



Your heritage partners

26 July 2019

Cultural Heritage Acts Review
Department of Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
City East. QLD. 4002
CHA_Review@datsip.qld.gov.au

Dear Review Team,

Re: Submission in response to the Review of the Cultural Heritage Acts

The focus of this submission will be on the *Aboriginal Cultural Heritage Act 2003* (ACH Act).

Australian Heritage Specialists Pty. Ltd. (AHS) is a cultural heritage consultancy providing archaeological, historic heritage and anthropological advice. Our clients include Commonwealth, state and local governments, publicly listed and private businesses and Aboriginal groups.

In the case of Aboriginal groups, our relationship is built on mutual trust and respect for their cultural rights and responsibilities to their traditional lands. For this reason, when working for an Aboriginal group, we define our role as being a "technical adviser" providing scientific archaeological or anthropological advice for the group's consideration, on the premise that the group makes their own decisions regarding management. It is important that this relationship is clearly understood, as AHS wishes to escape any stereotypical view that cultural heritage consultants (mainly archaeologists) make final decisions when working as technical advisers for an Aboriginal group.

The Nuga Nuga Aboriginal Corporation (on behalf of the Karingbal People) and the Jinibara People Aboriginal Corporation (JPAC) (on behalf of the Jinibara People) have each made submissions to the Review, focussing on matters that are of particular importance to them. In addition, JPAC made a submission to the review of the Cultural Heritage Duty of Care Guidelines (Duty of Care Guidelines). Each of these submissions should be read in conjunction with AHS's submission. AHS supports each of these submissions as they contain significant perspectives that sum up many of the difficulties with the ACH Act and its Duty of Care Guidelines that numerous Aboriginal groups have discussed with us.

This submission will also objectively report on difficulties with, and absences in the ACH Act experienced by proponents intending to meet their cultural heritage duty of care.

Striking a Balance

AHS is aware that the ACH Act should strike a balance between protecting cultural heritage and providing government and business achievable, clear-cut and practical processes. What has become apparent is that, to achieve a mutually fair, reasonable and, for Aboriginal people, respectful balance requires further clarification of the ACH Act. Its purpose and principles (Sections 5 and 6) recognise

what the ACH Act means to achieve. The Review presents an opportunity, after 15 years of this legislation being in effect, to bring sections of the ACH Act into line with its purpose and principles in a balanced way.

The Review

A Consultation Paper has been distributed by the Department of Aboriginal and Islander Partnerships (DATSIP) that provides questions to be considered by the Review. While the review is not restricted to these questions, they form central themes on which the Review will focus. Each will be discussed in turn.

1. Defining Cultural Heritage

Is there a need to revisit the definitions of cultural heritage – if yes, what definitions should be considered?

AHS agrees with and upholds the comments made by JPAC and the Nuga Nuga Aboriginal Corporation on this matter, and refers the Review team to their submissions.

What additional assessment and management processes should be considered?

One of the regular points of contention between proponents and Aboriginal parties that the ACH Act has exacerbated is about the appointment of so-called technical advisers, usually archaeologists.

Potentially a technical adviser may be appointed to provide scientific advice to all parties in a bi-partisan way that recognises that final decisions will be made by negotiation between the parties. However, in many cases, a technical adviser acts similarly to other professions, e.g., lawyers, who advise one or other party. Proponents may choose to appoint a cultural heritage adviser to assist them with advice on archaeology and cultural heritage management, and the ACH Act currently supports this. However, the Aboriginal party may also wish to have advice that is authoritative, i.e., that is based on trust and understanding of that party's particular cultural traditions, responsibilities, sites and places of significance.

Such trust and understanding is not necessarily achieved by having a degree in archaeology or anthropology; rather it is the result of a combination of these professional qualifications and a trustful relationship between the Aboriginal party and the cultural heritage adviser that has resulted in sharing of knowledge, so that the adviser understands in greater depth the cultural heritage of that particular Aboriginal party.



Case Study - On behalf of the Karingbal People, Elder Charles Stapleton had registered on the State's database a significant Aboriginal area in the southern Arcadia Valley near Rolleston, central Queensland. A section of this significant Aboriginal area was unlawfully damaged causing harm to Aboriginal cultural heritage through quarrying activities.

In the ensuing prosecution, the defendant appointed as an expert witness an archaeologist who had not worked in Arcadia Valley or with the Karingbal People. As expert witness for the State, Ann Wallin had also been the technical adviser for the Karingbal River People since 2002 and had been entrusted with information about numerous traditional sites and places, including the layers of significance associated with this significant Aboriginal area.

This knowledge, in conjunction with results of research and recent archaeological investigation in the Arcadia Valley underpinned her understanding of the archaeological potential of the significant Aboriginal area. Oswald's expert witness concluded the area had low significance; the State's expert witness could demonstrate what she had been told about the cultural significance of the area and the outcomes of recent research and how this potentially could raise archaeological findings, if further appropriate research was carried out, to the level of state significance. Effectively, the authority that results from a combination of cultural and archaeological knowledge gained through a respectful relationship proved valuable to both an understanding of

Aboriginal parties often wish to have a report prepared that contains information on what was found, and what management is recommended. Reporting plays two roles: it may assist with negotiation of a cultural heritage agreement in which management recommendations are subsumed into agreed work actions; and it provides the Aboriginal party with material with which they can inform their group about an assessment and its findings, and assist with the training of their cultural heritage officers. Emphasis must be given to the concept that an Aboriginal party is a representative of a group, and usually has responsibilities to keep that group informed. Sharing a report is an appropriate way to do so. Reporting is often the responsibility of the Aboriginal party's technical adviser.

In summary, when a proponent refuses to fund or involve suitably authoritative advice (using advice that is authoritative because of the adviser's relationship with the Aboriginal party) as suggested by Section 12.5 of the ACH Act, "evidence, of archaeological or historic significance to Aboriginal occupation of an area of Queensland" (Section 8(c) of the ACH Act) may not be collected. In addition, contention over a proponent's refusal is one of the major sources of disagreement between parties and AHS's experience suggests that Aboriginal parties are often the disadvantaged party in this regard.

AHS strongly agrees with, and upholds the comments made by JPAC on this matter, and refers the Review team to Section 1.1 of their submission.

On the question of whether the concept of intangible cultural heritage should be introduced into the definitions of Aboriginal cultural heritage, AHS contends that it is implicit in existing definitions. However, clarifying these definitions so that the wider community is fully comprehending of the concept of intangible cultural heritage may enhance or assist in elaborating cultural heritage processes.



2. Identifying Aboriginal Parties

Is there a need to revisit the identification of Aboriginal parties – if yes, who should be involved and what roles, responsibilities and powers should they have?

To assist with the identification of Aboriginal parties, AHS supports retaining the connection between the *Native Title Act 1993* and the ACH Act. However, the current way in which this connection is realised in the ACH Act requires some modification.

Connection between native title and cultural heritage legislation is important as there are significant overlaps in the two concepts. For example, the native title process ultimately depends on research into traditional owner connection to specific land areas, which also assists with the identification of Aboriginal parties. In addition, the rights given through successful determination of native title usually include a right to protect and manage cultural heritage consisting of sites, objects, places and areas of significance from physical harm or desecration, as well as rights that assist with on-going intangible cultural heritage practices. While native title may limit these rights to land that is open to native title, through the ACH Act the same concepts are also applicable to an Aboriginal party's remaining traditional country where native title has already been extinguished.

The current problems with the ACH Act regarding identification of Aboriginal parties can be summarised as:

- Internal authorisation - a lack of acknowledgement by the ACH Act that the position of an Aboriginal party should be authorised by the group that party is representing, as cultural heritage rights and responsibilities are held by the group rather than the individual; and
- Full linkage between the two parcels of legislation - the need for the ACH Act to acknowledge the full range of native title proceedings and outcomes, rather than relying, as it currently does, only on the act of registration of a claim or the finding through determination that native title exists.

AHS strongly supports the detailed submissions made by the Nuga Nuga Aboriginal Corporation and JPAC on this matter.

Is there a need to revisit the "last claim standing" provision – if yes, what alternatives should be considered?

The "last claim standing" provision certainly needs revision.

AHS appreciates that in this discussion several underlying concepts are important:

- certainty of process for proponents;
- respect for traditional owners with responsibilities and rights in their traditional country; and
- the ACH Act meeting its purpose "to provide effective recognition, protection and conservation of Aboriginal cultural heritage" (Section 4).

If these concepts are collectively to be realised, then the methods of achieving them must focus, as much as possible, on Aboriginal parties who have cultural heritage knowledge.

In several current situations, however, the way in which the current "last claim standing" provision works is **absurd**, achieving only certainty of process, albeit poorly developed process, for several proponents. The Nuga Nuga Aboriginal Corporation submission provides detailed information on one such case. AHS is aware of the **disastrous** outcomes to Aboriginal cultural heritage in Karingbal traditional country because of the failure of the ACH Act to address these circumstances adequately.



In addition, AHS suggests that problems around the current "last claim standing" will grow in number with time if the ACH Act is not changed. Reasons for this are:

- In situations where individuals have become Aboriginal parties because of a native title application, the application has then been withdrawn, but no new application has been made, the individual remains as Aboriginal party under the current ACH Act. The question remains unanswered of what happens if this individual becomes incapable of meeting the requirements of being an Aboriginal party or passes away, and who can replace this person on cultural heritage agreements and Cultural Heritage Management Plans (CHMP) for which they are Aboriginal parties.
- More native title claims will eventually go through a Federal Court trial which may result in similar outcomes to that experienced by the Karingbal People.

The *Native Title Act 1993* requires that those persons who become applicants for a native title claim are authorised by the Aboriginal group they represent to do all that is required to obtain determination. In contrast, the ACH Act requires no authorisation by the Aboriginal group of their Aboriginal parties. As a result, many applicants become Aboriginal parties (simply because of the way in which the ACH Act links to the Native Title Act) without guidance on the expectations of the group they represent or any role description. From the perspective of many Aboriginal groups, this lack of authorisation to perform their duties may cause considerable internal difficulties.

AHS strongly supports the submission made by JPAC on the matter of appropriate authorisation of Aboriginal parties. By introducing into the ACH Act the concept of internal authorisation of Aboriginal parties by the group they represent, and by upgrading the definitions of who are Aboriginal parties to fully encompass possible native title options and outcomes, the current difficulties around the concept of Aboriginal parties and the so-called "last claim standing" will be sorted out before the situation becomes more common, bringing certainty of process for all parties and maximising potential to manage cultural heritage appropriately.

Should there be a process for Aboriginal and Torres Strait Islander parties to apply to be a "Registered Cultural Heritage Body" to replace the current native title reliant model?

The role of a Registered Cultural Heritage Body is limited to the responsibility of notifying other parties who the Aboriginal party is for an Aboriginal group.

The importance of this role is apparent in cases where there are no registered native title claimants because:

- native title has been determined and a prescribed body corporate holds native title on behalf of the native title holders; or
- the Federal Court of Australia has found that native title has been discontinued and there are no native title holders, but that those who had been claiming native title are the descendants of the apical ancestors who were the native title holders (as in the Karingbal case); or
- an Aboriginal group has chosen not to pursue their rights and interests through a native title process.

The process advocated by the Jinibara People in the JPAC submission creates certainty of process for proponents in all such cases. It would also help to alleviate the situation, which was recently experienced by the Nuga Nuga Aboriginal Corporation, where the process of application and approval of a Registered Cultural Heritage Body took many years and significant expense, and there is still no final decision on the application by DATSIP.



3. Land User Obligations

Is there a need to bolster the oversight mechanisms for self-assessment and voluntary processes – if yes, what should this entail?

Section 23(1) of the ACH Act establishes a cultural heritage duty of care which requires a person carrying out an activity to take all reasonable and practicable measures to ensure that the activity does not harm cultural heritage. The Cultural Heritage Duty of Care Guidelines (the Guidelines) give advice on what are regarded as reasonable and practicable measures to ensure that the innumerable activities undertaken every day in Queensland do not harm Aboriginal cultural heritage.

After 15 years of the application of the Guidelines, the question must be asked whether these measures have assisted in the protection of Aboriginal cultural heritage. A review of the Guidelines was initiated in 2017, resulting in a submissions analysis. This Review provides the opportunity to finalise this process.

AHS is aware that many Aboriginal parties are concerned about the:

- lack of information to Aboriginal parties about activities being undertaken in accordance with categories 3 and 4 of the Guidelines;
- little respect for intangible cultural heritage in the Guidelines' definitions and categories;
- failure of many using the Guidelines to consider its Section 6 when category 4 appears to describe an area; and
- mis-application of the definition for Significant Ground Disturbance which means in part "the removal of native vegetation by **disturbing root systems and exposing underlying soil**", by assuming that when native vegetation has been removed, the land is automatically described by category 4. In fact, methods of land clearing before the 1950s rarely disturbed root systems and exposed underlying soil.

AHS is also aware that proponents and government departments require a system of self-assessment that is not onerous or overly complex, given the substantial range and number of activities that occur daily.

AHS agrees with that section of the submission made by JPAC to the Review of the Cultural Heritage Duty of Care Guidelines regarding workable changes to its Section 4 category system that would lead to better practice. If these were made, much of the current Section 6 would not be required, and more information about ground disturbing activities would be notified.

AHS is conscious of achieving a balance between the presumably large number of activities and an information flow to Aboriginal parties. A reasonable outcome may be to require information about the proposed activity being sent to Aboriginal parties in cases where that activity needs certain other forms of approval from local or state government, e.g., vegetation clearing licences, certain types of development applications. Alternatively, the adoption of the approach towards categories recommended by the JPAC submission to the Review of the Cultural Heritage Duty of Care Guidelines would solve some of the issues around information sharing.

The Review team may also consider how education and awareness of the ACH Act and Guidelines may assist the public to understand their cultural heritage duty of care. Rewriting of the Guidelines to make them shorter, more user friendly and concise would assist with education and awareness programs.

The JPAC submission is correct in its conclusion that there is currently a gulf between the way in which the Guidelines currently work and collectively the purpose of the ACH Act, the intent of Section 28(2) of the *Human Rights Act 2019* and native title rights the Jinibara People have been granted.

In addition, the submissions analysis that resulted from the Review of the Cultural Heritage Duty of Care Guidelines demonstrates that concerns about the adequacy of the Guidelines are held by many Aboriginal representatives, academics, cultural heritage consultants, lawyers, and to a lesser extent government agencies and proponents. Upgrading of the Guidelines and their re-writing to augment clarity and user-friendliness for all who undertake activities are badly overdue.

Is there a need for dispute resolution assistance for parties negotiating voluntary agreements – if yes, who should provide these services and what parameters should be put around the process?

This question focuses on **voluntary** agreements, which may include both cultural heritage agreements and CHMPs. AHS will provide this response collectively for both situations.

Currently within the ACH Act dispute resolution is only discussed in Part 7 Cultural Heritage Management Plans, and only considers the use of the Land Court. Those parties entering into cultural heritage agreements are not offered a dispute resolution path.

AHS recommends that a dispute resolution path is included in the Review for both cultural heritage agreements and CHMPs and concurs with the proposal put forward by JPAC's submission. The need for accessible and cost-effective mediation before parties consider the Land Court would greatly assist.

Is there a need to reconsider the threshold for formal cultural heritage assessments – if yes, what assessment and management processes should be considered?

The question must be asked what the term "formal cultural heritage assessment" means. Cultural heritage assessments, i.e., the activity of assessing through field surveying and research for the presence of and/or potential for cultural heritage is a component of nearly all formally notified CHMPs under Part 7 of the ACH Act, but they may also be part of the development of, or as a result of, a cultural heritage agreement in accordance with Section 23(3)(a)(iii). For this reason, the comparison with Victoria's legislation that has resulted in 3,000 CHMPs over the last five years may not be valid. Assessment as part of the development of a cultural heritage agreement rather than a CHMP is not as relevant under Victorian legislation. Conversely, in Queensland, many assessments for the development of a cultural heritage agreement are similar in form and scope to what is required for an assessment under a notified CHMP.

Contrary to the case of CHMPs which must be registered with the Minister, little understanding of how many cultural heritage agreements have been developed is available. On the premise of how many this consultancy has assisted, AHS would suggest that the number is far greater than that for CHMPs. The Review may wish to consider this point, and the usefulness of requiring, at the least, that the Minister is notified of the existence of a cultural heritage agreement as part of its finalising.

AHS supports JPAC submission about voluntary agreements (pp. 9, 10) which asks for clarification in the ACH Act of cultural heritage agreements, and provides a workable system of doing so without prejudicing the advantages of cultural heritage agreement-making. This is especially important as cultural heritage agreements can be developed for a wide range of purposes, e.g., a single cultural heritage agreement between a proponent and an Aboriginal party overarching many projects, or simply to develop agreed cultural heritage processes rather than focusing on a project.



The added advantage of adopting this part of the JPAC submission is on-going flexibility for proponents. Currently a CHMP is only triggered by a project also having to undertake an Environmental Impact Study (EIS). This gives the proponent flexibility of choice to enter into a voluntary CHMP or a cultural heritage agreement for many other development projects, depending on circumstances. For example, in some CHMPs for projects such as long linear infrastructure, the obligation for landowner/occupier notification is onerous in nature and may involve hundreds if not thousands of notifications, but if an EIS is not required, development of a cultural heritage agreement requires no notification.

4. Compliance Mechanisms

Is there a need to bolster the compliance mechanisms designed to protect cultural heritage – if yes, what needs to be improved and what additional measures should be put in place?

Pro-active and reactive compliance mechanisms are already identified by the ACH Act, namely:

- pro-active mechanisms of stop work orders issued by the Minister or injunctions obtained by Aboriginal parties); and
- reactive mechanisms of prosecution and penalties.

The compliance mechanisms that exist in the ACH Act are, in themselves, significant and, to a large degree, sufficient. A proviso on penalties is that, until the case of Ostwalds, all penalty fines were paid to the state, and Aboriginal parties, whose cultural heritage had been damaged, were not compensated or supported to undertake rehabilitation. The precedent established by the prosecution of Ostwalds suggests that the ACH Act should be upgraded to allow potential for fines to include payments to Aboriginal parties for compensation and rehabilitation.

Based on comments from numerous Aboriginal parties, AHS concurs with JPAC's submission about:

- the procedural misuse of cultural heritage agreements and CHMPs, whether cultural heritage is or is not damaged or destroyed; and
- timeframes for DATSIP investigation.

5. Recording Cultural Heritage

Is there a need to make improvements to the processes relating to the cultural heritage register and database – if yes, what needs to be improved and what changes should be considered?

AHS agrees with JPAC's submission on this matter, but will also comment further.

The Jinibara People take the approach that as many as possible of their significant Aboriginal areas and objects will be placed on the State's database, and are currently working at improving, correcting and adding new information. This is a work in progress, which could be sped up with financial assistance to determined native title holders. However, AHS is also aware that other Aboriginal parties have reservations about placing information on the database, often due to cultural sensitivities or, frankly, distrust of what may happen to a site or place if its position becomes more widely known.

AHS agrees with the JPAC recommendation that each significant Aboriginal area or object placed on the database should simply be called a "registered place" or words to that effect. This would reassure many Aboriginal parties, hopefully leading to much more information being placed on the database, while also flagging for proponents that cultural heritage is present and will require management.



A further concern for some Aboriginal parties is placing information on the database where native title applications overlap. The Karingbal People provide the following case study.

In about 2012, the Karingbal Elder, Charles Stapleton commenced work with Ann Wallin to map significant Aboriginal areas in his traditional country. Initially, Mr Stapleton was concerned that, by placing such information on the database, those members of overlapping claims would be given traditional knowledge they did not have. On behalf of Mr Stapleton, Ann Wallin spoke with the relevant officer who managed the database for DATSIP, and was assured that little information other than that the place was a significant Aboriginal area would be provided to anyone making a search of the database, and that consultation would only be directed to Mr Stapleton or his nominee. Despite this verbal assurance, DATSIP has now changed the database since the "last claim standing" decision, and now other people can also be consulted about these areas as they are still regarded as Aboriginal parties despite them having been found not to have any connection, and thus no traditional knowledge. The question must be asked how other people who have no knowledge about these significant Aboriginal areas could be used to advise on appropriate management – but unfortunately they are. Mr Stapleton's fear is that inappropriate management based on lack of knowledge about the area will cause harm.

If the database is to be a worthwhile source of information on significant Aboriginal areas and objects in areas where overlapping native title applications are on foot, then the ownership of that knowledge should be acknowledged and those searching the database should be directed only to that knowledge owner.

6. Other Matters

Continuing validity of cultural heritage agreements and CHMPs

As the Nuga Nuga submission stated, the Karingbal People made extensive written and verbal submissions in September 2018 to the Queensland Legislative Assembly's Economics and Governance Committee in relation to their concerns regarding the "last claim standing" provision.

An opposing response to these submissions was that the ACH Act required amendment to safeguard cultural heritage agreements and CHMPs in areas where the "last claim standing" provision became relevant. The implication was that without this amendment, those cultural heritage agreements and CHMPs would cease to be relevant. In reality, in Karingbal traditional country, very few if any CHMPs and cultural heritage agreements would have ceased.

To manage changes to Aboriginal parties as native title applications are finalised or from other causes, the ACH Act should contain directions on keeping cultural heritage agreements and CHMPs relevant into the future. Suggestions for this are:

- upgrading Section 23(3)(a)(iii) to read – "under a native title agreement or another agreement with an Aboriginal party **as at the date the agreement is entered into**, unless the Aboriginal cultural heritage is expressly excluded from being subject to the agreement"; or
- if the ACH Act is upgraded in accordance with concepts similar to those put forward by the JPAC submission in regard to voluntary agreements, then the words "as at the date the agreement is entered into" also be included.



In addition, the ACH Act could be updated to require that all CHMPs and cultural heritage agreements include a section that if the Aboriginal party changes, the other parties to the agreement will remove the previous Aboriginal party and replace them with the new Aboriginal party.

Cultural Heritage Studies vs Significant Aboriginal Areas

As pointed out by JPAC's submission, the reason the Jinibara People and indeed many other Aboriginal parties have not used Part 6 Cultural Heritage Studies is due to requirements to notify all landowners, and to arrive at agreement with affected landowners and occupiers about future management of Aboriginal cultural heritage. Given that many significant Aboriginal areas extend further than the boundaries of privately-owned land on which they are partially situated, necessitating agreement with a number of landowners and occupiers, these requirements may be onerous to Aboriginal parties. As a result, very few cultural heritage studies have been registered.

In comparison, placing an external boundary around a significant area, and entering it on the database as a significant Aboriginal area is achievable. In the case of areas and places known to the Aboriginal parties because of Aboriginal tradition, no access to the land is required to achieve this outcome. A significant Aboriginal area can contain both tangible and intangible cultural heritage. If already known or intangible cultural heritage is present, field assessment is not required to verify the place.

This comment has been included to explain the relative lack of use of Part 6 of the ACH Act. If the State has an interest in seeing more Part 6 Cultural Heritage Studies being performed, it may wish to introduce a specific additional part to its land and sea grants programmes, and provide assistance to Aboriginal people attempting to gain landowner and occupier permission to enter and agreement on management.

Integration with Other Legislation

Examples demonstrate the need to link the ACH Act with other legislation in a more collaborative and mutually beneficial way.

- Section 28.2(a) of the *Human Rights Act 2019* that was introduced on 1 July 2019 states:
 - Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community –
 - (a) To enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings.

The terms "maintain and protect" meshes with the purpose of the ACH Act, which is "to provide effective recognition, protection and conservation of Aboriginal cultural heritage" (Section 4). As has been discussed above, and in the JPAC submission, the concept of protection (rather than minimising harm) is not currently reflected in the Guidelines.

- Section 5.2(d) of the *Planning Act 2016* states:
 - Advancing the purpose of this Act includes –
 - (d) valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition.

Case Study: A state government department has the responsibility of upgrading some public spaces. Although a number of public spaces may be considered, budgetary constraints are such that only one or two spaces will actually be upgraded. Initial consultation to introduce the project occurred, at which the Aboriginal party asked for, and believed was granted, the ability for their Elders and spokesperson (five people in all) to visit each public space being considered (one day's work) so that their advice if any of the public spaces had significance and how this should be managed could be taken into consideration in the decision on which public space upgrade would be funded.

Instead of working collaboratively, the department chose the public space and appointed a consultant to design the upgrade. The consultant had no opportunity to talk through possible designs with the Aboriginal parties. Only after these actions had occurred, the department then offered to take two representatives to the site, so they could tell them what was going to happen there.

The Review team may consider inserting at the commencement of the ACH Act a clause that emphasises that timeliness of consultation so that Aboriginal parties may be part of the decision-making process is an important component of Aboriginal cultural heritage. The case of Mary Cairncross Park at Maleny, provided by JPAC is a perfect example of timeliness of consultation and its benefits to both results of the project and relationships between parties.

Thank you for the opportunity to provide this submission. Your further inquiries would be welcomed.

Yours Faithfully,



Benjamin Gall
Managing Director



Ann Wallin
Senior Advisor



Currently, the ACH Act contains no acknowledgement of the *Planning Act 2016* and gives no instructions on how Aboriginal and Torres Strait Islander knowledge, cultural and tradition should be valued, protected and promoted by that legislation.

- **State Legislation vs Local Government.** The ACH Act is state legislation, and as such is regulated by the State. However, local government is regularly required to give approvals and licenses for projects of many types that may impact on Aboriginal cultural heritage if the project proponent has not complied with their cultural heritage duty of care. Without attempting to supersede the State's responsibilities as regulator, some local governments include in their application forms for approvals and licenses that may involve land disturbance a question of whether the person making the application has met their cultural heritage duty of care.

It is recommended that the ACH Act is updated to recognise the valuable role local government could play, not as regulator, but as an educational conduit to applicants, without placing the burden of proof on local government. The State could also provide educational information about the cultural heritage duty of care for local governments to distribute to applicants.

Some local governments are pro-active and embrace their cultural heritage duty of care on land for which they are responsible or own, e.g., Sunshine Coast Council, but other Councils are less so. A review of the ACH Act may consider the appointment of DATSIP staff to work with local government, to advise on their cultural heritage duty of care and best practice.

Advisory Committee

Section 154 of the ACH Act allows the Minister to establish advisory committees. An advisory committee that advises the Minister on the progress and application of the ACH Act and discusses special cases and particular situations brought to it by DATSIP, other government departments, Aboriginal parties and the public.

The advisory committee, similar in principle to the Heritage Council that works with the *Queensland Heritage Act 1992*, could consist of several Aboriginal parties placed there by the collective authorisation of Aboriginal parties from regions, several specialists who work in the cultural heritage area, and several business representatives.

Obligation to Report Suspected Harm

The Review may consider introducing a clause that requires the public, including Aboriginal people, to report incidents of suspected harm to Aboriginal cultural heritage.

Early Consultation

A major source of concern for Aboriginal parties is coping with proponents who undertake all aspects of planning for a project before commencing consultation about Aboriginal cultural heritage. JPAC's submission on this issue sums up the feelings of dissatisfaction and lack of respect experienced by many Aboriginal groups.