ethics of professional planners and in planning education” (PIA 2002a:1).

PIA considers planning as being “centrally concerned with land use and related environmental, social and economic activities within a legislative, administrative and political context” (PIA 2002a:1). The planning curriculum should impart students with, amongst other things, knowledge of:

- “The political, legal and institutional contexts of planning including the influence of native title on land tenure; and
Indigenous Australian cultures, including relationships between their physical environment and associated social and economic systems” (PIA 2002:6).

Land use planning and management is ultimately about people and their relationships with land and other natural resources. The skills that planners and land managers bring to these processes are those of recognising and accommodating competing or multi-layered and co-existing interests, not only socially, economically, environmentally and culturally, but also spatially.

In this context, planners need to be aware of the perceptual limitations of their own discipline and the particular discourse of our own craft. The rational technocratic focus of much land use planning (i.e. survey, assess, design) often precludes appropriate and meaningful consultation with Aboriginal and Torres Strait Islander people. Planners also need to be aware of the norms of Anglo-Australian culture with its emphasis on liberalist ideas of individual property ownership, the rights of the individual (remembering the past connection between property ownership and voting rights, especially in Local Government), materialism, free enterprise, competition, nuclear families and written sources of history and law. These are in stark contrast to the non-competitive, communal and extended families, and a dependency on oral traditions and customary laws of Aboriginal and Torres Strait Islander societies (Wensing 1999).

4. Planning Education

The key question therefore, for planning education is: what are the key understandings that students and practitioners need to come to about Indigenous rights and planning that need to be taken into consideration in planning processes?

Four critical areas of planning education need to be addressed. They are:

- Planning theory and methodology
- Normative values and processes
- The administrative and legal context
- Communication skills and ethics.

Formal planning education needs to address these areas, both in planning education for new entrants into the profession, and in professional development courses for those already working in planning.

4.1 Planning Theory and Methodology

A considerable body of theoretical work has developed in planning in the past 20 years that addresses the issue of cultural difference and planning (Sandercock 1997 and 2003; Reeves 2005; Thomas 2000; Beebeejaun 2004; Harwood 2005). More significantly, there is new work being applied to the particular differences that Indigenous cultures represent for planning (Lane and Williams 2008; Hibberd 2006; Umemoto 2001; Porter 2010). All of these critique the notion of rational planning that was applied to what is often regarded as ‘vacant’ Crown land or ‘waste land’ (including obsolete land uses) and suggest that planning...
methods need to begin from a different premise. This premise must of course respect Aboriginal or Torres Strait Islander culture and heritage and Aboriginal and Torres Strait Islander people’s needs, aspirations, rights and responsibilities, especially in terms of caring for country. Yet it must also acknowledge the particular assumptions underpinning planning practice itself, and these must begin to become part of planning education.

Both the rational-comprehensive model of planning and it’s more nuanced and socio-politically aware development of deliberative planning, begin from certain presumptions of knowledge, expertise and values. The rational-comprehensive model suggests we can begin from a ‘blank slate’ approach. The deliberative model assumes that we can learn about others by creating a space within the planning system to hear their voices. Sandercock (2003:76) argues that planners need to acknowledge there are other ways of knowing and learning, without discarding the scientific and technical ways of knowing, as the rational-comprehensive model suggests, that planners learn as their core skills. In many situations planners are dealing with people’s passions and vested interests as much as they are dealing with their own ‘earnest technical predictions’. Sandercock maintains that planners need to understand that other ways of knowing may be important to culturally diverse populations and that it is important to be able to discern which ways of knowing are most useful in what circumstances. “Such an epistemology of multiplicity for planning would consist of at least six different ways of knowing, in addition to what is usually taught in planning schools: knowing through dialogue; from experience; through seeking out local knowledge of the specific and concrete; through learning to read symbolic, non-verbal evidence; through contemplation; and through action-planning” (Sandercock 2003:76).

In relation to Indigenous peoples, planning education has a little bit more work to do. If the assumptions of planning are rooted in western cultural attitudes to place and its use, then it follows that we need to understand and unpack those assumptions. Porter’s recent work (2010) argues that the planning systems of western settler states such as Australia bear the cultural assumptions of place and how place can be used appropriately of western (non-Indigenous) cultures. These are quite distinct from Indigenous productions of space, which means that when planning systems come into contact with Indigenous peoples, as they now must, it becomes a difficult task to bridge the difference. As Porter (2010:11) states the first and most important theoretical work that needs to be done is “to turn our analysis toward the culture and practice of planning” for without this, the ‘inclusion’ of Indigenous people in land management decisions can be viewed as “a new form of colonial oppression” (2010:12). In that case, planning education and practice must turn its attention to skilling students with the necessary aptitudes and cultural literacies required to understand and critique the cultural assumptions built into the planning methods and tools they will be using. This should form a core skill set for planning students in the future, as they approach their practice with Indigenous peoples.

4.2 Normative Values and Processes

Current normative values and processes are, in certain situations, no longer relevant, and new values and processes of planning need to be devised. New methods of determining land usage and capacity need to be devised that records, interprets and absorbs Aboriginal
and Torres Strait Islander people’s intrinsic knowledge of country and the environment. As Weir (2009:145) observes in relation to the Murray and Darling Rivers that we need to get better at embracing the complexity, uncertainty and resilience of variable water flows and let go the false security of regulated flows. Weir’s research on the importance of the Murray and Darling Rivers to Aboriginal people and their culture reaches the same conclusions as Sandercock, that we also “need to be open to ways of knowing the world that move beyond technical considerations” and that we need to “peg the authority of modern knowledge at a lower level and be more responsive to the agency of country” (Weir 2009:145). Other researchers are finding that regional planning processes Australia-wide are devoid of Indigenous landscape values, and that if Indigenous landscape values are not given the same degree of attention in regional planning processes, then their values will not be identified and they will not be recognised and accounted for in future landscape policies and planning initiatives (Low Choy et al 2009:1).

New methods also need to be devised that take proper account of the full range of Aboriginal and Torres Strait Islander people’s needs and aspirations in relation to the built environment. This is especially important given that at the time of the 2006 Census 32% of the Aboriginal and Torres Strait Islander population lived in major cities and a further 21% lived in inner regional areas (SCRGSP 2009).

4.3 The Administrative and Legal Context

Administrative processes need to change to enable Aboriginal and Torres Strait Islander people to be involved in planning processes at least to the same extent as other interested parties. Indeed, Aboriginal and Torres Strait Islander people should be involved in determining the processes by which consultation, participation and negotiation take place. In addition, planners need a sound understanding of the concept of Aboriginal and Torres Strait Islander peoples’ property rights and the procedures and institutions established under land rights and native title legislation by both Commonwealth and State/Territory jurisdictions, just as they are required to have sound understanding of the concepts of land tenure and land law introduced since colonisation, as well as State and Territory planning, heritage and environmental protection legislation.

The geography of the Indigenous estate also continues to grow in Australia. The development of land rights legislation in most jurisdictions around Australia, land acquisition programs such as those undertaken by the Indigenous Land Corporation (ILC), and native title law over the past 40 years has seen a significant increase in the extent of land in Australia coming under the ownership or control of Aboriginal and Torres Strait Islander people and communities. Altman (et al, 2007) estimates that over 20% of Australia is owned or managed by Aboriginal or Torres Strait Islander people and communities. Following the High Court’s decision in Wik in 1996, it was initially thought that the extent to which native title would be a consideration in planning matters would diminish. However, the increasing use of comprehensive agreements to resolve outstanding native title claims means that native title considerations will still be required when making planning decisions in areas where native title exists or may continue to exist. Planners therefore need to have a sound working knowledge of land rights, cultural heritage protection, conservation
management and native title legislation, and how the processes embodied in those different legislative regimes interact with each other as well as how they interact the different planning systems around Australia.

Planners also need to understand the concept of cultural heritage and what it means to Aboriginal and Torres Strait Islander people, and they need to respect Aboriginal and Torres Strait Islander people’s intellectual property rights when dealing with cultural heritage. Moreover, planners need to be able to recognise the necessity to involve Aboriginal and Torres Strait Islander people in making decisions about cultural heritage and intellectual property rights. This is the neglected “fourth pillar” of sustainability, i.e. cultural sustainability (Hawkes 2001). Particularly in relation to Indigenous cultures (worldwide), there is a need to recognise the intrinsic link between environmental sustainability and the Indigenous world-view which embraces a more holistic view of life and well being respecting the interconnectedness between all the key elements and law and custom.

4.4 Communication Skills and Ethics

Communication, which is rigidly constructed, alien, unfamiliar and monitored via committee procedures, constrains and inhibits genuine participation and involvement of Aboriginal and Torres Strait Islander people (Cosgrove and Kliger 1997:215). Aboriginal and Torres Strait Islander people have different ways of making decisions and different community structures, and it is important for planning processes to take account of these cultural differences. Aboriginal and Torres Strait Islander people feel more comfortable with decision making processes that are more inclusive and communicative than those generally utilized by government bureaucratic processes. This is evidenced by the negotiations in developing comprehensive native title agreements over resource developments in two jurisdictions and a comprehensive native title agreement in western Victoria (Guest 2009). Communicating with Aboriginal and Torres Strait Islander people therefore requires different skills, including cross-cultural communication skills.

In the light of the United Nations General Assembly’s endorsement of the Declaration on the Rights of Indigenous Peoples, it is imperative that planners have an understanding of how to recognise and take account of Aboriginal and Torres Strait Islander people’s rights in contemporary planning processes. There are currently no guidelines for planners on how to engage with Aboriginal and Torres Strait Islander people and communities in ways that reflect the important principles embodied in the UN Declaration on the rights of Indigenous peoples: self determination; free, prior and informed consent; and negotiation in good faith.

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has developed Guidelines for Ethical Research in Indigenous Studies. The AIATSIS guidelines are founded on respect for Indigenous Peoples’ inherent rights to self-determination and to control and maintain their culture and heritage. The Guidelines include a statement of the

5 See Attachments B and C to this paper for further discussion of these matters.

principles of ethical research in Indigenous studies, followed by an explanation of each principle, accompanied by some practical applications. They are not intended as directive, but rather as recommendations for achieving the best standards in ethical research. The Australian Housing and Urban Research Institute (AHURI) has also prepared Ethical Principles and Guidelines for Indigenous Research as a starting point for discussions among the research community, Indigenous stakeholders and AHURI about how to recognise and take account of Indigenous rights and interests in the development of proposals and conduct of research, to outline the main ethical issues and principles involved, and to assist researchers access the literature on the conduct of research with Indigenous people.

Ethics is concerned with moral conduct, duty and judgment – the standards of what is right and wrong. As discussed in part 3 of this paper, there are new imperatives for planners and land managers to engage with Aboriginal and Torres Strait Islander people and their relationships to land and their aspirations. Research by Jackson (1997b), Cosgrove and Kliger (1997) and others highlights some of the regrettable outcomes of past approaches to planning practice, and it is undeniable that Aboriginal and Torres Strait Islander rights and interests were ignored by rational approaches to planning. It is acknowledged that this is not the fault of the profession per se, but a consequence of the notion of terra nullius and was reinforced by the statutory planning processes that were in place at the time (Sheehan and Wensing 1998:32). The ground has fundamentally shifted and the planning profession needs to develop a new set of standards for its moral conduct in relation to working with Aboriginal and Torres Strait Islander people and communities. As Porter (2010:155) states, planners need to ‘unlearn’ the colonial culture of planning because the colonial approaches ‘cast long shadows across planning in settler states’ (2010:150).

While the AIATSIS and AHURI guidelines have been prepared for the purposes of conducting academic research, in the absence of more specific protocols they are a good starting point for planners.

PIA has undertaken, as part of its Reconciliation Action Plan to develop guidelines for incorporating Aboriginal and Torres Strait Islander issues into contemporary planning processes.

PIA’s Reconciliation Action Plan (PIA 2008b) includes a commitment to developing guidelines for its members on incorporating the following into contemporary planning practice:

- New planning methodologies that begin from a premise that respects Aboriginal and Torres Strait Islander people’s connection to country;
- New methods for determining land usage and capacity that records, interprets and absorbs Aboriginal and Torres Strait Islander peoples’ intrinsic knowledge of country and the environment;
- New methods for accommodating the full spectrum of Aboriginal and Torres Strait Islander peoples’ needs and aspirations; and

http://www.ahuri.edu.au
Communication processes that enable planners to engage effectively with Aboriginal and Torres Strait Islander communities, stakeholders and client groups, avoiding some of the disastrous pitfalls that have been experienced in the past despite the best of intentions.

The Reconciliation Plan (PIA 2008b) also includes a commitment to developing guidelines to assist planners with incorporating the following into planning practice for Aboriginal and Torres Strait Islander communities:

- Promoting the transfer of planning skills to Aboriginal Torres Strait Islander people in relation to capability development.
- Facilitating the transfer of other skill sets – e.g. development, finance, management / independence, administration, external engagement, and employment generation.
- Assisting Aboriginal and Torres Strait Islander people with interpreting and navigating government and corporate processes. e.g. grant processes, mining agreements, and government approvals.

These items are on the Indigenous Planning Working Group’s workplan for the year ahead. The development of these guidelines or protocols for dealing with Aboriginal and Torres strait Islander communities and issues is a vital part of building a new ethic in the profession, an ethic that instinctively respects Indigenous culture and tradition and enables members of PIA to be ethical and professional in their practice.

5. Code of Professional Conduct

PIA’s Code of Professional Conduct (PIA 2002b) requires members to “uphold and promote the elimination of discrimination on the grounds of race, creed, gender, age, location, social status or disability” (Clause 3.1.2). The Code also requires members to “use their best endeavours to ensure the development is sustainable, provides for the protection of natural and man-made resources, is aimed at securing a pleasant, efficient and safe working, living and recreation environment, and is efficient and economic” (Clause 3.1.5).

While these provisions are commendable, the Code could contain some specific references to recognise and respect Aboriginal and Torres Strait Islander people’s rights and interests. For example, the Code could be amended by the insertion of an additional dot point as follows:

"Members shall use their best endeavours to ensure plans and planning documents are cognisant of Aboriginal and Torres Strait Islander people’s interests, including their special relationship to land and waters through traditional laws and customs and the management and preservation of their country and unique cultural heritage".
6. Conclusion and Recommendations

This paper has argued that formal planning education for new entrants into the profession as well as for those already working in the profession, is in urgent need of reform. The paper identifies four areas in need of attention:

- Planning theory and methodology.
- Normative values and processes.
- The administrative and legal context.
- Communication skills and ethics.

The paper also suggests that PIA’s Code of Professional Conduct requires updating to better accommodate the imperatives for planners to be better educated and appropriately trained and skilled in including Aboriginal and Torres Strait Islander people’s rights, interests, need and aspirations in conventional and contemporary planning processes.

The IPWG therefore recommends that:

1. PIA give consideration to requiring a minimum content on Aboriginal and Torres Strait Islander peoples’ rights, interests, needs and aspirations for accreditation of University planning courses. This could include for example, guidelines on the best approach to developing the content, including collaboration with Aboriginal and Torres Strait Islander people/organisations.

2. The scope of the minimum content on Aboriginal and Torres Strait Islander matters embrace the four critical areas of planning education, namely:
   - Planning theory and methodology;
   - Normative values and processes;
   - The administrative and legal context; and
   - Communication skills and ethics.

3. PIA discuss these matters openly with University planning schools and PIA members, and with Aboriginal and Torres Strait Islander people and organisations to ensure any approach developed by PIA is relevant, engaging, inclusive and accurate.

4. PIA makes a commitment to giving Aboriginal and Torres Strait Islander people and communities a key role in the preparation of relevant subject matter and key decision making capacity in the approval of the content of relevant educational courses.

5. PIA give consideration to developing a unit on Aboriginal and Torres Strait Islander people and communities as part of for its Certified Practicing Planner Course to bring existing practitioners up to date with these issues. As with the previous recommendations, the course content should be developed in collaboration with Aboriginal and Torres Strait Islander people/organisations where possible.
6. PIA give consideration to holding forums on Aboriginal and Torres Strait Islander issues as part of PIA’s Continuing Professional Development Program for existing PIA members.

7. PIA give consideration to enhancing resources available to members, particularly online, concerning matters such as reconciliation, measuring Indigenous well being, native title rights and interests, land rights, cultural heritage protection and management, Indigenous Land Use Agreements, and joint management of reserves, national parks and conservation areas.

8. PIA give consideration to amending its Code of Professional Conduct to include a clause encouraging members to use their best endeavours to take account of Aboriginal and Torres Strait Islander connections to country wherever possible.

9. PIA give consideration to providing scholarships to Aboriginal and Torres Strait Islander students to study urban and regional planning.

Consideration of these matters will assist the planning profession in adopting better approaches to involving Aboriginal and Torres Strait Islander people in contemporary planning processes.

References

Legal Authorities

*Mabo v the State of Queensland (No. 2) (1992) 175 CLR1*
*The Wik Peoples v the State of Queensland and Ors (1996) 141 ALR 129*

Legislation

*Native Title Act 1993* (Cth)

Books, Reports, Journals, etc.


Australian Housing and Urban Research Institute (AHURI) (undated) *Ethical Principles and Guidelines for Indigenous Research.*  
http://www.ahuri.edu.au

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) (undated) *Guidelines for Ethical Research in Indigenous Studies.*  


Planning Institute of Australia (PIA) (2008a) Planning Education Discussion Paper, PIA, Canberra. (Authors: Gurran, N; Norman, B; and Gleeson, B.)


Attachment A – Use of the terms ‘Aboriginal and Torres Strait Islander peoples’ and ‘Indigenous peoples’

The Planning Institute of Australia recognises the diversity of cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. There is no single cultural model that fits all Aboriginal and Torres Strait Islander people, and the Planning Institute of Australia recognises they retain their distinctive cultural identities whether they live in urban, regional or remote areas of Australia.

The Planning Institute of Australia also acknowledges that there are differing usages of the terms ‘Aboriginal and Torres Strait Islander’, ‘Aboriginal’ and ‘Indigenous’.

The use of the term ‘Indigenous’ has evolved through international law and acknowledges a particular relationship of Aboriginal people to the territory from which they originate. The term ‘Indigenous’ is therefore, best used in international settings, recognising the international diversity of Indigenous peoples around the World.

Within Australia, it is most appropriate to use terms that further specify identity. In Australia at the national level it has long been appropriate to specify that we have Aboriginal and Torres Strait Island nations and peoples, recognising that there is a collective dimension to their livelihoods.

At the regional and community level it is appropriate to use regionally or locally specific terms of identity. For example, the Ngunnawal People in the case of the Aboriginal people in the Canberra and surrounding district, or the Wiradjuri Nation in the case of Aboriginal People from central southern New South Wales.

When referring to a specific government document or policy, the Planning Institute of Australia respectfully maintains the government’s language to ensure consistency.

PIA’s Indigenous Planning Working Group is so named because members of the Group work with Indigenous peoples in other contexts and not only within Australia. For example, in the Pacific Island nations, Papua New Guinea and East Timor, as well as with Aboriginal and Torres Strait Islander peoples, communities and nations within Australia.

(The Planning Institute of Australia acknowledges the Aboriginal and Torres Strait Islander Social Justice Commissioner’s commentary in the Commissioner’s annual Social Justice Reports and Native Title Reports as the primary source of guidance on these matters.)
Attachment B – The special nature of Aboriginal and Torres Strait Islander people’s relationship to land and waters

In dealing with activities or decisions in relation to land or waters where Aboriginal cultural heritage or native title rights and interests may exist, it is very important to understand the special nature of Aboriginal and Torres Strait Islander people’s relationship to land and waters.

It is now widely accepted that Aboriginal and Torres Strait Islander people have occupied Australia for many thousands of years. They are the oldest surviving culture on earth and, in all likelihood, have the oldest continuing system of land tenure (Reynolds 1999:217). The remaining and continuing elements of their connection to country should never be under estimated.

Land means much more to Aboriginal and Torres Strait Islander peoples than economic sustenance. All Aboriginal societies recognise a very different principle of land ownership from that enshrined in British common law. Aboriginal peoples do not ‘own’ the land, the land ‘owns’ them. There is a mutual belonging that means that the land cannot be alienated from its rightful guardians and custodians, who are also its children. A person’s own country forms the basis of his or her being and identity.

The land links families to their ancestors and their spirits and Dreaming stories, and it bonds kinship relations within the community. The land can be the holder of the Law, and the land connects people to country by defining their relationship and responsibility to country. Being deprived of their land has made Aboriginal people sick (literally homesick) and ultimately destroys the cohesion of many dispossessed communities. In the last 230-240 years, most Aboriginal peoples have shared the experience of being forced from their land. The loss of land, or damage to land, can cause immense harm to Aboriginal and Torres Strait Islander peoples and their cultures.

In Mabo v the State of Queensland (No. 2) (1992) 175 CLR1, the High Court referred to the central role of land to Aboriginal and Torres Strait Islander peoples:

Under the laws or customs of the relevant locality, particular tribes or clans were, either on their own or with others, custodians of the areas of land from which they derived their sustenance and from which they often took their tribal names. Their laws or customs were elaborate and obligatory. The boundaries of their traditional lands were likely to be long-standing and defined.

The special relationship between a particular tribe or clan and its land was recognised by other tribes within the relevant local native system and was reflected in differences in dialect over relatively short distances. In different ways and to varying degrees of intensity, they used their homelands for all the purposes of their lives: social, ritual, economic. (Deane J and Gaudron J, pp99-100)
To Aboriginal and Torres Strait Islander people, ‘land and sea country’ means land, water, sky and air, and is a nourishing terrain, giving and receiving life. It is not just imagined or represented; it is lived in and lived with:

*Around much of the coast of Australia, Aboriginal people own (according to their own law) both the land and the surrounding waters. The creative beings traverse the whole area – land, sea, beach, reef, sea grass bed, sky, and fresh water sources. The law of the land is also the law of the sea, and the sea, like land, is country that is known, named, sung, danced, loved, harvested and cared for* (Rose 1996:7-8).

‘Country’ is also an Aboriginal English term that refers to the collective identity shared by a group of people, their land (and sea) estate, and all the natural and supranatural phenomena contained within that estate (Porter 2002:16; Dodson 2003:2). Therefore, these relationships with country ‘sustain [Aboriginal and Torres Strait Islander people], provide the foundations for [their] social order and define [their] identity’ (Watson 2005:3).

Land is central to the cultural heritage of Aboriginal and Torres Strait Islander peoples as it provides the basis of their social, cultural and economic well-being (ALGA 1999:225).

As Wensing (2007:382) concludes,“it is no longer appropriate to interpret Aboriginal people’s connection to country as cultural heritage alone, or to identify Aboriginal places by drawing lines on maps to designate particular land values”. Instead, Aboriginal people must have the opportunity for genuine participation in planning and land management processes.
Attachment C – The relationship between Aboriginal or Torres Strait Islander cultural heritage and native title

The terms ‘sacred sites’, ‘sites of significance’ and ‘Aboriginal places of significance’ are now commonly associated with Aboriginal people’s (and Torres Strait Islanders’) cultural heritage. Legislation aimed at protecting places of Aboriginal and Torres Strait Islander cultural heritage have been in existence in most jurisdictions in Australia for most of the past 30 years (ALGA 1999:243).

According to the Australian Heritage Commission (AHC) (2002:4), Aboriginal heritage is dynamic. “It includes tangible and intangible expressions of culture that link generations of Aboriginal people over time. Aboriginal people express their cultural heritage through ‘the person’, their relationships with country, people, beliefs, knowledge, law, language, symbols, ways of living, sea, land and objects all of which arise from Aboriginal spirituality.”

Places of Aboriginal cultural heritage can exist on land with any type of title and planning and development decisions can, unwittingly, affect the values of Indigenous heritage places (AHC 2002). “Maintaining heritage values and places is a vital part of the community’s ‘sense of place’, cultural identity and well-being. This is particularly true for Indigenous Australians, whose heritage creates and maintains links between ancestors, people and land” (AHC 2002:1)

Many of the various Aboriginal cultural heritage regimes continue to retain a lack of cultural sensitivity around their classifications or declarations. For example, in some jurisdictions Aboriginal heritage is still viewed as relating only to archaeological or historical artefacts and the Aboriginal heritage legislation does not include any proprietorial rights.

The earlier failure of governments at all levels to recognise the depth of Aboriginal people’s connection to country, coupled with Aboriginal law and custom about who has authority to know about country, has produced a strong inclination among Aboriginal people to withhold information about significant sites from state agencies. ‘Aboriginal sites are often subject to strict protocols of disclosure and many are “secret” sites known only to properly authorised individuals’ (Jacobs 1996:113; see also Evatt 1996:90–2). Additionally, the recording of such sites also establishes a power imbalance between the state agency that compiles and maintains the register and the Aboriginal community. In some cases, the disclosure of significant sites through a public register has given rise to their wanton destruction rather than their protection (Wensing 2007:381).

As The Allen Consulting Group notes in their Regulatory Impact Statement on the Regulations accompanying new Aboriginal heritage legislation in Victoria, cultural heritage is important to Aboriginal people as an expression of their ongoing relationship to the land. “Involvement in its management plays an important part of Aboriginal community life and cultural identity. Interest in Aboriginal cultural heritage is also important in promoting understanding and respect for Victoria’s rich Aboriginal culture and complex history for the benefit of the broader community” (The Allen Consulting Group: 2007:1).
In comparison, ‘native title’ is the term used by the common law and in the *Native Title Act 1993* (Cth) to recognise the communal, group or individual rights of Aboriginal and Torres Strait Islander peoples in relation to their pre-existing and continuing connection with land and/or waters. In the landmark claim by Eddie Mabo and others on behalf of the Meriam Island people in the Murray Islands in the Torres Strait, the High Court of Australia recognised their prior and continuing occupation and ownership of the islands in the Torres Strait and determined that the basis on which the British had occupied and developed Australia – *terra nullius* – was a legal fiction (*Mabo (No. 2)* 1992). Where Torres Strait Islander people could demonstrate a continuing connection with land or waters, the Court returned to them the right to live on and use their traditional lands and waters for activities such as hunting, fishing and ceremonies: it called this right ‘native title’. The High Court said the concept of native title at common law was also applicable to mainland Australia (*Mabo (No. 2)* at 110), meaning that Aboriginal people’s prior and continuing occupation and ownership of Australia could also be recognised. Consequently, historical assumptions about the absolute ownership of land by the Crown were invalidated (Wensing 2007:376).

Native title is defined in s223(1) of the *Native Title Act 1993* (Cth) as:

“The communal, group or individual rights and interests of Aboriginal people or Torres Strait Islanders in relation to land or waters where:

- the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal people or Torres Strait Islanders; and
- the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land and waters; and
- the rights and interests are recognised by the common law of Australia.”

The content of native title will vary from one place to another and between different groups of Aboriginal people. Depending on the particular laws and customs of the particular group, it may include a variety of rights and interests including living, hunting, gathering, fishing, ceremonial, rights of access, use, and occupation. It may also include the right to be consulted about decisions or activities that could affect the enjoyment of native title rights and interests (ALGA 1999:226).

Currently there are different legislative procedures for dealing with Aboriginal or Torres Strait Islander cultural heritage and native title matters and in many circumstances it will be necessary to fulfill the requirements of both processes.