



HQPlantations Ref: HQPREC-56-2718

25 March 2022

Cultural Heritage Acts Review
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
CITY EAST Qld 4002

Dear Review Team

HQPlantations submission relating to proposals for reforms the Qld Cultural Heritage Acts.

Please find attached, HQPlantations (HQP) response to the Queensland Governments proposals for reforms to the Qld Cultural Heritage Acts (the Acts). Whilst HQP supports the review of the Acts with a view to improving cultural heritage protections for Aboriginal and Torres Strait Islander people, including intangible cultural heritage, and strengthening compliance mechanisms, we have particular concerns over how reforms would be practically implemented and what enabling mechanisms would be established. Our main concerns relate to:

High risk area mapping:

- How and at what scale will high risk areas be mapped? There have been past instances where a broad brush approach has been used for State mapping of 'risk areas' resulting in capture of large areas, without adequate assessment of ground risks / area values. This is of particular concern to HQP who manage timber plantations across 91 State Forests across Queensland in addition to numerous freehold properties.
- Where the landowner/land manager disagrees with a high risk boundary, what is the proposed mechanism for review and who bears the cost of this process? Again our experience with the 2018 implementation of the Vegetation Management Act was that regulators adopted an inflexible single holding based administrative process to address State mapping errors that resulted in unnecessary additional business costs and operational delays.
- Any required changes must be timely.

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Manageable consultation workloads on First Nation Groups:

- Should the consultation / engagement scope be defined too broadly, and in the absence of appropriate risk area mapping and consideration of the risk posed by the activity, we have genuine concerns over the ability of groups to effectively engage and consult in a timely way. We are already hearing concerns from some groups around consultation fatigue where extensive low risk, rather than intensive high risk, activities are proposed.

Thankyou for considering our submission and HQP would welcome the opportunity to discuss the concerns outlined above with the Review Team.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. West', with a stylized flourish at the end.

David West
Senior Manager Stewardship

Attachment 1: HQPlantations submission on proposals for reforms the Qld Cultural Heritage Acts.

Responses below relate to questions asked of stakeholders within **Options paper, Finalising the review of Queensland's Cultural Heritage Acts, December 2021.**

Proposals 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.

HQP response to proposal 1 questions.

1. Do you support this proposal and option? Why or why not?

In principle, subject to the high risk area mapping exercise being based on clearly defined "non land tenure" based parameters and a recognition that changes may have a major impact on some landowners, particularly those with an extensive, rather than intensive operational footprint.

2. Are there any improvements that could be made?

- Prescribe or provide guidance on reasonable timeframes for consultation processes (including responses) for both the proponent and the Aboriginal party or Torres Strait Islander party.
- Provide a clear action pathway for instances where either party does not respond/engage within prescribed timeframes.
- The options paper mentions "right people for right country" but determining who this is and obtaining up-to-date contact information is still very difficult in some cases and can change frequently. This information is captured in annual General Reports of documents in ORIC and Notification of a Change to a Corporation Officer, perhaps there could be a central database that automatically updates when this information is submitted.

3. Should consultation occur for all activities in high-risk areas so there is no excluded activity?

It depends on the significance thresholds that apply in determining high risk areas i.e. if the mapped areas are highly significant with accurate mapping to define boundaries, then potentially, yes. If they are very broadly defined and cover large areas, then certain low risk activities should be excluded to ensure that risk of consultation fatigue for both Indigenous peoples and proponents is managed.

4. What are your thoughts on proactively mapping cultural heritage areas?

Unclear what is intended by "proactively mapping". We have no objection in sharing existing data, with the consent of the relevant First Nations group. However, we would be concerned if proactive extends to imposing additional cost and time on the proponent. We would require a more detailed understanding of the proposed mapping process and how it would be maintained in the event of both identification of new areas, as well as processes for review and potential removal of existing areas. It is also unclear how this proposal differs from existing mapping associated with registered cultural heritage sites?

5. What types of activities and areas should be included in the definitions for:

- prescribed activity? No additional suggestions
- high-risk area? No additional suggestions
- excluded activity?: Activities under the QFRS Act (construct and maintain fire breaks, wildfire response (including creation of fire breaks); Activities equivalent to current

category 1 activities; and, continuation of existing land use (e.g. plantation establishment, maintenance, roading and harvesting, fuel reduction burning and other fire management activities).

- significant Aboriginal or Torres Strait Islander area or object? No additional suggestions
6. Should consultation protocols be developed for each Aboriginal party and Torres Strait Islander party? It would be a potentially onerous obligation, and likely unworkable, to have different protocols for every group for a business such as HQP with extensive low impact operations with the interests of 20 Indigenous groups to consider. Preference would be for the development of a general set of consultation protocols within the Act providing for flexibility for proponents and the relevant Aboriginal Party to agree to alternative site/issue specific protocols (falling back to legislated baseline protocols where agreement can't be reached).
 7. How should Aboriginal and Torres Strait Islander parties be supported to manage increased consultation about cultural heritage protection?
Agree, increased direct support to Aboriginal and Torres Strait Islander parties assist them in consultation and cultural heritage protection. The volume of consultation is likely to increase as a result of these reforms and through our current consultation, some groups have indicated they are already experiencing consultation fatigue or are under-resourced to consult as much or as often as they would like.
 8. Should the development of a new assessment framework be led by a First Nations advisory group (with other experts as required)? Yes, provided significant land managers and owners are involved.

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.

HQP response to proposal 2 questions

1. Do you support this proposal and option? Why or why not? Yes. Compliance is likely easier and processes more streamlined and transparent when relevant legislation is aligned. However, we reiterate our concerns over how the high risk mapping is to be undertaken (level of accuracy, recognition of ongoing land use and previous disturbance, consultation with affected land owners and managers, maintenance and dispute resolution mechanisms etc)..
2. Are there any improvements that could be made? No suggestions

Proposal 3

Amend the Cultural Heritage Acts to expressly recognise intangible elements of cultural heritage.

HQP response to proposal 3 questions

1. Do you support this proposal and option? Why or why not? Yes. It is such an important part of Indigenous culture and needs to be recognised, protected and promoted.
2. Are there any improvements that could be made to the option or definitions? For Indigenous peoples to determine
3. Is there an alternative framework or option that might better recognise intangible cultural heritage, instead of amending the definitions in the Cultural Heritage Acts? Identify an

alternate category of activities that may impact this kind of heritage and require consultation e.g. significant disturbance footprint, landscape altering etc.

Proposal 4

Provide a mechanism to resolve and deal with issues arising under the Cultural Heritage Acts.

HQP response to proposal 4 questions

1. Do you support this proposal? Why or why not? Yes. Negotiations can break down when there are disputes over who has the authority to speak for country and also when there are nil or non-committal responses.
2. Do you support these options? Why or why not?
3. Are there any improvements that could be made?

Proposal 5

Require mandatory reporting of compliance to capture data and support auditing of the system.

HQP response to proposal 5 questions

1. Do you support this proposal and option? Why or why not? Disagree – it should be mandatory to keep records related to consultation but only mandatory to report in the instance of a dispute arising. It should not be a requirement that all other records (i.e. not subject to dispute) be lodged with the State.
2. Are there any improvements that could be made? Need to recognise the prevalence of verbal over written modes of consultation that are common when engaging with Aboriginal and Torres Strait Islander peoples when developing legal requirements under this proposal. Recommended templates and forms to help capture such records in a consistent way would be beneficial.

Proposal 6

Provide for greater capacity to monitor and enforce compliance.

HQP response to proposal 6 questions

1. Do you support this proposal? Why or why not? Yes
2. Do you support these options? Why or why not? Yes
3. Are there any improvements that could be made? Should Authorised officers be employed by a First Nations group it is critical that there is some legislated accountability for the entity.

Proposal to reframe definitions

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.

HQP response to proposal to reframe definitions

Both of these options mean that there may be more than one Aboriginal party for an area, and on Option 1, that any CHMP's made with previous Aboriginal parties, even if they no longer have party status, would continue to be recognised. That seems excessively complex as we could be dealing with multiple Aboriginal parties for the same area past and present.

How long must pre-existing CHMPS continue to be recognised for? If there is a review date, with which party does the proponent revise the plan with?

Proposals to promote leadership by First Nations

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.

HQP response to proposal 1 questions

1. Do you support the proposal to establish a First Nations-led entity? Why or why not? Yes, subject to an understanding and agreement to the scope of its functions and powers.
2. An alternative to establishing an entirely new entity for this purpose could be to incorporate the proposed First Nations-led entity's responsibilities into another already existing entity or body. Do you support this alternative approach? If yes, what existing entity or body could this become a part of? No comment.
3. Do you think there should be two separate entities — one for Aboriginal cultural heritage and another for Torres Strait Islander cultural heritage? For First Nations groups to determine.
4. What are your views on the proposed functions? What other functions could this entity have? Need to be clear on advisory vs approving functions, ensure the entity isn't providing both for a given function and that there is legislated accountability for the entity.
5. Should this entity have decision-making responsibility for approving 'party status' for an area and approving Cultural Heritage Management Plans? Yes to approving 'party status', but query whether it should have approval rights re CHMPs if the landowner and the First Nations group have already agreed the CHMP.
6. Is it culturally appropriate for this body to have a role in cultural heritage management and protection? Yes, in relation to CH management. Regarding protection, it would depend on the scope of the body's powers to protect.
7. Should the entity have a dispute resolution function? Yes
8. Should the entity be independent of the government? Will depend on the scope of its functions and powers. Should be accountable.

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.

HQP response to proposal 2 questions

1. Do you support this proposal on historical connection? Yes
2. Why or why not? Most appropriate way in determining who has the rights to speak for country but process needs to be transparent and include dispute mechanism.