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31 March 2022

Cultural Heritage Acts Review
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
CITY EAST Qld 4002

Via Email: CHA_Review@dsdsatsip.qld.gov.au

Dear Sir/Madam

Re: Submission to the "Options paper – Finalising the review of Queensland's Cultural Heritage Acts (December 2021)"

Thank you for the opportunity to provide a submission on the above-mentioned Options Paper.

My comments in this submission relate to the *Aboriginal Cultural Heritage Act 2003* (the Act). As a Kuuku I'yu Northern Kaanju Custodian and under my Customary Obligations and Primary Substantive Rights[1] I speak as a descendant of my ancestors of the Kuuku I'yu Northern Kaanju Ngaachi Kaanichi[2] (highlands) upper Wenlock and Pascoe Rivers, and as Chairperson, speak as a descendant of my ancestors for both the Chuulangun Aboriginal Corporation and Mangkuma Land Trust. I do not speak for Torres Strait Islander or other Aboriginal peoples, however, given the similarities between the Acts, I acknowledge the comments are relevant to both Acts, and to other areas of Queensland.

I would like to provide a general overview and consideration of the Options paper, and then address some of the specific proposals in the paper.

As you may be aware, I have provided submissions in 2017 to the review of the guidelines, in 2019 to the review of the Acts, again in 2020 to the Options Paper-Stage 1 and now, am happy to provide comments again. Some of the issues raised in in my previous submissions are considered in the Options paper, whilst others have not been considered or incorporated in this version. Rather than rewrite all of these issues, I have attached my previous submissions as a part of this submission (Attachments 1, 2 and 3), and ask that you consider them as part of this submission.

[1] "Primary Substantive Rights" means the following, and includes, but not limited to, property rights, cosmology, cultural landscapes, objects, sacred and sensitive places, non-discrimination relative to traditional lands, health and education, genetic resources, cultural and intellectual property, water rights, culture, personal and group security, relationships, traditional cultural expression, traditional ecological knowledge, indigenous knowledge, traditional medicines, language, technologies, territories and cultural resources.
[2] "Kaanichi" means the traditional highland ngaachis (homelands) and their respective puulawii (fathers' father) governance, laws and decision-making and management structures and processes.

I particularly draw your attention to my comments with respect to culturally appropriate governance through Indigenous Reference Groups and the need for clan-based mapping, developed in consultation with Indigenous communities, to be incorporated into other spatial mapping products to inform proponents of development proposals and identify appropriate clans for consultation on those proposals.

I am also attaching a letter I sent to Minister Crawford recently (Attachment 4), outlining my concerns about the designation of an "Aboriginal party" in the Cultural Heritage database, without consent, and also ask that you consider this as part of my submission.

The Department also has a copy of my submission to the Inquiry into Juukan Gorge, which considers many of the issues relevant to protection and management of cultural heritage (Attachment 5).

The Options paper (the paper) sets out proposals focussed on three key areas, the first of which I offer the following comments on:

1. Providing opportunities to improve cultural heritage protection through increased consultation with Aboriginal and Torres Strait Islander peoples, recognising intangible cultural heritage, and strengthening compliance mechanisms.

The paper builds on earlier consultation and analysis, and examines, amongst other things, if the Acts are still operating as intended. There is little question that, in their current form, the Acts are operating as originally intended, that is to let the development of land proceed despite its cultural heritage values or significance to Traditional Owners, and despite the will and/or responsibility of Aboriginal peoples and sets out some processes for achieving this.

It is abundantly clear that there must be vast improvements to cultural heritage protection, and the paper outlines proposed improvements through increased consultation, recognising intangible cultural heritage and strengthening compliance mechanisms. What is missing or is unclear is **regulating,** in conjunction with other legislation, development affecting cultural heritage significance and the need to **retain** the cultural heritage significance of the places, artefacts and values to which the Act applies. This is standard in legislation that seeks to protect matters of significance, and needs strengthening in how the purpose of the Act is to be achieved in the primary legislation. I have attached to the end of this document a comparative analysis of the purpose of two cultural heritage acts in Queensland – one for "European/historical cultural heritage" and the *Aboriginal Cultural Heritage Act*, to demonstrate the similar, but fundamentally different approaches (Attachment 6).

The purpose of the Act, and how it is to be achieved needs strengthening, perhaps even a total rewrite, to do more than just recognise and manage cultural heritage, but to actually protect and retain it. There is a need to establish timely and efficient (and effective) processes for the management of activities that may harm Aboriginal cultural heritage.

While this review seeks to respond to particular issues within the current framework, and provides some good approaches, there must ultimately be much more fundamental change to planning systems and practices to "align with the Queensland Government's broader objective to reframe the relationship with Aboriginal and Torres Strait Islander peoples". In particular, I note proposals in

Victoria to provide a **veto power** of Cultural Heritage Management Plans that threaten to harm Aboriginal cultural heritage. Given the Queensland legislation sets out to protect and conserve Aboriginal cultural heritage and Queensland's *Human Rights Act 2019* (s28)[3], legislates the distinct cultural rights of Aboriginal peoples, such protection and rights cannot be achieved without the ability to say no. The ability to 'veto' a proposal that will harm or destroy Aboriginal cultural heritage must be enshrined in the legislation within an established, culturally appropriate decision-making framework.

This approach is consistent with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that Indigenous peoples have the right to maintain, control, protect and develop their Cultural Heritage. The ability to say no is also not unique in Australia, where the *Northern Territory Sacred Sites Act* provides for the Aboriginal Areas Protection Authority (a statutory organisation established under the Act), to refuse to issue an Authority where it believes there is a threat of harm to sites of cultural heritage significance. Such a veto under the Queensland legislation, administered through the governance mechanisms proposed in the Options paper, would enable real control over the management of their cultural heritage, consistent with the Act.

> "*Land use planning systems and the practices through which they are made operational must also undergo fundamental change. Everyday planning practice must involve a habitual engagement with Aboriginal and Torres Strait Islander peoples about their country, about proposals that affect their lands and waters, and in a manner that acknowledges and respects the parity of two co-existing land ownership and governance approaches. ... It is about recognising the parity of Indigenous governance authority with Western systems to seek agreements on matters of mutual concern*."
> • Wensing (2016a:51), Background Report on Draft Aboriginal and Torres Strait Islander Planning Policy, Dr Sharon Harwood RPIA Ed Wensing FPIA FHEA APRIL 2017.

I congratulate the Department on continuing this review and inviting comment at multiple stages in the review's development. However, I do wish to note two points – (1) that the paper (at 2.2 Timeline for implementation), suggests that "Depending on the outcomes of this consultation, preferred options would be subject to appropriate further government and budgetary considerations. Any legislative reforms will consider the transitional arrangements needed to ensure continuity for existing arrangements and agreements, including Cultural Heritage Management Plans."

While this is reasonable to consider, it also concerningly suggests that the reforms aren't coming anytime soon, and that we will continue to be subject to the current constraints and inadequacies of the current system, not just for the three years that this review has been underway, but for many years into the future. Consideration should be given to implementing a set of transitional reforms that progressively contemporise the operation of the Act, such as, for example, establishing the duty of care requirements as a statutory code, resourcing/establishing preliminary Indigenous governance mechanisms, commencing clan-based mapping, and progressing any other achievable amendment priorities **now**. More substantive legislative changes can then be advanced in a more time considered way.

[3] The *Human Rights Act 2019* binds government through the laws it administers to act in accordance with s28, not only for public entities, but in its decision making in respect to permit and authorities it issues.

(2) I also note that the Victorian review of their cultural heritage legislation was carried out by their already established Victorian Aboriginal Heritage Council. I note the establishment of similar governance is proposed, but, of course, does not currently exist. I strongly believe that culturally appropriate governance entity should oversee the finalisation of this Queensland review and its implementation.

In the review of Queensland's *Biodiscovery Act 2004*, I sat on an expert panel with other First Nations people, researchers and biodiscovery entities in progressing what resulted in robust, supported and achievable reform. That Act also has many elements worth replicating in terms of a statutory 'code', a framework for mandatory consultation/engagement and guidelines for ensuring authenticity in speaking for country.

Comments on Proposals set out in the Options Paper

Proposal 1: Replace the current Duty of Care Guidelines with a new framework that requires greater engagement, consultation and agreement making with the Aboriginal party or Torres Strait Islander party to protect cultural heritage.

The proposal suggests replacing the guidelines with a Cultural Heritage Assessment Framework to protect cultural heritage. This is supported, if (and only if):

- The Assessment framework, is prescribed in the primary legislation and is appropriately (and statutorily) integrated into the planning legislation (and state planning policies) and other legislation that authorises activities that may impact matters of significance (e.g. *Environmental Protection Act* and *Mineral Resources Act*), including criteria for assessable development (e.g. performance outcomes and acceptable outcomes). Note also, provisions could be included for cultural heritage protection outcomes in local government planning[4] schemes (such as are included in the Mapoon Planning Scheme). For some reason, clearing activities under the *Vegetation Management Act 1999* do not appear to trigger an assessment of potential impact of the activity on the cultural heritage values of an area (other than perhaps a specific 'site'). This is likely as a result of the categories in the Act that only look at ground disturbance. Of any activities likely to affect the tangible and intangible cultural heritage values of an area, mass destruction of its natural and cultural values from clearing must be considered and triggered under any assessment framework.
- The definition of prescribed activity is limited to 'ground that has not previously been disturbed'. Previous disturbance does not necessarily negate the cultural heritage value of a place or site. A **prescribed activity** needs to be broader (across all five 'categories') and consider cultural heritage full stop. An example may be a ceremony ground which has "disturbed" areas being converted to a commercial camping area – there may be no surface disturbance, but there would be an impact on the cultural values of the area.

[4] Local planning is crucial as it involve end-users. Local governments prepare regulatory planning instruments, with actionable priorities, facilitating local spatial plans and engage with the community using participatory planning techniques and methodologies. There is no reason why local councils could not implement cultural landscape scale mapping into their spatial planning approaches; allowing for another key spatial planning aim regarding territorial cohesion, not just between urban, infrastructure, agriculture, and green space, but also the broader clan landscape scale and over time a mosaic of cultural scales that would enable for elaboration and better operation of local planning systems.

- The definition of **exclusion activity** needs careful consideration, as the example given (clearing along a fence line) is open to broad interpretation and abuse. Other acts offer exemption certificates (e.g. the *Queensland Heritage Act*) for minor works – a self-assessable guideline to support well defined exclusion activities may alleviate opportunities for abuse.
- Cultural Heritage Mapping, consistent with other mapping products utilised by proponents and planners in the Queensland Globe is supported, keeping in mind cultural sensitivities and that the absence of mapping does not necessarily equate with the absence of cultural heritage values[5]. Such mapping should go much further than "high risk areas" though – as previously mentioned, there is a need for clan-based mapping, developed in consultation with Indigenous communities, to be incorporated into other spatial mapping products to inform proponents of development proposals and identify appropriate clans for consultation on those proposals. Any mapping, which could take years to finalise, could be progressively incorporated into the assessment framework. All mapping would be overseen, managed and protected by an appropriately established First Nations body.
- With respect to **high-risk areas**, this appears to be an "all or nothing" approach. There needs to be a more tiered approach, with extensive consultation on what those tiers are, under the five different categories, and be supported by more comprehensive definitions. An area not mapped as 'high risk' is not a comprehensive indication of cultural heritage values, and as such, a mapped area of 'high risk' is an insufficient sole trigger.
- Aboriginal peoples have been constrained by the lack of commitment and resources to real participation in decision making about their cultural heritage. To actually achieve the purposes of this Act, and of the *Queensland's Human Rights Act*, real and continuing resourcing for governance, participation, mapping and other support products is necessary. The new assessment framework, to be successful, must be led by First Nations people[6].

Proposal 2: Integrate cultural heritage protection and mapping into land planning to enable identification of cultural heritage at an early stage and consideration of its protection.

My comments under Proposal 1 are relevant to this proposal. A statutory approval process, with enforceable conditions and consistent with how other development applications are triggered, considered, and approved/not approved is supported. Consideration must be given to what the trigger is, who decides the application, whether there is a veto/grounds for refusal (e.g. will proving mitigation/avoidance be enough for a proponent, how input from Traditional Owners (not just a First Nations body) will be considered and who the advice/concurrence agency is).

Proposal 3: Amend the Cultural Heritage Acts to expressly recognise intangible elements of cultural heritage.

[5] Spatial planning has both a regulatory and development function. Governments at all levels use regulatory mechanisms to give approval for activities, and as a development mechanism this also elaborates on development regarding services, infrastructure, urban development, preserving resources et cetera. A key spatial planning objective is to "enhance cultural heritage as a factor for development". This means that 'cultural sensitivities' is a factor in a development space and its landscape function, condition, spatial structure, and history. Spatial planning should not only be a key instrument for social, territorial, and economic development, but also include cultural sustainability as part of that framework.

[6] The problem with most planning is that planning statutes do not keep pace with the reality of spatial development, and the geospatial reality of cultural heritage in tangible and intangible forms.

This proposal is supported. Queensland needs to include intangible cultural heritage, to recognise (as in Western Australia) that cultural landscapes have both tangible and intangible elements. The NSW definition (page 9 of the Options paper) appears more appropriate than the Victorian definition. Any definition, however, would need considerable engagement with and support from Traditional Owners.

Proposal 4: Provide a mechanism to resolve and deal with issues arising under the Cultural Heritage Acts.

This proposal is supported. Any First Nations body needs to be statutorily appointed, with clear powers, and terms of reference that not only clarify the qualifications/requirements for members, but also that such a body does not speak for country, and must seek all available information and input from those who do speak for country, in making recommendations/decisions, and supported by the Traditional Owners of the values/land being affected. To ensure confidence in the body, selection of the members needs to be recognised by Indigenous peoples (not simply convenient, prominent, native title advocates). There are good examples in the Northern Territory and Victoria about effective models and scope of responsibilities. Of course, as mentioned previously, to be successful, real and continuing resourcing for governance, participation, mapping and other support products is necessary.

With respect to the jurisdiction of the Land Court (or Planning and Environment Court) to hear disputes, when Cultural Heritage Agreements are a statutory requirement and a condition of approval under a legislative framework, those Courts will hold jurisdiction as they do with other authorities/approvals. The Land Court's alternative dispute resolution function assumes capacity of participants. To be successful, this option would require resources for the meaningful participation of Traditional Owners (it can't be assumed that affected people in communities can simply zoom in or have the means to attend).

Proposal 5: Require mandatory reporting of compliance to capture data and support auditing of the system.

This proposal is supported. A requirement for land users to document and register all agreements and consultation under the Cultural Heritage Acts would demonstrate that the conditions of approval had been met. This would not replace the need for monitoring and enforcing compliance as in proposal 6.

Proposal 6: Provide for greater capacity to monitor and enforce compliance.

This proposal is supported. While there are current powers, they are limited and not resourced or prioritised. The introduction of infringement notices can assist with addressing a broader scope of non-compliance issues, with the more serious breaches reserved for enforcement action. That said, enforcement is after the fact, so will be better supported by a proper legislative framework and approvals process to assess, condition and then enforce compliance.

It is particularly supported to increase the number of authorised officers to monitor and enforce compliance – employed by government or a First Nations body. The definition of a First Nations body for this purpose could be extended to include a wider range of entities, such as PBCs, RNTBCs, Cultural Heritage bodies, appropriate incorporated Indigenous organisations and/or Indigenous Land and Sea Ranger entities.

4.3 Proposal to reframe definitions

The proposal to reframe the definitions of 'Aboriginal party' so that people who have a connection to an area under Aboriginal tradition have an opportunity to be involved in cultural heritage management and protection is strongly supported. This would recognise the custodial relationships and responsibilities that determine who can speak for particular Country and/or features of that Country.

The need for better definition of 'Aboriginal party' is best demonstrated in my letter to Minister Crawford (Attachment 4), whereby I became aware that the Department had listed "One Claim" as 'the Aboriginal party' for sites that I had registered, well before the "One Claim" – a claim that I did not support, and a claim that is being progressed on the false claim that it has the support of Traditional Owners. Yet the Government accepted the claim, and worse, attributed these important sites, for which they have no custodial responsibility, to One Claim.

The current interpretation of "Aboriginal party" is very problematic on many levels – in terms of who will grant "permission" for works, for continuing research, for approving harm to values where custodial responsibilities exist – but most of all, it isolates those with responsibility from custodianship of sites, and alienates them from customary obligations to their protection and management. This needs to change.

These are not native title issues and could be better addressed through a properly constituted First Nations body, and appropriate engagement with and the support of the Traditional Owners of the values/land being affected/registered. This issue was comprehensively considered in preparing the guidelines to support implementation of amendments to *Queensland's Biodiscovery Act*, which may assist this process.

Section 35(7) of the Act should apply whether or not there is or is not a registered native title holder, registered native title claimant or native determination ("that a person is an Aboriginal party for the area if: the person is an Aboriginal person with particular knowledge, observances, customs or beliefs association with the area and, the person has responsibility under Aboriginal tradition for some or all of the area …. or is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for some or all of the area…..").

Again, cultural heritage values are not a native title issue, and the lack of a determination, or a negative determination, does not negate the need for consideration, management and conditioning of impacts on cultural heritage values. A native title party is not an Aboriginal party (unless it is the expressed wish of the Aboriginal party for a native title entity to be the Aboriginal party). Clan-based

mapping, with various organisations/contacts imbedded in the mapping (as mentioned previously) would assist in determining the appropriate Aboriginal party[7].

The proposal also suggests that a person claiming to have a connection to the area under Aboriginal tradition could apply for recognition as an Aboriginal party, to be decided by a First Nations independent decision-making body. This appears to be an onerous process, and it strikes me that the whole review process is focussed on whether an Aboriginal party is the right party and dispute resolution processes to that end, instead of on the applicant wishing to interfere with/destroy cultural heritage.

An Aboriginal party shouldn't have to apply for recognition. A guideline for what constitutes an Aboriginal party should be sufficient and Aboriginal party status shouldn't be 'applied for' but considered during any assessment process (applying for party status assumes knowledge of the need to apply, resources and capacity).

The First Nations body should provide oversight for the overall operation of the Act, enable dispute resolution, and progress implementation of a robust framework – not judge who can speak for country (there are too many examples now of those speaking for other's country, and removing those with cultural authority from discussions). If there is a proper trigger in the planning and other legislation, the onus would be on the applicant to identify the appropriate Aboriginal party (supported by clan-based mapping and assisted by the First Nations body). If supported, there is sufficient governance within community to identify who can speak for what.

5. Promoting leadership by First Nations peoples

It is strongly supported that First Nations peoples should have greater participation in the control, protection and administration of cultural heritage and decision-making about cultural heritage matters[8]. This is true not only for the Aboriginal Cultural Heritage Act, but across government legislation (a strong, established Indigenous Reference Group structure, supported by an overarching

[7] It should be noted that the conjoint composition of many native title claimant groups presents questions about the nature of recognition of claimant groups under the Native Title Act and their application to other processes such as cultural heritage. There are questions regarding the nature of the 'society' and 'groups' relevant to native title claims on Cape York Peninsula as there are a number of different scales applied to 'classical' and 'contemporary' Aboriginal social organisation which fail to recognise their complex, nebulous and indeterminate nature.
Macro-groupings, such as language-named or place-based 'tribal' groups, and also including groups of two or more of these 'tribal' or other groups in combination (and in the case of 'One Claim', several 'tribal' groups) is the most typical scale for recognition of native title rights and interests despite the fact that groups recognised at this scale do not often correspond to the most significant land-holding group among the indigenous people of the region in their quotidian interactions, nor the group with responsibilities, obligations and rights with respect to specific cultural heritage.

[8] Very little legislation, especially regarding land and natural and cultural resource management, is shaped with input from Traditional Custodians, and it rarely reflects their rights and interests or their governance, autonomy and Indigenous social structures. There is a need to engage Traditional Custodians and their representatives (that have been chosen by them) in a program of review of all legislation to better reflect Indigenous Australians' rights and interests in social, economic, biocultural, and cultural heritage matters.
However, a history of rights conflicts, paternalism, policy failure, lack of trust and inability to adequately address Indigenous needs have led to seriously damaged relationships between government and Indigenous peoples which is compounded by poor cross-cultural communication. There is a need for purpose-built engagement structures with highly skilled personnel in the area of policy and program development and legislation reform.

First Nations body, would support this – as previously supported by the Queensland Government under the Wild Rivers legislation).

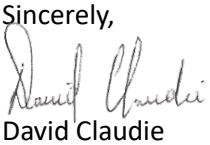
The composition of, terms of reference for, scope and responsibilities of that First Nations body should be appropriately consulted with First Nations peoples (not simply have members nominated by Land Councils). The Victorian model provides some good perspectives on composition (i.e. native title holders, Traditional Owners or Aboriginal people with an historical, traditional or contemporary interest in cultural heritage) and the draft NSW model provides a good framework for scope of work appropriate to a large state like Queensland (i.e. approval of CHMPs, administration of cultural heritage legislation, provide advice to the Minister, enter into conservation agreements, issue stop work orders and establish local panels that play an advisory role in local cultural heritage expertise and participate in cultural heritage plans).

It is absolutely **not supported** that the proposed First Nations-led entity's responsibilities be incorporated into another already existing entity or body – there is no such body that exists, nor would any such body have the current scope or representation to give confidence to its role and functions.

The proposal for the First Nation's body to consider how to define historical connection, where historical connection might apply and how they would participate in decisions affecting cultural heritage to which they have an historical connection, may form a part of the role of the body, although this may overwhelm the work of the body and may be better addressed as part of the Path to Treaty process.

Thank you for consideration of our submission. I would be only too happy to discuss the issues raised in this submission and can be contacted via email at chuula@bigpond.com.

Sincerely,



David Claudie
Kuuku I'yu Northern Kaanju Traditional Custodian
CEO/Chairman, Chuulangun Aboriginal Corporation

List of Attachments

Attachment 1: Submission to the Cultural Heritage Duty of Care Guidelines Review Issues Paper (2017)

Attachment 2: Submission on the review of the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* (2019)

Attachment 3: Comments on Review of the Cultural Heritage Acts – Options Paper Stage 1 (2020)

Attachment 4: Letter to Minister Craig Crawford re: Culturally appropriate voice for Country (2022)

Attachment 5: Submission to the Inquiry into Juukan Gorge (2021)

Attachment 6: Comparison of two Queensland Acts that 'protect' cultural heritage

Attachment 6:

Comparison of two Queensland Acts that 'protect' cultural heritage

The strength (and/or lack of strength) of the legislative frameworks for protecting cultural heritage in Queensland becomes starkly evident when you compare the purposes of legislation for protecting 'European' cultural heritage with Aboriginal cultural heritage.

The first provides regulated protection, the latter emphasises the recognition and provides for "timely and efficient management activities to avoid or minimise harm", with a 'voluntary' duty of care that specifically excludes offences for breaching that duty of care.

Whilst there are similarities in their intent to protect, one seeks to retain those values, the other actually provides for managing activities to destroy or impact heritage. A starting point for review of the Act, is to provide consistency, in regulating, in conjunction with other legislation (such as, for example, the Planning Act), development that affects the cultural heritage significance of Queensland (and Aboriginal heritage is of state significance).

Queensland Heritage Act 1992

2 Object of this Act

The object of this Act is to provide for the conservation of Queensland's cultural heritage for the benefit of the community and future generations.

The object is to be primarily achieved by—

(a) establishing the Queensland Heritage Council; and

(b) **keeping a register of places and areas of State cultural heritage significance** called the Queensland heritage register; and

(c) **requiring the reporting of the discovery of archaeological artefacts** and underwater cultural heritage artefacts; and

(d) providing for the identification and management of places of local cultural heritage significance by local governments; and

(e) **regulating, in conjunction with other legislation, development affecting the cultural heritage significance of Queensland heritage places**; and

(f) providing for **heritage agreements** to encourage appropriate management of Queensland heritage places; and

(g) providing **for appropriate enforcement powers** to help protect Queensland's cultural heritage.

In exercising powers conferred by this Act, the Minister, the chief executive, the council and other persons and entities concerned in its administration must seek to achieve—

(a) the **retention of the cultural heritage significance** of the places and artefacts to which it applies; and

(b) the **greatest sustainable benefit to the community from those places and artefacts consistent with the conservation of their cultural heritage significance**.

Please note that s3 of the Act (Non-application to Aboriginal or Torres Strait Islander places etc), specifically excludes Aboriginal cultural heritage

This Act does not apply to—

(a) a place that is of cultural heritage significance solely through its association with Aboriginal tradition or Island custom; or

(b)a place situated on Aboriginal or Torres Strait Islander land unless the place is of cultural heritage significance because of its association with Aboriginal tradition or Island custom and with European or other culture, in which case this Act applies to the place if the trustees of the land consent.

Aboriginal Cultural Heritage Act 2003

Main purpose of Act

The main purpose of this Act is to **provide effective recognition, protection and conservation** of Aboriginal cultural heritage.

5 Principles underlying Act's main purpose

The following fundamental principles underlie this Act's main purpose—

(a) the recognition, protection and conservation of Aboriginal cultural heritage should be based on respect for Aboriginal knowledge, culture and traditional practices;

(b) Aboriginal people should be recognised as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage;

(c) it is important to respect, preserve and maintain knowledge, innovations and practices of Aboriginal communities and to promote understanding of Aboriginal cultural heritage;

(d) activities involved in recognition, protection and conservation of Aboriginal cultural heritage are important because they allow Aboriginal people to reaffirm their obligations to 'law and country';

(e) there is a need to establish timely and efficient processes for the management of activities that may harm Aboriginal cultural heritage.

6 How main purpose of Act is to be achieved

For achieving effective recognition, protection and conservation of Aboriginal cultural heritage, this Act provides for the following—

(a) recognising Aboriginal ownership of Aboriginal human remains wherever held;

(b) recognising Aboriginal ownership of Aboriginal cultural heritage of a secret or sacred nature held in State collections;

(c) recognising Aboriginal ownership of Aboriginal cultural heritage that is lawfully taken away from an area by an Aboriginal party for the area;

(d) establishing a **duty of care for activities that may harm Aboriginal cultural heritage**;

(e) **establishing powers of protection, investigation and enforcement**;

(f) establishing a database and a register for recording Aboriginal cultural heritage;

(g) ensuring Aboriginal people are involved in processes for managing the recognition, protection and conservation of Aboriginal cultural heritage;

Note: There are also numerous examples of other legislative frameworks, such as the *Biodiscovery Act 2004*, which set out frameworks for appropriate engagement, consideration of traditional knowledge and, indeed, Aboriginal parties.