

Laurel James

From: Katharine Wiltshire [REDACTED]
Sent: Thursday, 7 April 2022 3:54 PM
To: CHA Review
Cc: [REDACTED]
Subject: Cultural Heritage Acts Review | Options Paper Stage 1 – Legislative Proposals - Identifying who to consult - extension until 8 April 2022
Follow Up Flag: Follow up
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To the CHA Review

Due to time constraints with other commitments I summarise a few main points from feedback from some of the Elders who have proven biological descent from ancestors originating from country:

Aboriginal Customary Law upheld by Qld Human Rights Act 2019 section 28:

- Fundamental law that only descendants of identified ancestors originating from country are **eligible** to become an Aboriginal Party or Native Title party for Cultural Heritage protection.
- Eligible Knowledge Holders may become a separate Aboriginal Party so more than one Aboriginal Party may be registered to care for country.

An Indigenous led Advisory Group for each regional bora society or each regional area only after consultation and consent by a council of family representatives eg in SEQ: Waka Waka, Kabi Kabi, Yuggara, Yugambah (Wangerriburra) and Ngarangwal (Ngandowal). However, regarding any subject areas under cultural heritage investigation, only the descendants of ancestors from that area of country are the ones who make decisions on their country.

The Advisory Group is separate and independent of native title representative bodies or service providers who may be conflicted representing numerous native title claims. Many native title claims may or seem to have significant issues such as: excluding ancestors and their descendants who may have cultural knowledge; including historical people who may not have cultural knowledge; incorrect boundaries and language. The Aboriginal Party/Parties need to consist of Right People for Right Country and Right Language group. The Advisory Group may have input from independent anthropological research open access documents and restricted documents if permission is granted by the family. With more capacity and support the Department of Community and Personal Histories may be able to assist and provide this additional support.

Decision making processes are done by the proven descendant representatives of identified ancestors originating from country by proportional voting and not by mob (majority) rule.

Deregister any Aboriginal Party comprising of persons who does not descend from an ancestor originating from country as they will not be eligible under the proposed amendments and operation of the ACHA 2003.

Proposed amendments to the ACHA 2003 are outlined below.

Regards

Katharine

Proposed amendments: OMIT words highlighted in purple and ADD words highlighted in red

34 Native title party for an area

- (1) Each of the following is [A] *native title party* for an area is —
- (a) a registered native title claimant for the area;
 - (b) a person who, at any time after the commencement of this section, was a registered native title claimant for the area, but only if—
 - (i) the person's claim has failed and—
 - (A) the person's claim was the last claim registered under the Register of Native Title Claims for the area; and
 - (B) there is no other registered native title claimant for the area; and
 - (C) there is not, and never has been, a registered native title holder for the area; or
 - (ii) the person has surrendered the person's native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or
 - (iii) the person's native title has been compulsorily acquired or has otherwise been extinguished;
 - (c) a registered native title holder for the area;
 - (d) a person who was a registered native title holder for the area, but only if—
 - (i) the person has surrendered the person's native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or
 - (ii) the person's native title has been compulsorily acquired or has otherwise been extinguished.
- (2) If a person would be a native title party under subsection (1)(b) but the person is no longer alive, the native title party is instead taken to be the native title claim group who, under the Commonwealth Native Title Act, authorised the person to make the relevant native title determination application.

35 Aboriginal party for an area

- (1) A native title party for an area is an **Aboriginal party** for the area.
- (2) Subsection (3) applies to a native title party for an area who—
- (a) is or was a registered native title claimant; or
 - (b) is the native title claim group who authorised a person who is no longer alive, but who was a registered native title claimant, to make a native title determination application.
- (3) The native title party is an **Aboriginal party** for the whole area included within the outer boundaries of the area in relation to which the application was made under the Commonwealth Native Title Act for a determination of native title, regardless of the nature and extent of the claimant's claims in relation to any particular part of the whole area.
- (4) Subsection (5) applies to a native title party for an area who is or was a registered native title holder the subject of a determination of native title under the Commonwealth Native Title Act.
- (5) The native title party is an **Aboriginal party** for the whole area included within the outer boundaries of the area in relation to which the application for the determination was made, regardless of the extent to which native title was found to exist in relation to any particular part of the whole area.

- (6) However, a native title party to whom subsection (5) applies is not an **Aboriginal party** for a part of the area if—
- (a) native title was not found to exist in relation to the part; and
 - (b) there is a registered native title claimant for the part.
- (7) If there is no native title party for an area, [A] person is an **Aboriginal party** for the area if—the person is an Aboriginal person **with proven descent (including adoption) from an identified ancestor originating from country which includes the area** and
- (a) particular knowledge about traditions, observances, customs or beliefs associated with the area; or
 - (b) the person—
 - (i) has responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area; or
 - (ii) 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, or for significant Aboriginal objects located or originating in the area.

Begin forwarded message:

From: Katharine Wiltshire <[REDACTED]>
Subject: Re: Cultural Heritage Acts Review | Options Paper Stage 1 – Legislative Proposals - Identifying who to consult - extension of time request
Date: 30 March 2022 at 5:23:35 pm AEST
To: CHA Review <CHA_Review@dssatsip.qld.gov.au>
Cc: [REDACTED]

To CHA Review

Thank you.

Please note and include the following amended wording highlighted in red as follows:

Please rely on the previous submissions from prior years.
The main proposal is to de-register **and exclude** persons from false claims or false genealogies without descent **from an ancestor originating from** country or language group **to be an Aboriginal Party**.

It is submitted that only persons with proven accepted genealogies from identified ancestor/s originating from country or the language group are eligible to be an Aboriginal Party.

It is submitted that an Aboriginal Party relates to any person or persons who have authority under Aboriginal Customary Law. This means there could be more than one Aboriginal Party for an area and it is not just positively determined native title claims.

Kind regards

Katharine
Katharine Wiltshire
Assistant to the
Yúgara Yúgarapul People

On 30 Mar 2022, at 5:09 pm, CHA_Review <CHA_Review@dndsatsip.qld.gov.au> wrote:

Dear Katharine,

We are able to extend the date for your submission to 8 April 2022 in case you require further time.

Many thanks for your interest in the review and we look forward to receiving your submission.

Kind regards,

<image003.png> **Cultural Heritage Acts Review Team**
Legal Policy, Strategic Policy and Legislation, Aboriginal and Torres Strait Islander Partnerships
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

CHA_Review@dndsatsip.qld.gov.au | PO Box 15397, City East QLD 4002
1800 469 166 | www.qld.gov.au/CulturalHeritageActsReview

On 31 Jan 2020, at 10:32 am, CHA_Review <CHA_Review@datsip.qld.gov.au> wrote:

Good morning,

Thank you for your responses to the questions posed in the Options Paper Stage 1 as part of the review of the cultural heritage acts.

As previously advised, we are seeking an extension on the current deadline from the Office of the Deputy Premier and will advise all stakeholders as soon as when we get a response.

Sincerely,

Cultural Heritage Review Team

From: Katharine Wiltshire

Sent: Friday, 31 January 2020 5:12 AM

To: CHA_Review <CHA_Review@datsip.qld.gov.au>

Subject: Cultural Heritage Acts Review | Options Paper Stage 1 – Legislative Proposals - Identifying who to consult - comments and reply by 5pm Friday 31 January 2020.

Amended

From: Katharine Wiltshire

[REDACTED]

Subject: Re: Cultural Heritage Acts Review | Options Paper Stage 1 – Legislative Proposals - Identifying who to consult - comments and reply

Date: 30 January 2020 at 3:36:21 pm AEST

To: CHA_Review

<CHA_Review@datsip.qld.gov.au>

[REDACTED]

To CHA Review

YYAC are having the first Directors Meeting for the year on Saturday 1 February 2020. Please extend the response time until the end of February 2020 as the people who assist the Yugara People are away on leave until mid-February 2020 and there are two authorisation meetings on 8 and 15 of February 2020. In the meantime **or unless/until there is another submission** please **rely** on these draft comments and answers below re "Identifying who to consult".

"Identifying who to consult"

- Comments:

The most crucial and fundamental factor in Cultural Heritage Body (CHB) and Party registration is right (knowledgeable) people for right country with capacity to care for country. If the Federal Court of Australia (FCA) finding for a family descent line or claim is that there is **no biological descent** from an

ancestor from the language group **and/or associated country** then under Aboriginal Customary Law and the principles of the *Native Title Act 1993* (Cth) (**NTA**) those people have **no rights**. **If there is no proven descent from an ancestor from associated country** they are not registered or de-registered asap as a party and/or CHB. No representatives of a false assertion to ancestor/s are permitted to speak for country under Aboriginal Customary Law. This applies to **all undetermined** claim areas and FCA proceedings - not just the Last Claim Standing. Re knowledgeable people with **proven** descendants from ancestor/s of the language group and CHB area then there may be more than one party registered. Respect the NTA section 84D provision by the FCA for unregistered parties because for instance they are apparently not properly authorised because they share the same disputed ancestor as a registered party which might be a False Claim. These unregistered Parties need to be given the **same status** as registered Native Title Parties and acknowledged. This applies to **all undetermined** claim areas and FCA proceedings - not just the Last Claim Standing. Respect the Human Rights Act 2019 section 28 Cultural Rights ATSI.