2 August 2019

CHA Review
Department of Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
CITY EAST QLD 4002

By Email: CHA_review@datsip.qld.gov.au

Dear Sir/Madam

Review of the Queensland Aboriginal Cultural Heritage Act 2003 (ACHA)

1. We are members of the Yugara/Yuwarapul People (Yugara People) who were the
native title claimants in the Federal Court proceedings (QUD586/2011, QUD139/2015)
(Brisbane NT case) over the greater Brisbane City Council, Logan City Council,
Moreton Bay Regional Council, Redland City Council regions (the wider Brisbane
region).1

2. We have previously corresponded with the Department of Aboriginal and Torres Strait
Islander Partnerships (DATSIP) in regard to the operation of the ‘last claim standing
rule’ in the Queensland Aboriginal Cultural Heritage Act 2003 (ACHA). Our previous
 correspondence includes submissions to:

   (a) the Minister for Aboriginal and Torres Strait Islander Partnerships on 26 June
       2015, 20 January 2016, and 20 March 2018 on the interpretation of section 34
       of the ACHA; and

   (b) the Economics and Government Committee on the Revenue and Other
       Legislation Amendment Bill 2018 (Previous Submissions).

3. In the Previous Submissions, we argued that section 34(1)(b)(i) of the ACHA (last
claim standing rule) fails to accord natural justice and procedural fairness to those
Aboriginal groups whose rights and interests are impacted by the decision to register a
group as the native title party for an area.

4. The last claim standing rule operates to cause considerable prejudice and hardship to
the Yugara People. This section operates to perpetuate the removal of Aboriginal
people from their ancestral country and maintains a misunderstanding of the importance
of Aboriginal culture and connection to land. It has resulted in the Yugara People not
being considered an Aboriginal party, and therefore we are not notified, consulted or
authorised to deal with cultural heritage matters. We are unable to speak for our country
and protect our culture heritage in the wider Brisbane region.

5. This submission is a request to urgently review the operation of the ACHA in respect of
the recognition of native title, Aboriginal parties and cultural heritage body.

6. This submission also addresses the operation of law referred to (sections 34 and 35
ACHA) and argues that an Aboriginal claim group or persons ought not to be registered
as a “native title Party for an area” under section 34 ACHA to profit from false claims
made which have been disproven comprehensively in the judgment or any other claim
groups that do not demonstrate proper representation of descent lines from ancestors
originating from country under the authority of the representatives of the descent lines.

1 Sandy (On Behalf Of The Yugara People) And Others V Queensland And Others (No 2) (2015) 325 ALR 583.
7. We submit that the Yugara People hold ancestral connection to the wider Brisbane region and that we continue to practice our traditions and customs. As such, the Yugara People are the correct people for country and should have a say in what entity should be the registered cultural heritage party for the wider Brisbane region pursuant to the ACHA. It is productive of gross injustice and against our ancient customary laws to allow people who have no biological connection to ancestors from country and to deny the correct descendants of the greater Brisbane region, the Yugara People, to speak for Yugara People country.

8. We seek the reform of the last claim standing rule to ensure that the Aboriginal party and cultural heritage body is a person with particular knowledge about traditions, observances, customs or beliefs, and has biological descent from the area. Specifically, the DATSIP must be able to take into account and assess the merits of claimants to Aboriginal Party status, and must be able to take into account the findings of a court of competent jurisdiction where a determination has been made in respect of native title.²

9. Foremost, the State Government has an obligation under the Reconciliation Action Policy (RAP) to not impose policies and decisions, such as the last claim standing, upon Aboriginal peoples without taking into account the impact upon their unique cultures and world views. The last claim standing rule also breaches the United Nations Declaration of the rights of Indigenous Peoples (UNDRIP) and Universal Declaration of Human Rights (UDHR). We seek the assistance of the Federal Minister that he recommend to the State Government that the legislation be amended in order to be consistent with Australia's obligations under UNDRIP and UDHR.

**Background**

10. The last claim standing rule operates to allow groups to speak for country even if their native title claim has been rejected by a court of competent jurisdiction on the basis of no biological descent to the ancestor originating from country or language group. This is productive of gross injustice. As a result, persons have been afforded the power to speak for the wider Brisbane region, despite having no biological or traditional connection to the area.

11. The ACHA relies upon a false claim as the basis of cultural heritage body over the wider Brisbane region. This has caused significant detriment to the Yugara People having been denied the right to care for country or speak for country.

**Acceptance of the Yugara native title claim**

12. The court accepted our claim of biological descent from our ancestors, such as Jackey Jackey (Bilinba), John Bungaree, and Lizzie Sandyl Brown.³

13. Importantly, the court accepted our evidence regarding the continuity of connection to our land for the Yugara People.⁴ We are active in our practice of our cultural traditions and customs. Our people participate in care for country where possible, recording our Elders and continuing our traditional language, dreamtime stories, songs and dance, artworks, camps, bush medicine, bush food and spiritual connections to country.

14. We submit that we are the correct Aboriginal party for the greater Brisbane region, and should be registered as the Aboriginal cultural heritage body in order to protect our connection to land for future generations.

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² ACHA section 13
³ Sandy (On Behalf Of The Yugara People) And Others V Queensland And Others (No 2) (2015) 325 ALR 583, 683 [315].
⁴ Sandy (On Behalf Of The Yugara People) And Others V Queensland And Others (No 2) (2015) 325 ALR 583, 623 [154].
The Last Claim Standing Rule

15. The main purpose of the ACHA is to “provide effective recognition, protection and conservation of Aboriginal Cultural heritage.” The object and intent of the Act state that “…as far as practicable, Aboriginal cultural heritage should be owned and protected by Aboriginal with traditional or familiar links to the cultural heritage if it is comprised”, of remains, sacred objects, and other things. 6

16. Section 13 of the ACHA states that:

(a) “A provision of this Act must not be interpreted in a way that would allow the provision to operate in a way that prejudices-

(a) a right of ownership of a traditional group of Aboriginal people,…in Aboriginal cultural heritage used or held for traditional purposes under Aboriginal Tradition.

17. The last claim standing rule does not support either the purpose of the object, intent, or the intended interpretation of the ACHA.

18. The last claim standing rule causes considerable prejudice and hardship for Yugara. We are the correct descendants of the greater Brisbane region, and have been denied the ability to speak for country.

19. In particular, the last claim standing rule currently operates without any regard for the factual basis of the native title party’s claims. This has resulted in the forced disassociation between Aboriginal parties and the ancient connections with our traditional caring of our cultural homelands. Additionally, a native title claim cannot be registered if it has an ancestor that is in another registered claim, but it may proceed to determination under section 84D(4) NTA. 8

Native title party and Aboriginal party

20. Section 34 of the ACHA is enclosed at Annexure 1, and is the means for identifying the native title party for an area. We consider that ‘a registered native title holder’ for an area is a valid means of identifying a native title party and only ‘a native title claimant’ for an area if endorsed by a panel of independent experts as part of an Advisory Committee. We do not consider that a formerly registered, or last claim standing, should be capable of being registered without any regards to the merits of that claim. We contend that the mechanism in section 35(7) of the ACHA is a viable alternative for the identification of the native title party.

21. Section 35 of the ACHA is enclosed at Annexure 2 and outlines the Aboriginal party for an area. By default, a native title party is the Aboriginal party. 9 Therefore, this section relies upon the last claim standing rule and allows for the recognition of people who do not have a traditional connection to country.

22. Section 35(7) states:

(7) If there is no native title party for an area, a person is an Aboriginal party for the area if—

(a) the person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and

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6 Aboriginal Cultural Heritage Act 2003 (Qld) s 4; Aboriginal Cultural Heritage Act 2003 (Qld) s 14.
7 SAndy on behalf of the Yugara/Yugaral People v State of Queensland [2012] FCA 978 [48]
8 Aboriginal Cultural Heritage Act 2003 (Qld) s 35 (1).
(b) the person—

(i) has responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area; or

(ii) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area.

23. Section 34 and 35 of the ACHA contemplate an interaction with the relevant provisions of the NTA.¹⁰

24. In Nuga Nuga Aboriginal Corporation (ICN 8089) v Minister for Aboriginal and Torres Strait Islander Partnerships, the Supreme Court of Queensland stated that:

"...native title logically starts from sovereignty. Native title at common law is the basis for native title under the NTA and the basis of native title in an Act of this jurisdiction, including the ACHA."¹¹ (Citations omitted)

"It is by no means impossible, as the facts of the present case show, that a person's native title at common law may be established without registration as a registered native title holder. However, the present case does illustrate that such a question may not be finally resolved until a determination is made under s 225 of the NTA, after a contested hearing among rival groups of length and complexity, where judicial determination is required."¹²

25. The last claim standing rule operates contrary to and unsupportive of the Federal Legislation's interpretation of native title and of native title as it is recognised more widely. It relies upon uncontented and false claims, which give Aboriginal parties the power to speak for the wider Brisbane region, despite having no biological or traditional connection to the area.

Deregistration by the Minister

26. Section 36(6) of the ACHA gives the Minister the power to cancel the registration of a corporation as the Aboriginal cultural heritage body for an area if the Minister is no longer satisfied about the matters in section 36(4).

27. Section 36(4) of the ACHA states the Minister must be satisfied in order registration of the Aboriginal cultural heritage body, that the corporation is an appropriate body to identify Aboriginal parties for the area and has the capacity to identify Aboriginal parties for the area. As above mentioned, the native title party is by default the Aboriginal party.

28. This section unfairly benefits Aboriginal parties recognised under the last claim standing.

29. Further, section 37 of the ACHA outlines the functions of an Aboriginal cultural heritage body, as identifying, for the benefit of a person who need to know under the ACHA, the Aboriginal parties for an area. The function of the Aboriginal cultural heritage body cannot be carried out rightly under sections 12 to 15 of the ACHA by an Aboriginal Party who does not

¹⁰ Mirvac Queensland Pty Ltd v Chief Executive Officer of the Dept of Aboriginal and Torres Strait Islander Partnerships [2018] QSC 248, [13].
¹¹ Nuga Nuga Aboriginal Corporation (ICN 8089) v Minister for Aboriginal and Torres Strait Islander Partnerships [2017] QSC 321 [52].
¹² Nuga Nuga Aboriginal Corporation (ICN 8089) v Minister for Aboriginal and Torres Strait Islander Partnerships [2017] QSC 321 [53].
have biological descent nor maintained customary connection to the area, and therefore do not possess the ability to identify Aboriginal cultural heritage or to carry out this function.

30. The ramifications for non-compliance with the ACHA such as carrying out activities that harm Aboriginal cultural heritage make it critical for land users to be able to correctly identify Aboriginal interests in land, including culturally significant sites.\(^{13}\) It is imperative for respect, truth, knowledge and justice that the incorrect party is not maintained as cultural heritage body.

**Duty of the Minister to rectify the error**

31. The last claim standing rule has led to certain groups maintaining their status as native title parties, despite evidence that their registration was based on errors of fact.

32. In *Puhlhofer v LB Hillingdon*, Lord Brightman held that:

> "Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely" (emphasis added).\(^{14}\)

33. Chief Justice Mason supported this finding in *Australian Broadcasting Tribunal v Bond*.\(^{15}\)

34. As it is beyond the power of the courts to review an administrative decision based on a mere error of fact, the Parliament has a responsibility to ensure that decision makers can correct decisions based on information that is subsequently found to be inaccurate.

**Inconsistency with The Queensland Government’s Reconciliation Action Policy**

35. Reconciliation has sought to remediate the progressive dispossession of Indigenous persons of their land. The last claim standing operates in breach of the Queensland Governments’ RAP. The RAP recognises the dispossession, settlement and cumulative acts of colonisation have left an enduring legacy of economic and social disadvantage that many Aboriginal people and Torres Strait Islander peoples continue to experience.\(^{16}\)

36. The Action 2.0 of the RAP states that the Queensland Government will ensure Aboriginal and Torres Strait Islander cultures are recognised, valued and embedded in core business, and acknowledges that:

> "In the past, governments have imposed policies and decisions upon Aboriginal peoples and Torres Strait Islander peoples without taking into account their unique cultures and world views.”\(^{17}\)

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\(^{13}\) See *Aboriginal Cultural Heritage Act 2003 (Qld)* s 23 - Maximum penalty for a corporation - 10,000 penalty units.

\(^{14}\) *Puhlhofer v LB Hillingdon* [1986] 1 AC 484 [14].

\(^{15}\) *Australian Broadcasting Tribunal v Bond* [1990] HCA 33 [95]-[96].


37. The operation of the ACHA is contrary to the RAP, and continues to impose a decision upon Aboriginal peoples without taking into account the reality of that decision and implications on their unique culture. In order to be consistent with the aspirations and goals of RAP the Queensland Government by order of its Minister, must recognise the biological descendants of ancestors from country as the rightful traditional custodians, and not recognise groups that do not hold ancestral connection to that land.

38. Foremost, the Queensland Government cannot uphold reconciliation values, where Aboriginal people are denied their connection to country by registration of an Aboriginal person or one family group who do not have biological descent to the area. The ACHA operates to perpetuate the dispossession of Aboriginal persons that continue to significantly disadvantage Aboriginal people.

Human Rights Act 2019

39. The operation of the last claim standing rule operates in contravention of the Human Rights Act 2019 (Qld) (HRA) that will come into force from 1 January 2020. Pursuant to section 58(1), it is unlawful to not give proper consideration to a relevant human right in making a decision.\(^{18}\)

40. Section 28 of the HRA protects the cultural rights of Aboriginal peoples and Torres Strait Islander peoples. Importantly, "Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture".\(^{19}\) This is similar to the UNDRIP Article 8.

41. We have experienced the forced destruction of our culture, by being unable to protect significant sites or artefacts, maintain a proper connection with our country, or effectively continue connection with all of our culture.

Responsibility by the Federal Minister

42. The Australian Constitution was amended in 1967 to enable the recognition of Aboriginal peoples in our legislative structure, and facilitate the recognition of native title interests. The pre-amble to the NTA recognises that Aboriginal peoples of Australia inhabited this country for many years prior to European settlement, and that the Aboriginal peoples had been progressively disposed of their lands.

43. The Federal Government's Closing the Gap Report 2019, states that "[b]eing on country is intrinsically linked to social, cultural and economic and physical and emotional wellbeing of Indigenous people."\(^{20}\) The Report states that "our young people need to be strong in two worlds - culture, language and education go hand in hand".\(^{21}\) Access to country is part of a much broader issue. In particular, by incorrectly stating who can speak for country, the wellbeing of the Yugara People is impacted and we are deprived of the ability to properly maintain our continuing culture for future generations.

44. The Closing the Gap Report is a whole-of-government agenda for the Commonwealth and each State. The Federal and State government must be accountable to Aboriginal and Torres Strait Islander peoples.\(^{22}\)

\(^{18}\) Human Rights Act 2019 (Qld) ss 58(1).  
\(^{19}\) Human Rights Act 2019 (Qld) s 28 (3).  
\(^{20}\) Department of the Prime Minister and Cabinet, Closing the Gap Report 2019, p 23.  
\(^{21}\) Department of the Prime Minister and Cabinet citing Kimberly Aboriginal Law and Culture Centre, Closing the Gap Report 2019, p 17.  
\(^{22}\) Department of the Prime Minister and Cabinet, Closing the Gap Report 2019, p 164.
Breach of the UDHR and UNDRIP

45. Australia is a member nation of the United Nations. Australia has an obligation to uphold its adoption of the UDHR, as proclaimed in 1948 as a common standard of fundamental human rights to be universally protected. Australia has basic obligation under Article 27 to ensure that “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”

46. The operation of the last claim standing rule prevents the Yugara People to speak on behalf of their country and to participate in the cultural life of their community.

47. Secondly, in 2009 Australia announced its support for the UNDRIP. The legislation as it stands operates in contravention of the UNDRIP.

48. Article 8 of the UNDRIP states:  
   (a) 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

49. Article 11 of the UNDRIP states:  
   (a) 1. Indigenous peoples have the right to practice and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
   (b) 2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

50. Indigenous persons also have the right to maintain, protect and access in privacy their religious and cultural sites.

51. Australia should be active in commitment to its human rights obligations. Instead, the last claim standing rule in effect denies the Yugara People access to their artefact sites, and deny the Yugara People the ability to practice and revitalise their cultural traditions. We have experienced the forced destruction of our culture, by being unable to protect significant sites or artefacts, maintain a connection with our country, or effectively continue connection with our culture.

52. We urge the Federal Minister to ensure that ACHA does not breach Australia’s international human rights obligations.

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Impact on Yugara People

53. As part of reconciliation, the Queensland Government must understand the importance of Aboriginal groups being able to maintain their connection with ancestral lands in order to continue their culture.

54. The effect of the last claim standing rule denies the Yugara People the right to properly "care for country" or "speak for country", by allowing another group to act as the 'last' native title party for the area. This limits our ability to speak for country. Our knowledge, customs and traditional duties need to be enabled to adequately protect our historical sites and artefacts.

55. The only people who were the last native title claimants to have biological descent from the ancestors associated with this region were found to be the Yugara People. We have viewed people with no biological descent make false claims to the wider public about our land and make economic profit from our country.

56. This has resulted in emotional devastation and heartbreak for us. We are proud of our heritage and want to ensure that our culture is continued by future generations.

57. During this time we have been discriminated against, and have lost valuable economic opportunities that could have been attributed to establishing ongoing connection with our country and giving back to our families and community.

Broader Impacts

58. We are aware of other Aboriginal people, such as the Karingbal Aboriginal People, who are also seeking legal change. 28 The Karingbal Aboriginal People were awarded compensation for destruction of their artefacts that were not properly identified by the registered Aboriginal cultural heritage party. 29 The company at fault claims that the destruction was a result of miscommunication and a lack of awareness about who the traditional owners were. 30

59. The legislation as it stands has been described as "a deeply flawed legislative provision that puts people in the position of speaking for country without any requirement or appropriate qualifications to do so". 31 The Government should have regard to the Aboriginal group’s relationship and connection to their country, and not blindly allow Aboriginal parties to speak for cultural heritage where there is no biological descent or substantiated evidence put forward.

Recommended Changes

60. The Yugara People respectfully recommend that the operation of the ACHA is reformed so that the last claim standing rule does not apply in circumstances where the DATSIP cannot be satisfied that the former registered native title claimants meet the criteria of an Aboriginal party in section 36(7), in that they do not have particular knowledge about traditions,


observances, customs or beliefs associated with the area, or any responsibilities under Aboriginal tradition for the area, or for any Aboriginal objects in the area.

61. The Yugar People recommend that provision should be made in section 34 for DATSIP to receive and consider additional information similar to the section 36(5).

Advisory Committee to DATSIP Proposal

62. The Yugar People propose that a new advisory committee is established in Queensland to receive evidence and provide advice and recommendations to the DATSIP.

63. The Queensland legislation states that the Minister may establish advisory committees as he or she considers appropriate. We are aware of other States (WA, SA, and NSW) that have established compulsory advisory committees that have an active role in making recommendations and evaluating cultural heritage interests, and informing the decision maker’s determination.

64. We propose that an advisory committee should be formed in Queensland, to make recommendations to DATSIP in regards to the merit of a native title claim, or make a decision in place of DATSIP. In effect, this ensures that Aboriginal persons who understand the importance of Aboriginal connection to land are involved in the decision and that the correct Aboriginal group is granted rights in relation to their land.

65. We propose that the advisory committee may be modelled similarly on the legislative provisions of the other States. We recommend the inclusion of at least three independent expert anthropologists as part of the advisory committee, as well as, more resources allocated to the Department of Community and Personal Histories to have sufficient capacity to provide appropriate departmental documents and receive additional materials to provide informative summaries to the experts of the advisory committee.

Western Australia

66. The administration of the Aboriginal Heritage Act 1972 (WA) is the responsibility of the relevant Minister, who is required to have regard to the recommendations of the Aboriginal Cultural Material Committee (the WA Committee) and the Registrar of Aboriginal Sites but is, generally speaking, not bound to give effect to any such recommendation.

67. The WA Committee consists of at least one person recognised as having specialised experience in the field of anthropology as related to the Aboriginal inhabitants of Australia. Subject to that requirement, the appointed members are selected from persons (whether or not of Aboriginal descent) having special knowledge, experience or responsibility which, in the Minister’s opinion, will assist the Committee in relation to the recognition and evaluation of the cultural significance of matters coming before the WA Committee.

68. The functions of the WA Committee include:

(a) evaluating on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons;

(b) where appropriate, recording and preserving the traditional Aboriginal lore related to such places and objects;

(c) recommending to the Minister places and objects which, in the opinion of the Committee, are, or have been, of special significance to persons of Aboriginal descent and should be preserved, acquired and managed by the Minister; and
(d) advising the Minister on any question referred to the Committee, and generally on any matter related to the objects and purposes of the Act.

69. In evaluating the importance of places and objects the Committee must have regard to:
   (a) any existing use or significance attributed under relevant Aboriginal custom;
   (b) any former reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment;
   (c) any potential anthropological, archaeological or ethnographical interest; and
   (d) aesthetic values.

70. The WA Committee may recommend to the Minister that an Aboriginal site is of outstanding importance and that it appears to the Committee that the Aboriginal site should be declared a protected area.

71. Where the WA Committee is satisfied that a representative body of persons of Aboriginal descent who usually live subject to Aboriginal customary law has an interest in an Aboriginal site that is of traditional and current importance to that body of persons and which is in the custody or control of the Minister, the Minister must make that place or object available to that body of persons as and when required for purposes sanctioned by relevant Aboriginal tradition.

South Australia

72. The Aboriginal Heritage Act 1988 (SA) is administered by the Minister, the Aboriginal Heritage Committee (the SA Committee) and inspectors appointed by the Minister. The Minister must consider any relevant recommendations of the Aboriginal Heritage Committee.

73. The Committee consists of Aboriginal persons appointed by the Minister, as far as is practicable, from all parts of South Australia to perform the functions required under the Aboriginal Heritage Act 1988 (SA) and to represent the interests of Aboriginal people throughout the State in the protection and preservation of the Aboriginal heritage. The functions of the SA Committee are to advise the Minister, either by request or at its own initiative, with respect to many things, including any measures that in the Committee's opinion should be taken for the protection or preservation of Aboriginal sites, objects or remains.

New South Wales

74. The National Parks and Wildlife Act 1974 (NSW) is administered by the National Parks and Wildlife Service which is constituted by the Chief Executive and by officers, employees and other specified persons.

75. The Aboriginal Cultural Heritage Advisory Committee (the NSW Committee) is formed under the National Parks and Wildlife Act 1974 (NSW), and advises the Minister and the Chief Executive on any matter relating to the identification, assessment and management of Aboriginal cultural heritage.

76. The NSW Committee consists of 13 persons, including 10 members that are appointed from nominees of Aboriginal elders groups, registered native title claimants and Aboriginal owners as listed on the Aboriginal Land Right register. The members of the Committee must be
persons who are involved in cultural heritage matters in their local communities, and have an understanding of cultural heritage management issues.

Overarching Intent – Respect for Aboriginal Customary Law

77. Our ancient laws proceed the British based laws by tens of thousands of years. These are the laws we need to abide by with regards to Aboriginal business on country. The fundamental principle is that another person cannot enter, let alone speak for, another persons' country or tribal homelands without permission and authority. A second essential customary law is about decision making. Only an authorised council of representatives and knowledgeable Elders (council of Traditional Custodian representatives) can make decisions on behalf of the people on our country under our customary ways. We conduct decision making by representatives who are chosen by their own ancestral descent lines. Decision making is done by the majority (ideally 75%+) or consensus of representatives. We are placed within the Australian Constitution and identified as an 'Aboriginal' race under section 51(XXVI)\(^\text{32}\). Under our culture we have our own customary laws we need to abide by when dealing in Aboriginal business otherwise it may be punishable under our ancestral spiritual beliefs and connections.

Identifying Aboriginal Parties - Aboriginal Customary Law proposal

78. Registration of Aboriginal Parties should not be based on prima facie registered native title claims by NNTT\(^\text{33}\) if they are determined to be false or considered historical native title claims without biological connection to an ancestor originating from country and associated language group. Only positively determined native title claims in the Federal Court of Australia ought to be the only ones considered a Native Title party for an area under ACHA section 34 in order to be registered as an Aboriginal Party. However, this ought not to exclude other Aboriginal Parties being registered if the person/s have proven connection to country and knowledge as described below.

79. At least three independent expert anthropologists to be part of an advisory panel or committee to consider right people (ancestors and descendants) for right country and language group. This advisory committee is to be independent of native title claims. Additional resources need to be allocated to the Department of Community and Personal Histories to supply requested departmental documents and any other related materials.

80. Under Aboriginal Customary Law Aboriginal people from country are identified by acceptance and approval by the authority of representative Elders, representatives of descent lines and knowledge holders of the Yugara People on our traditional ancestral homelands.

Decision Making proposal – Traditional Custodian Representatives of the country

81. Traditionally the only people authorised to speak for country about Indigenous matters are the authorised representatives of the main identified descent lines of ancestors from country through a council of Traditional Custodian representatives.

\(^{32}\) 51. Legislative powers of the Parliament s 51(XXVI) The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: “the people of any race for whom it is deemed necessary to make special laws”; https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/link.aspx?_id=AFF6CA564BC3465AA325E73053ED44A&\_z=z#chapter-01_part-05_51

\(^{33}\) NNTT: National Native Title Tribunal
82. A council of Traditional Custodian representatives re Right People for Right Country with proven descent from the rightful ancestors of country need to be part of the decision-making process. Knowledgeable representative person/s with proven and/or expert approved biological descent of an ancestor originating from the language group, cultural and spiritual connection to country ought be the only ones considered for registration as an Aboriginal Party to ensure natural justice prevails.

83. Decision making regarding Aboriginal business such as the ACHA Review and proposed amendments needs to include independent decision makers who know about Cultural Heritage matters and right people for right country. Elective representatives of the State’s parliament are not knowledgeable about Cultural Heritage or anthropology and may not be considered appropriate as protectors of Indigenous Cultural Heritage regarding the ACHA Review and instating the right people for right country.

84. For just governance at least 50% of the decision making needs to be by authorised representatives from each of the main descent lines from country. The other 50% may be people with specialised knowledge and expertise in the area under consideration. This decision-making group would be different for each area under consideration with an aim to reach consensus or at least 75% in agreement. It may result in registration of either more than one Aboriginal party for an area or a new entity to be formed under descent lines and decision-making processes regarding authority over particular sub-areas.

85. For any given area decision-making processes and governance of the Aboriginal Party to be enabled by the majority of descent lines at an annual AGM rather than mob rule or majority voting. ORIC registered corporations with appropriate rules for proportional representation of descent lines to facilitate effective and just governance will be the preferred option. Private companies only to be considered if the company demonstrates proper commitment to decision making processes with the council of Traditional Custodian representatives or representatives of a particular area and equal opportunities employment to descendants of identified ancestors from country. The Aboriginal Party or Parties to be contracted and reviewed on an annual basis with a report demonstrating KPI outcomes regarding Cultural Heritage protection and equal employment opportunities for descendants.

**Land user obligations - proposal**

86. Duty of Care by the land user should not be way of self-assessment regarding cultural heritage protection. The ACHA needs to include a provision for engagement of the Indigenous Party or Parties and initial expert survey with a report to determine if the area is likely to hold Indigenous Cultural Heritage. Any recommendations from the expert survey report for Cultural Heritage agreements need to be done within a prescribed framework with CHMPs.

87. Consultations are to be encouraged to ascertain how cultural heritage protection and mitigation strategies can be regarded as a value-added asset to the development. For instance, cultural historical reports and information boards on natural or restored reserves or trails could add value to the development. Engagement with the local Indigenous community may assist in developing stronger bonds.

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34 ORIC: Office of the Registrar of Indigenous Corporations
35 KPI: Key Performance Indicators
Compliance mechanisms

88. If an Aboriginal Party is not demonstrating adequate Duty of Care including knowledge, care or skills for a particular area or site then this Aboriginal Party should be able to be disengaged and another appropriate Aboriginal Party appointed in its place for that particular matter.

Cultural heritage register and database

89. It is submitted that an authorised representative of an ancestral descent line for an area be able to access the register as a registered user for a particular area even if they are not a registered Aboriginal Party. Aboriginal persons or entities should be considered for registration as an Aboriginal Party and/or added as a contact in the database under their own proven connections to ancestors and country despite other Aboriginal Parties being on the register. It needs to be inclusive of the right knowledgeable people not exclusive for a few who may not be representing anyone but themselves and their own self interests.

Suspension and temporary registration of Aboriginal Parties proposal

90. As the Human Rights Act 2019 section 28\(^{36}\) will be in operation as of the 1 January 2020, we propose suspension or de-registration of the Cultural Heritage Bodies that were registered based on the last claim standing operation of the ACHA under section 34 that do not comply with the overarching intent of the ACHA by that date. We propose by or from the 1 January 2020 the operation of the ACHA regarding section 34 last claim standing to be administered under section 13 and section 35(7). During this time the operation of the ACHA could include temporary registration of other Aboriginal Parties to care for country until any amendments to the ACHA become law.

Conclusion

This submission is made in good faith to request section 36(6) of the ACHA be administered, and in support of the omission of ‘registered’ in ‘native title claimants’ and substantially amend or omit the last claim standing rule with provision of other person/s to be registered as an Aboriginal Party.

The last [registered] claim standing rule has very little, if any, regard to whether the Aboriginal party that speaks for country have biological descent, and have maintained their customs and traditions, for that area. It is not appropriate to rely upon prior claims that are no longer registered to determine the native title party for that area and afford that party the right to speak for country when they have no ancestral connection to the area. We contend that in conjunction with section 13 the mechanism in section 35(7) of the ACHA is a viable alternative for the identification of the native title party.

To include a panel of three independent expert anthropologists as part of an Advisory Committee, as well as, allocate more resources to the Department of Community and Personal Histories to have sufficient capacity to provide appropriate departmental documents and receive additional materials to provide informative summaries to the expert advisory body.

A council of Traditional Custodian representatives re Right People for Right Country with proven descent from the rightful ancestors of country are part of the decision-making process.

The Yugara People (QUD586/2011, QUD139/2015) request the opportunity to discuss the impact of the review, and to have an opportunity to respond to any questions that the DATSIP has in relation to this submission.

Yours faithfully

Ruth A. C. James
RUTH JAMES

Gresham Brown
GRESHAM BROWN

S. Thompson
SHANIAH THOMASON

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Robert Mitchell
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RHEANNE SANDY
Yugara People

(QUD586/2011, QUD139/2015)

ANNEXURE NOTE

This and the following page are "Annexure 1" of the submission

Review of the Queensland Aboriginal Cultural Heritage Act 2003 (ACHA)

dated and signed on 2nd August 2019.
Aboriginal Cultural Heritage Act 2003

Reprint current from 9 November 2018 to date (accessed 21 May 2019 at 18:06)

Part 4 > Section 34

34 Native title party for an area

(1) Each of the following is a native title party for an area—

(a) a registered native title claimant for the area;
(b) a person who, at any time after the commencement of this section, was a registered native title claimant for the area, but only if—
   (i) the person’s claim has failed and—
      (A) the person’s claim was the last claim registered under the Register of Native Title Claims for the area; and
      (B) there is no other registered native title claimant for the area; and
      (C) there is not, and never has been, a registered native title holder for the area; or
   (ii) the person has surrendered the person’s native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or
   (iii) the person’s native title has been compulsorily acquired or has otherwise been extinguished;
(c) a registered native title holder for the area;
(d) a person who was a registered native title holder for the area, but only if—
   (i) the person has surrendered the person’s native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or
   (ii) the person’s native title has been compulsorily acquired or has otherwise been extinguished.

(2) If a person would be a native title party under subsection (1)(b) but the person is no longer alive, the native title party is instead taken to be the native title claim group who, under the Commonwealth Native Title Act, authorised the person to make the relevant native title determination application.
ANNEXURE NOTE

This and the following page are "Annexure 2" of the submission

Review of the Queensland Aboriginal Cultural Heritage Act 2003 (ACHA)
dated and signed on 2nd August 2019.
35 Aboriginal party for an area

(1) A native title party for an area is an Aboriginal party for the area.

(2) Subsection (3) applies to a native title party for an area who—
   (a) is or was a registered native title claimant; or
   (b) is the native title claim group who authorised a person who is no longer alive, but
       who was a registered native title claimant, to make a native title determination
       application.

(3) The native title party is an Aboriginal party for the whole area included within the outer
    boundaries of the area in relation to which the application was made under the
    Commonwealth Native Title Act for a determination of native title, regardless of the
    nature and extent of the claimant’s claims in relation to any particular part of the whole
    area.

(4) Subsection (5) applies to a native title party for an area who is or was a registered native
    title holder the subject of a determination of native title under the Commonwealth Native
    Title Act.

(5) The native title party is an Aboriginal party for the whole area included within the outer
    boundaries of the area in relation to which the application for the determination was
    made, regardless of the extent to which native title was found to exist in relation to any
    particular part of the whole area.

(6) However, a native title party to whom subsection (5) applies is not an Aboriginal party
    for a part of the area if—
    (a) native title was not found to exist in relation to the part; and
    (b) there is a registered native title claimant for the part.

(7) If there is no native title party for an area, a person is an Aboriginal party for the area if
    —
    (a) the person is an Aboriginal person with particular knowledge about traditions,
        observances, customs or beliefs associated with the area; and
    (b) the person—
        (i) has responsibility under Aboriginal tradition for some or all of the area, or
            for significant Aboriginal objects located or originating in the area; or
        (ii) is a member of a family or clan group that is recognised as having
             responsibility under Aboriginal tradition for some or all of the area, or for
             significant Aboriginal objects located or originating in the area.
YUGARA PEOPLE
(QUD586/2011, QUD139/2015)

SUPPLEMENTARY SUBMISSION

Proposed amendments to sections 34 & 35 of the Queensland Aboriginal Cultural Heritage Act 2003 (ACHA)

Re Review of the ACHA submission by the Yugara People
dated and signed on 2nd August 2019.
34 Native title party for an area

(1) Each of the following is a native title party for an area—

(a) a registered native title claimant for the area;

(b) a person who, at any time after the commencement of this section, was a registered native title claimant for the area, but only if—

(i) the person’s claim has failed and—

(A) the person’s claim was the last native title claim registered under the Register of Native Title Claims, and the person is a descendant of an ancestor originating from country which includes all or part of the claim area; and

(B) there was no other registered native title claimant for the area who is a descendant of an ancestor originating from country which includes all or part of the claim area; and

(C) there is not, and never has been, a registered native title holder for the area; and

D) the person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and

E) the person—

• has responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area; or

• is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area;

(ii) the person has surrendered the person’s native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or

(iii) the person’s native title has been compulsorily acquired or has otherwise been extinguished;

(c) a registered native title holder for the area;

(d) a person who was a registered native title holder for the area, but only if—

(i) the person has surrendered the person’s native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or

(ii) the person’s native title has been compulsorily acquired or has otherwise been extinguished.

(2) If a person would be a native title party under subsection (1)(b) but the person is no longer alive, the native title party is instead taken to be the native title claim group who, under the Commonwealth Native Title Act, authorised the person to make the relevant native title determination application.
35 Aboriginal party for an area

(1) A native title party for an area is an *Aboriginal party* for the area.

(2) Subsection (3) applies to a native title party for an area who—

   (a) is or was a registered native title claimant; or

   (b) is the native title claim group who authorised a person who is no longer alive, but who was a *native* title claimant, to make a native title determination application.

(3) The native title party is an *Aboriginal party* for the whole area included within the outer boundaries of the area in relation to which the application was made under the Commonwealth Native Title Act for a determination of native title, regardless of the nature and extent of the claimant’s claims in relation to any particular part of the whole area.

(4) Subsection (5) applies to a native title party for an area who is or was a registered native title holder the subject of a determination of native title under the Commonwealth Native Title Act.

(5) The native title party is an *Aboriginal party* for the whole area included within the outer boundaries of the area in relation to which the application for the determination was made, regardless of the extent to which native title was found to exist in relation to any particular part of the whole area.

(6) However, a native title party to whom subsection (5) applies is not an *Aboriginal party* for a part of the area if—

   (a) native title was not found to exist in relation to the part; and

   (b) there is a registered native title claimant for the part.

(7) If there is no native title party for an area, a person is an *Aboriginal party* for the area if—

   (a) the person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and

   (b) the person—

      (i) has responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area; or

      (ii) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for some or all of the area, or for significant Aboriginal objects located or originating in the area; and

      (iii) is a descendant of an ancestor originating from country which includes all or part of the area.

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*Omit: Yellow highlighted words with strikeout line; Add: Red highlighted underlined words*