



28th July 2019

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. I am writing this submission as a Cultural Heritage Consultant who has been working with Traditional Custodians in South East Queensland for just shy of 20 years.

Below are my concerns with the Act, that I feel need addressing:

- Not having a trigger in the Development Assessment planning system leads to a reactive system on the ground where Aboriginal people are having to front up to development sites that have already commenced and ask them how they have abided by their Duty of Care. This is quite often, shrugged off, as developers say, I have my development approval. **There needs to be a trigger for Aboriginal Cultural Heritage in the planning system, specifically local government planning schemes.**

- Part 6 of the ACH Act was supposed to be used for regional studies and has been under-utilised greatly. **Part 6 studies should be undertaken by Local Governments with Aboriginal Parties. Mapping layers can be produced from these studies and included in planning schemes as a trigger for development.** Aboriginal Cultural Heritage sites do not need to be identified on this mapping, lot and plans can just be highlighted in a traffic light system of mapping- Red to stop and consult with the Aboriginal Party as the area has been ground-truthed and there is a site there; Amber- there might be a need to consult- contact the Aboriginal Party as there might be something in the area; Green- the development is OK to go forward as the area is highly developed or has been checked for Aboriginal Cultural Heritage.
- Outside of an EIS, the current planning system has triggers for developments to make sure they abide by laws for historical heritage, flora and fauna, hydrology and bushfire assessments. This is discriminatory practice, by including triggers for historical heritage (mainly European) and not Aboriginal Cultural Heritage assessments. **The Aboriginal Cultural Heritage Act (2003) needs to be rolled into the Planning Act (2016).** Having a line in the purpose of the Planning Act (2016) that states, '*Advancing the purpose of this Act includes- (d) valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition; and (e) Conserving places of cultural heritage significance;*' is not good enough. Aboriginal Cultural Heritage is not mentioned again in the Planning Act and this could be viewed as tokenistic by some and needs rectifying.
- Queensland State Planning Policy has statements like: '*Owing to the sacred or spiritual significance of an area or object, Aboriginal and Torres Strait Islanders may not wish to disclose information and specific details about these heritage values. However, some places of value to the local community may be able to be notated in the planning scheme, or spatially represented in a strategic map. This information can better inform local government decision-making about appropriate land uses and the built environment in these areas, and also provide a starting point for*

development applicants to engage with local Aboriginal and Torres Strait Islander groups about features that are important to them'; however, no local governments are enacting on this. **The State needs to lead by example and encourage local government to play an active role in managing Aboriginal Cultural Heritage and including it into planning schemes.**

- There are no enforcement officers on the ground making sure developers are abiding by their Duty Of Care. **Enforcement Officers need to play an active role and be out enforcing the legislation and fining those proponents that do not abide by it.**
- The Duty of Care Categories need clarity and is a loop-hole for developers that do not want to involve the Aboriginal Party nor undertake an Aboriginal Cultural Heritage Survey. **The Duty of Care Guidelines need reducing in number and clarifying.**
- Some consultants are stating areas are a Category 4 under the Duty of Care Guidelines so proponents do not have to engage the Aboriginal Party. **Evidence should be provided on how consultants and proponents established the category of their site under the Duty of Care Guidelines.** This needs to be presented to the Aboriginal Party who is properly resourced, and an independent body to determine whether the category is right and the proponents have met their Duty Of Care. Active enforcement officers could assist with this as well.
- Mainstream Australians and developers have little to no knowledge on what Aboriginal Cultural Heritage is or how to identify tangible sites such as scarred trees. **DATSIP, alongside Aboriginal Parties, needs to undertake education in the development industry and undertake a media campaign to the wider public about what Aboriginal Cultural Heritage is and the importance of abiding by their Duty of Care.**
- Lawyers, archaeologists and developers all interpret the act differently. People within those professions all interpret the act differently as well. **There is a huge need to clarify the act, around when it is triggered and what proponents need to do to abide by the act.**
- The DATSIP database site records that are pre 1984 are inaccurate,

usually around 200m which is fraught with difficulty when using a search of the database to abide by part of a Duty of Care (sec 23e of the Act). When site points are 200m out, they can be located on the wrong lot and plan and thus a search request will say that there is nothing on the area that was searched, when in fact there was. There are currently 7,199 Aboriginal Cultural Heritage site points and 96 site areas in South East Queensland and we have no idea what state they are in, or even if they are still in existence. **The database needs ground-truthing by Aboriginal Parties.**

- Many consultants are undertaking Aboriginal Cultural Heritage surveys, reports and due diligence without the Aboriginal Party, when the Act states that the Aboriginal Party determine significance. This is identified in Part 6 of the act and in other areas, though I feel this needs highlighting. **DATSIP should be actively discouraging consultants from undertaking assessments without the Aboriginal Party.**
- The methodology in this review is not clear. **How points within submissions are being highlighted by the review team and included moving forward needs to be clearly articulated.**

I look forward to updates on how the Cultural Heritage Acts review is progressing.

Warm regards,

A handwritten signature in cursive script that reads "Kate Greenwood". The signature is written in a dark ink and is positioned above the printed name.

Kate Greenwood