



## AgForce Queensland Farmers Limited

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31 March 2022

Mr Tony Cheng

Cultural Heritage Acts Review

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

PO Box 15397

CITY EAST QLD 4002

By Email: [CHA\\_Review@dssatsip.qld.gov.au](mailto:CHA_Review@dssatsip.qld.gov.au)

Dear Mr Cheng

**Re: AgForce Queensland Farmers' Limited Submission to the Department of Seniors, Disability Services and Aboriginal & Torres Strait Islander Partnerships Options Paper – Finalising the Review of Queensland's Cultural Heritage Acts**

AgForce Queensland Farmers (AgForce) is a peak organisation representing Queensland's cane, cattle, grain, and sheep & wool producers. The cane, beef, grain and sheep & wool industries in Queensland generated around \$7.8 billion in on-farm value of production in 2019-20. AgForce's purpose is to advance sustainable agribusiness and strives to ensure the long-term growth, viability, competitiveness, and profitability of these industries. Over 6,400 farmers, individuals and businesses provide support to AgForce through membership. Queensland primary producers provide high-quality food and fibre to Australian and overseas consumers and contribute significantly to the social fabric of regional, rural, and remote communities. Our members actively manage approximately 40% of Queensland agricultural land, over 56 million ha and so have a significant interest in the management and protection of Cultural Heritage.

AgForce welcomes the opportunity to provide a submission to the Department of Seniors, Disability Services and Aboriginal & Torres Strait Islander Partnerships (DSSATSIP) Options Paper – Finalising the Review of Queensland's Cultural Heritage Acts (the Options Paper).

AgForce holds the following principles to guide our advocacy concerning Cultural Heritage:

1. AgForce acknowledges and respects the cultural and spiritual relationship Aboriginal and Torres Strait Islander peoples have with country
2. Representing landholders and respecting their property rights, AgForce has a significant interest in how cultural heritage is managed and protected and in ensuring an effective, affordable, certain, and timely cultural heritage framework operates in Queensland
3. For the greatest certainty and consistency, a registered native title holder under the Native Title Act 1993 should be the Aboriginal party or a Torres Strait Islander party for cultural heritage purposes
4. AgForce does not support further legislative penalty or changes in existing compliance mechanisms, preferring a focus on effective education and assistance to landowners and users
5. AgForce supports further efforts to ensure proactive Cultural Heritage identification and information being readily, but appropriately, available for awareness, research, and planning support concerning land development

ADVANCING SUSTAINABLE AGRIBUSINESS

6. AgForce supports having dispute resolution processes regarding the management of cultural heritage which facilitate the fair, timely and cost-efficient resolution of disagreements.

It is evident that the proposed amendments in this review, if adopted, will have a substantial negative impact on land users resulting in undue delays, uncertainty and inefficiencies, without any demonstrable significant benefits to any of the stakeholders. Overall, the Options Paper lacks the sufficient level of detail required to adequately consider the implications of the proposals and raises a significant number of unanswered questions. Notwithstanding this, AgForce has considered the proposals in the Options Paper and has responded to them in an attachment to this letter.

AgForce remains committed to progressing sensible and inclusive reform on Cultural Heritage and we welcome genuine engagement. Should you have any queries, please contact Policy Officer Nikki Hoffmann on 0477 963 694 or via email: [HoffmannN@agforceqld.org.au](mailto:HoffmannN@agforceqld.org.au)

Yours sincerely

A handwritten signature in black ink, appearing to be 'M Guerin', written in a cursive style.

Michael Guerin  
Chief Executive Officer

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# AgForce Queensland Farmers Limited

The AgForce logo is located in the top right corner of the page. It features a stylized yellow and blue graphic element resembling a plow or a field, with the word "AGFORCE" written in yellow capital letters below it.

AGFORCE

Submission to the Department of Seniors, Disability Services  
and Aboriginal and Torres Strait Islander Partnerships Options  
Paper – Finalising the Review of Queensland’s Cultural  
Heritage Acts

## Key Area 1 – 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*

### Duty of Care Guidelines

AgForce does not support the replacement of the current *Duty of Care Guidelines* (the Guidelines) with the proposed new *Cultural Heritage Assessment Framework* (the framework). AgForce is not aware of any evidence that suggests the requirements of the Guidelines are not being complied with and therefore sees no compelling need to replace the existing Guidelines to further protect cultural heritage.

AgForce considers the current Guidelines provide the appropriate balance between a self-assessable compliance pathway and the protection of cultural heritage.

### Consultation

AgForce disagrees that it is always reasonable or practical to have mandatory consultation with Aboriginal or Torres Strait Islander parties. The problem with increasing the level of direct consultation or involvement of indigenous parties, is that those parties must also have the capacity and resources to deal effectively with the increased demand. Without it there is the potential for a backlog in meetings and cultural heritage surveys to occur and cause further delays to development that could deliver social and economic benefits. AgForce is concerned about situations where, due to a lack of resourcing or other reasons, Aboriginal and Torres Strait Islander parties do not respond to requests in a timely manner.

The proposed requirement to undertake consultation for all ‘prescribed activities’, regardless of whether the area is a high-risk area, raises serious concerns about the need, practicality and cost of this requirement. Requiring producers to participate in mandatory consultation for everyday farm management activities such as controlled burning or ploughing, within low-risk areas would not foster good relations, nor would it necessarily result in the better protection of cultural heritage.

Consultation should not occur for all activities (including excluded activities) in high-risk areas. For agricultural producers, whose daily activities include clearing fence lines and maintaining cleared areas around infrastructure, which are proposed to be defined as ‘excluded activities’, the additional costs and time delays associated with the proposed requirement to consult on all activities in high-risk areas is substantial. Requiring consultation for these activities would not foster good relations, nor would it necessarily result in the better protection of cultural heritage.

### Proposed Definitions

The definitions of ‘prescribed activity’, ‘excluded activity’ and ‘high-risk area’ are central to the workability of this proposal.

Related to the above concerns, AgForce does not support the proposed definitions in their current form and recommends further detailed consultation to ensure they are practical for both Aboriginal and Torres Strait Islander parties and land users.

### **Overall Concerns**

The combination of the onus on regulated assessment, mandatory consultation and a right to veto (requiring agreement to be achieved) by the indigenous party would make the proposed reforms *unworkable*, resulting in no better outcomes for either the protection of cultural heritage or the advancement of relationships and communication with indigenous people. Further, AgForce cautions against taking an even more prescriptive, costly and regulated approach in the absence of additional land user education and awareness.

#### **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**

AgForce supports proactively identifying and mapping cultural heritage interests and areas to better inform planning and streamlining effective and necessary engagement requirements around cultural heritage protection. Disclosure of cultural heritage information could be limited to the affected land user to protect matters of cultural heritage as necessary. Where no interests are identified then the proposal not to require consultation is supported. AgForce is concerned about the practicalities and lack of information provided in the state-wide mapping proposal. AgForce is concerned about the timeframe to complete the mapping, the level of resources required, the ability to 'ground truth' or appeal inaccurate data and the level of involvement of land users to assist in this process. AgForce does not support governments transferring the cost of validating the accuracy of their maps onto affected landholders, as we see for vegetation and strategic cropping mapping. Overall, the proposal for state-wide mapping does not provide sufficient information and requires further detailed consultation.

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

AgForce does not support the proposal to amend the definition of cultural heritage to include 'intangible' elements on the basis that the *Aboriginal Cultural Heritage Act 2003 (Qld)* and *Torres Strait Islander Cultural Heritage Act 2003 (Qld)* (the Acts) adequately acknowledge and provide protection for intangible heritage.

Under Section 9 and 10 of the Acts, cultural heritage is defined to comprise significant areas or objects that are of particular significance to Aboriginal or Torres Strait Islander people because of 'Aboriginal tradition' or 'Island custom', as well as the history, including contemporary history, of an Aboriginal or Torres Strait Islander party for an area or object. The Editor's note in each Act refers to the *Acts Interpretation Act 1954 (Qld)*, which confirms that the reference to 'Aboriginal tradition' and 'Island customer' are references to the 'body of traditions, observances, customs, and beliefs' of Aboriginal or Torres Strait Islander people.

AgForce acknowledges and respects the cultural and spiritual relationship between Aboriginal and Torres Strait Islander parties and their country and that cultural heritage is broader than a collection of objects and areas. AgForce considers that to the extent an area or an object may be of particular significance due to intangible heritage (such as traditions or rituals that may be associated with that area) the Acts already have scope for such areas and objects to be protected. AgForce considers the current definitions of cultural heritage captures the concept of intangible heritage and supports retaining the definitions of Aboriginal and Torres Strait Islander cultural heritage for this reason.

It is unclear how amending the definition of cultural heritage to include 'intangible' elements would necessarily result in the better protection of cultural heritage than is currently available under the Acts.

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

AgForce supports the incorporation of a dispute resolution process where agreement cannot be reached with the Aboriginal and Torres Strait Islander party regarding the management of cultural heritage.

The dispute resolution process must facilitate the timely and cost-effective resolution of issues and minimise the risk of undue delay to land use activities.

AgForce does not support the proposal for the establishment of a First Nations-led entity or for such an entity being responsible for dispute resolution without further detail on the establishment and scope of the entity.

AgForce considers the Land Court to be the most appropriate and experienced entity to manage cultural heritage disputes and supports extending the land Court's alternative dispute resolution (ADR) function.

AgForce is not averse to the inclusion of a dispute resolution framework, notwithstanding that any such process:

- Is not at additional cost to the proponent alone
- Is not a lengthy process which has the potential to unreasonably result in additional delays to essential farm activities
- Does not become a mandatory requirement

In short, any proposed dispute resolution framework must be time and cost efficient.

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

AgForce does not support the mandatory reporting of compliance to capture data and support auditing of the system. AgForce does not consider increased compliance mechanisms, such as mandatory reporting, are necessary given the lack of any evidence that suggests the requirements of the Acts are not being complied with. It is unlikely that mandatory reporting of compliance to capture data would achieve any demonstrable benefits. It would however, impose a significant cost to government and a greater administrative burden not only on land users undertaking activities, but also the Aboriginal and Torres Strait Islander parties involved.

AgForce does not support a system auditing process, particularly without any sufficient detail as to what the process entails.

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

AgForce does support an increase to compliance mechanisms under the Acts and is not aware of any evidence that suggests the requirements of the Acts are not being complied with. Due to the lack of evidence about non-compliance, AgForce sees no compelling need to increase compliance, monitoring, and enforcement mechanisms further to protect cultural heritage.

AgForce does not support the expansion of the authorised officer roles. The proposed expansion would provide officers with very broad powers to enter properties, request documents and issue on the spot fines for the failure to document decision making. Given the lack of evidence of contraventions of cultural heritage obligations, we believe that the proposed powers are a significant overreach and so do not support their inclusion.

The Acts already have several compliance mechanisms that are both pro-active and preventative (such as stop orders issued by the Minister or injunctions obtained by the Aboriginal or Torres Strait Islander Party) and reactive, in the form of offences and penalties that can be imposed on individuals and companies that breach the Acts. The penalties for non-compliance for both individuals and companies are significant. AgForce therefore considers that the non-compliance deterrents in the form of offences and penalties, along with the powers to prevent breaches in the form of stop orders and injunctions, are already appropriate and effective.

Alternatively, AgForce supports further efforts to ensure proactive cultural heritage identification and information being readily available for awareness, research and planning support. More emphasis should be placed on identifying cultural heritage, along with providing voluntary education and awareness programs, rather than focus on onerous government-led compliance action.

## Key Area 2 – Reframing the definitions of ‘Aboriginal party’ and ‘Torres Strait Islander party’

**Proposal:** *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*

AgForce does not support reframing the definitions of ‘Aboriginal party’ and ‘Torres Strait Islander party’ and instead recommends that the current system is retained.

A registered native title holder under the Native Title Act should remain as an Aboriginal party or a Torres Strait Islander party for an area under the Queensland Cultural Heritage Acts. This provides the greatest certainty to all parties and consistency across jurisdictions.

AgForce is concerned that broadening out of the definitions of those with a cultural heritage interest, such as including those who are not native title holders, will lead to significant confusion, disagreements and delays within the process of managing cultural heritage.

AgForce recommends retaining the current system of identifying the most appropriate Aboriginal or Torres Strait Islander party for consultation and engagement to meet obligations to protect cultural heritage.

### **Option 1:**

AgForce does not support Option 1 as it will create significant conflict and potentially unintended consequences within current Native Title Claims and arrangements. Such proposed arrangements would also detract from good policy outcomes. This option contemplates an engagement of multiple parties for an area, resulting in considerable uncertainty and increased conflict. AgForce supports the ongoing recognition of registered native title claimants and registered native title holders as the Aboriginal party under the Acts.

### **Option 2:**

AgForce does not support option 2, as it provides no better outcome in identifying the Aboriginal or Torres Strait Islander party in negative determinations. There are very few areas of negative determination in Queensland. AgForce sees no need to abolish the Last Claim Standing provision as it provides a significant amount of commercial certainty.

## Key Area 3 – Promoting leadership by First Nations peoples in cultural heritage management and decision-making

**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*

AgForce does not support the proposal for the establishment of a First Nations-led entity on the basis that the proposal provides insufficient information about the establishment, operation and scope of responsibility of the entity. The proposal poses a significant number of unanswered questions including the composition of the membership of the entity, timeframes, the type of disputes and appeal mechanisms to name a few.

Overall, the proposal does not provide sufficient information and requires a significant amount of work that, in our view, exceeds this current review's scope. AgForce recommends that there should be further detailed consultation regarding the establishment of a First Nations-led entity.

**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*

Historical connection is recognised under the legislation and therefore it is unclear why the First Nations-led entity would be required to assume a role in assessing historical connection. AgForce does not support this proposal on historical connections on the basis that there is insufficient information to understand what the proposal would accomplish and no clear justification as to why the proposal is necessary.