



Nuga Nuga Aboriginal Corporation (ICN 8089)

Abn. 23 791 863 046

admin@karingbalpeople.org

Cultural Heritage Acts Review
Department of Seniors, Disability Services
and Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
CITY EAST QLD 4002
CHA_Review@dssatsip.qld.gov.au

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Karingbal People – Submission in response to the Options Paper – Finalising the Review of Queensland’s Cultural Heritage Acts

The Karingbal People are grateful to again have the opportunity to engage with the Queensland Government’s review of the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) (the **Cultural Heritage Acts**).

This submission has been prepared in response to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships’ (the **Department**) *Options Paper: Finalising the Review of Queensland’s Cultural Heritage Acts (Options Paper)*. As with our previous submission in response to the State’s Consultation Paper,¹ this submission relates only to the “last claim standing” provisions of the Cultural Heritage Acts, and the proposals dealt with under Part 4 of the Options Paper.

Previous submissions

The Karingbal People have provided extensive submissions in relation to our concerns regarding the “last claim standing” provisions, including to the Queensland Legislative Assembly’s Economics and Governance Committee in September 2018,² and in response to the State’s Consultation Paper in July 2019 (referenced above).

For the purposes of this submission, the Karingbal People continue to rely upon and reiterate the matters stated in those submissions.

Proposals for reframing the definitions of ‘Aboriginal party’ and ‘Torres Strait Islander party’

Option 1

¹ <https://www.dssatsip.qld.gov.au/resources/dssatsip/work/atsip/culture/review-cha/stakeholder-submissions/29-nuga-nuga-aboriginal-corporation.pdf>.

² <https://documents.parliament.qld.gov.au/committees/EGC/2018/RevenueOLA2018/submissions/002.pdf>.

According to the Options Paper:³

This option involves changes in areas of Queensland where there is no registered native title holder or registered native title claimant.

In these areas, it is proposed that:

- *an Aboriginal person or a Torres Strait Islander person who claims to have a connection to the area under Aboriginal tradition or Ailan Kastom can request recognition as an Aboriginal party or a Torres Strait Islander party*
- *the Cultural Heritage Acts are changed so that a previously registered native title claimant is not a native title party of an area, and section 35(7) is removed.*

This option requires the establishment of a First Nations decision-making body.

This option contemplates removal of the last claim standing provision, with a previously registered native title claimant to no longer be considered a native title party of an area. The Karingbal People welcome this aspect of the proposal, which accords with our long-stated concerns in relation to this provision and in relation to the amendments most recently made to it which legislatively entrenched the flaws in its application.

The balance of the proposal suggests:

1. the removal of section 35(7); and
2. permitting Aboriginal or Torres Strait Islander persons who claim to have a connection to the area under Aboriginal tradition or Ailan Kastom to request recognition as an Aboriginal party or a Torres Strait Islander party, with applications to be assessed by a First Nations decision-making body.

It is unclear what the content of “claiming to have a connection” is, and whether this may set a lower threshold than the requirements currently included in section 35(7). A mere claim of connection may allow for applications to be made by persons who lack the legitimate traditional knowledge and traditional responsibility currently required under the Cultural Heritage Acts, which may then negatively impact on the fundamental principles of the Cultural Heritage Acts in section 5.

The Karingbal People’s preference is for the recognition process to maintain the requirements of traditional knowledge and traditional responsibility currently included in section 35(7), with an additional requirement that these criteria must be objectively demonstrated.

The Karingbal People therefore support the establishment of an independent First Nations decision-making body for the objective identification of persons who legitimately have the requisite traditional knowledge and traditional responsibility to be an Aboriginal party or Torres Strait Islander party.

However, the Karingbal People submit that further criteria should be legislated to guide that body in making assessments of persons with the requisite traditional knowledge and traditional responsibility. Such criteria should include a requirement to have regard to any determinations of, or commentary by, a Court to the effect that certain people today are the descendants of the native title holders of the country, notwithstanding such people today have not successfully evidenced the technical evidentiary requirements for maintenance of connection under the *Native Title Act 1993* (Cth). The effect of this should be that:

- such people should be recognised as the Aboriginal party or Torres Strait Islander party of that country; and
- where there is a determination or commentary by a Court that certain persons are not descended from the original native title holders of country, those persons should not be recognised as the Aboriginal party or Torres Strait Islander party for that country.

³ Options Paper, page 20.

While the Karingbal People support aspects of this option, such as the removal of the last claim standing provision and creation of a decision-making body, we cannot provide full support in the absence of further clarification on the finer details of the proposal. The Karingbal People would appreciate the opportunity to engage in further dialogue with the Department regarding the proposal and the details of the recognition process it creates.

Option 2

The Options Paper describes this option as follows:⁴

This option involves changes in areas where the Aboriginal party of Torres Strait Islander party is a previously registered native title claimant subject to a negative determination (native title does not exist).

In these areas, it is proposed that:

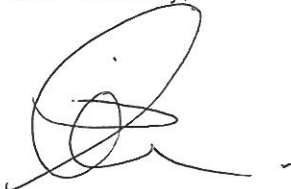
- *the Cultural Heritage Acts are changed so that a previously registered native title claimant subject to a negative determination (native title does not exist) is not a native title party*
- *section 35(7) of the Acts applies.*

The Karingbal People have serious concerns with this proposal, as it has the potential to further promote the existing flaws in the Cultural Heritage Acts whereby mere assertions of qualifications under section 35(7) are sufficient to establish Aboriginal Party status. Such an approach allows proponents to continue to rely on such assertions, untested, and pick and choose who they deal with, without any regard to whether a person actually has the requisite traditional knowledge and traditional responsibility.

We therefore reiterate that the application of section 35(7) would be improved with the establishment of criteria and forums for the objective identification of persons who legitimately have the requisite traditional knowledge and traditional responsibility to be an Aboriginal party or Torres Strait Islander party under that subsection. This may be achieved by establishing and utilising an independent First Nations decision-making body, as suggested in Option 1.

In addition to further discussions regarding each of the options, the Karingbal People would welcome the opportunity to work with the Department in relation to the further development of the options. Please contact Rebecca Scheske on admin@karingbalpeople.org if any further information is required in relation to the matters raised in this submission.

Yours sincerely,



Rebecca Scheske

Director Nuga Nuga Aboriginal Corporation

⁴ Options Paper, page 22.