

Submission: Consultation Paper – Review of Cultural Heritage Acts 2003

Public Consultation Session: Townsville, July 2019.

Submission by: Leah Saltner (Bindal and Birriah Traditional Owner, North Queensland)

Discussion Points	Limitations Cultural Heritage Acts 2003	Proposed Solutions
Intangible Heritage	Cultural Heritage Acts does not identify intangible cultural heritage.	<p>Develop a definition of intangible cultural heritage (e.g. based on landscapes) in the Cultural Heritage Acts.</p> <p>The intangible cultural heritage identified in the Consultation paper (i.e. stories, festivals and crafts) can be captured in the broader definition.</p> <p>Consider the intangible cultural heritage definition under human rights legislation.</p> <p>Develop a framework that identifies intangible cultural heritage for Traditional Owners based on:</p> <ol style="list-style-type: none"> 1. Values <ul style="list-style-type: none"> • connection to country and family • connection to cultural traditions 2. Aboriginal Cultural History and Traditional Knowledge <ul style="list-style-type: none"> • collaboration of Aboriginal history (incl. oral history) and Traditional knowledge. 3. Landscape profile <ul style="list-style-type: none"> • information sources that supports the values and Aboriginal history as identified by Traditional Owners (e.g. archaeologist reports, oral history interviews etc).
<p>COMMENT:</p> <p>The burden of proof regarding intangible cultural heritage should not be on the Traditional Owner group. Resources should be paid by the proponent if they contest the validity of intangible cultural heritage identified by the Traditional Owner group.</p> <p>What will be the process if the validity of intangible cultural heritage is contested? What is DATSIP's role as the administrator of the Cultural Heritage Acts?</p>		

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Linkages to existing Acts	Cultural Heritage Acts does not link to Planning Acts (e.g. local govt).	<p>The relevant Planning Acts (2016) needs to have clear legislative linkages to the Cultural Heritage Acts.</p> <p>The Planning Act needs to trigger the Cultural Heritage Acts like the Queensland Heritage Act 1992.</p>
	Cultural Heritage Acts does not link to other legislation.	The Cultural Heritage Acts needs to have clear legislative linkages to other relevant legislation that impact on country (e.g. Biosecurity Act 2015, Coastal Protection and Management Act 1995)
<p>COMMENT: A framework needs to be developed that outlines ‘specific activities’ that trigger the Cultural Heritage Acts.</p> <p>The framework needs to provide clear direction to the proponent and the activities may be based on level of ‘impact’ on country.</p>		
Monetary compensation	Cultural Heritage Acts does not identify monetary compensation to Traditional Owners who are impacted by changes to their cultural heritage.	<p>Identify levels of impact (incl. spiritual and landscape connection) on cultural heritage.</p> <p>Develop monetary compensation for each impact level.</p> <p>Identify monetary compensation based on existing precedent in the Timber Creek, NT high court decision.</p>
		<p>Utilise formulas identified in the Timber Creek high court decision and have compensation based on the three elements as per the high court decision:</p> <ol style="list-style-type: none"> 1. economic loss (80% freehold land value). 2. non-economic loss (loss of traditional attachment to the land). 3. Interest on the economic loss form time of extinguishment.

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Identifying Aboriginal and Torres Strait Islander Parties	Current Cultural Heritage Acts identifies 'native title parties' as the appropriate party to consult.	The Prescribed Body Corporate (PBC) should be the first point of contact.
		<p>Primary engagement with the PBC will identify if they have alternate governance process/arrangement regarding cultural heritage.</p> <p>E.g. Some PBC's governance structures have separated their native title and cultural heritage responsibilities.</p> <p>Consideration will need to be given to the following:</p> <ul style="list-style-type: none"> • Is the PBC a cohesive group? • Will economic benefits be distributed in a fair manner to benefit the collective Traditional Owner group?
		Traditional Owner groups with native title registered claims, the native title applicants should be the first point of contact.
<p>COMMENT: This could be a potential risk to the Qld government in terms of intervention in 'Indigenous governance' and cultural decision making. DATSIP should develop a process that enables them to be satisfied that monetary compensation will benefit the Traditional Owner groups collectively, this may be done through social and cultural benefit 'criteria'. The PBC can perhaps than identify their social and cultural priorities that align with the criteria.</p>		
Aboriginal Heritage Council (Victoria model)	Overarching Aboriginal Heritage council model is not in the current Cultural Heritage Acts.	Not enough information provided at the Townsville workshop, July 2019.
		It seems 'top heavy' to have an overarching cultural heritage council with no legislative powers and acts as an advisory body only.
		<p>Any additional resources should be provided to the PBC's to:</p> <ul style="list-style-type: none"> • increase their capabilities to understand cultural heritage • manage their cultural heritage • actively participate in other planning processes that impact on cultural heritage.

ADDITIONAL COMMENTS	<p>The Cultural Heritage Acts needs to formally recognise the interdependence between intangible cultural heritage and tangible cultural heritage (e.g. natural landscapes).</p> <p>The Cultural Heritage Acts needs to have 'levels' of impact based on activities that the proponent wants to undertake. Monetary compensation for each impact level needs to be developed, utilise formulas as per the Timber Creek, NT High court decision.</p> <p>The Cultural Heritage Acts needs to have monetary penalties and enforcement options if the proponent does not satisfy their responsibilities under the Cultural Heritage Acts.</p> <p>The Cultural Heritage Acts needs to have a streamlined administrative process.</p> <p>DATSIP as the administrator of the Cultural Heritage Acts need to be transparent in their decision-making processes, their decisions and be adequately resourced.</p>
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