

8 April 2022

Cultural Heritage Acts Review
DATSIP
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Dear Cultural Heritage Acts Review Team,

Thank you for the opportunity to comment on the *Aboriginal Cultural Heritage Act 2003 (Qld)* and *Torres Strait Islander Cultural Heritage Act 2003 (Qld)* (the Cultural Heritage Acts) Review. My name is Suzanne Thompson and I am the Managing Director of the Yumbangu Aboriginal Cultural Heritage and Tourism Development Aboriginal Corporation (YACHATDAC). YACHATDAC is a non-for-profit Aboriginal Corporation, formed in 2016 by local traditional custodians of the Iningai lands, situated in Outback Central Western Queensland. YACHATDAC was established to address the need for continued protection and preservation of our Cultural Heritage assets, caring for country and reawakening of culture and the reconnection of songlines and ceremony.

Below are my comments on the various proposals within the *Aboriginal Cultural Heritage Act 2003 (Qld)* and *Torres Strait Islander Cultural Heritage Act 2003 (Qld)* (the Cultural Heritage Acts) Review Options Paper.

Providing opportunities to improve cultural heritage protection.

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 Duty of Care Guidelines need to be removed as a way of abiding by obligations under the *Aboriginal Cultural Heritage Act 2003* (ACH Act). The Duty of Care Guidelines itself should be reworked but left as only a guideline, not in the ACH Act itself. There is a strong need for the Duty of Care Guidelines to be based on the significance of a site and not in its current form, being focused on disturbance.
- The proposed framework around a prescribed activity reads like the Duty of Care Guidelines reworded. Again, a focus on significance, not the activity or level of disturbance should be focused on here.

- Early engagement through the mapping of high-risk areas is problematic. Areas such as the Desert Uplands might not have a lot of different landforms and therefore might be deemed as a non-high-risk area, but this is where our stone arrangements, springs and artefact scatters are found, which are of high significance to us. We would agree to creating a mapping layer based on significance, which include buffer zones as a way of a proactive approach. This should be undertaken by Traditional Owners alongside archaeologists.
- A recommendation for a cultural heritage search of the mapping is not strong enough, this should be mandatory for proponents with any development-based plan to alter the landscape.
- Traditional Owners need further financial support when undertaking cultural heritage surveys and negotiations with proponents. We should have our own archaeologist and our needs listened to. Doing a cultural heritage survey walk over such a large area, such as the Ski Park in Barcaldine in one day, is just not enough time to adequately assess the area.
- A First Nations advisory group with other experts as required is a good framework, but only if this body is made up of smaller Traditional Owner groups based on topographical watersheds. We have created the Lake Eyre Basin Traditional Owners Alliance, which has been set up by Traditional Owners, for community. Our concern is a top-down approach of people being picked by government to sit on a body, to make decisions for areas that they don't even come from.

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.

The ACH Act needs to be rolled into planning processes for state and local government by being incorporated into the *Planning Act 2016 (QLD)* and local government planning schemes. Historical heritage is mapped in local planning schemes, a register is included and there are codes for assessment. Aboriginal cultural heritage is not and that is why we are rapidly losing our sacred sites. Any mapping layer to be included in planning schemes and planning processes needs to be based on significance, not mapped on risk. Areas such as intangible sites need to be included.

Mapping should also include recognition that cultural heritage is embedded in vast cultural landscapes. This requires mapping to be done both at scale to map broader cultural values and landscapes, as well as at a more granular level for specific development to ensure that tangible and intangible cultural heritage is recorded and protected.

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

Yes, we whole-heartly support this amendment. We also submit that recognition of intangible cultural heritage requires an understanding that cultural heritage extends to the broader cultural landscape. Cultural heritage isn't just tangible artefacts, but includes the ongoing practice of culture by living communities protecting lands and waters in accordance with First Law.

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

We are not sure that the proposed framework is the answer. Greater consultation with Traditional Owners on how they want their cultural heritage managed, needs to be undertaken. A Traditional Owner body could only work, if this body is made up of smaller Traditional Owner groups based on topographical watersheds which has been set up by community and not by government.

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

Mandatory reporting should be in place and not just for cultural heritage plans and agreements, but it should be cultural heritage site based. We have no idea what sites have been destroyed by development over the years as there is no mandatory reporting requirement. Agreements need to be transparent and the mandatory reporting allows for this.

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

- Yes, we support this proposal, it is very much needed, as currently there is little to no deterrent for proponents under the ACH Act. We need active enforcement officers, handing out fines to proponents who do destroy sites or do not consult when they should be.

- The fines for these offences should not go to the state, but to the Aboriginal Party as it is our cultural heritage that has been damaged and destroyed and we are the ones who has had to spend the time to gather the evidence about the offence.
- Furthermore, the definition of ‘fair’ and ‘reasonable’ needs defining under the ACH Act. The recent court case brought by DSDSATSIP on the landholder in Cape York who cleared remnant vegetation and breached the ACH Act but got away with it as the definition of ‘fair’ and ‘reasonable’ were not defined, is strong evidence this needs to be remedied immediately.

Reframing the definitions of ‘Aboriginal party’ and ‘Torres Strait Islander party’.

Proposal 1: Reframe the definitions of ‘Aboriginal party’ and ‘Torres Strait Islander party’ so that people who have a connection to an area under Aboriginal tradition or Ailan Kastom have an opportunity to be involved in cultural heritage management and protection.

Option 1.

We do not support this option.

Option 2

We do support this option.

The definition of ‘Aboriginal party’ currently relies on the Native Title Act to determine who to consult with about cultural heritage. This allows proponents to tick a box without engaging in a meaningful consent process with the appropriate knowledge holders who have cultural authority in relation to both tangible and intangible cultural heritage in an area.

The definition of ‘Aboriginal party’ should be changed so that Traditional Owners with knowledge and authority about both tangible and intangible cultural heritage in an area are able to be recognised as a party and actively engaged on cultural heritage management and protection, regardless of whether there is already a native title party recognised for that area.

This would require proponents to publicly notify that they are engaging in activities on Country, so that any Traditional Owners who have cultural connection to and cultural responsibility for an area can nominate themselves as a party. This should happen prior to any approvals being granted, so there is enough time for meaningful consultation with all First Nations with cultural connection to the area.

The current system of relying on the native title party to determine who to consult with is failing First Nations across Queensland, who are not being represented by the PBC or the native title applicant. Ultimately, it is the people who are practising and manifesting culture, the knowledge holders with authority to speak for Country, who must be consulted about cultural heritage as a priority.

Promoting leadership by First Nations peoples

Proposal 1: Establish a First Nations-led entity with responsibilities for managing and protecting cultural heritage in Queensland. The entity could work with existing and future local Aboriginal and Torres Strait Islander groups who manage cultural heritage matters within their respective areas.

- As addressed previously, a First Nations advisory group with other experts as required is a good framework, but only if this body is made up of smaller Traditional Owner groups based on topographical watersheds. We have created the Lake Eyre Basin Traditional Owners Alliance, which has been set up by Traditional Owners for community. Our concern is a top-down approach of people being picked by government to sit on a body to make decisions for areas that they don't come from.
- The functions of this entity sounds like what the DSDSATIP Cultural Heritage Unit is doing at the moment. How will this entity be funded and will the government have any responsibility to administer the act?
- This proposed body or entity should not have decision-making responsibility for approving 'party status' for an area and for approving Cultural Heritage Management Plans, as it is not culturally appropriate for someone who is from another area, to make decisions for somewhere that is not their Country. Any proposed body or entity should follow our protocols.

Proposal 2: The First Nations independent decision-making entity, in partnership with Aboriginal and Torres Strait Islander peoples, explores the most culturally appropriate approaches for recognising historical connection to an area for the purposes of cultural heritage management.

There is a need that historical owners are recognised, but only if there is acknowledgement that they have been protecting and caring for the country as custodians and that they have a continued generational practice of ensuring that sacred sites are being maintained and

protected. This can also be proven through historical relationships with broader community acknowledgment, Indigenous and non-Indigenous. This can only be supported by presenting a clear understanding of customary practices such as cultural protocols of First Peoples Leadership and eldership status and not western leadership and eldership frameworks. These areas could be mapped and historical owners could have a say on any proposed development, but only for those areas that they have a clear understanding and connection to.

Thank you for your time reading our submission, I look forward to updates on how the Cultural Heritage Acts review is progressing.

Warm regards,

Suzanne Thompson