

Submission from:
North Queensland Dry Tropics Traditional Owners Management Group
 Friday 25 February 2022

Formulated from issues raised during 18 June 2019 meeting and notes table on 25 February 2022

(Nations and clan groups include: Gudjala, Jangga People, Bidjara People, Gurambilbarra and Wulgurukaba People, Birriah People, Gugu Badhun People, Bindal People, Juru People, Wangan Jagalingou People, Manbarra People, Wiri People, Warraungun People)

Issues raised during 18 June 2019 consultation meeting	Relevance to 2021 Options Paper (key points to raise highlighted)
GENERAL	
There is a high level of scepticism amongst Traditional Owners as to whether this review is genuine and whether the government will listen to their concerns.	* Election commitment to finalise the Review.
The majority of Traditional Owners do not have the capacity or resources to prepare formal legal submissions whereas industry and its representative bodies, such as QRC, have significant resources to prepare extensive submissions in the 'language' of government.	* Increased consultation period and methods for stakeholder engagement. * Meetings being conducted with Traditional Owner Group to ensure representation in feedback. * Option to complete online survey. * DSDSATSIP Regional Office support available.
Are the voices of Traditional Owners going to be heard?	
There is a general feeling that government favours industry over Traditional Owners ie. the so called 'balance' which the legislation purports to seek is skewed towards industry.	* Working toward a balance is achieving certainty which benefits both parties. * Option paper proposals aim to increase the protection of cultural heritage and the involvement of Aboriginal and Torres Strait Islander Queenslanders' its ongoing management and protection.
OWNERSHIP AND DEFINITIONS OF CULTURAL HERITAGE	
Why does the government own Aboriginal cultural heritage in any context? It belongs to the Traditional Owners.	* Ownership matter—no proposal to amend current provisions.
Ownership rights must include rights to access for significant sites on private property.	
65% of Queensland is pastoral leases with no access rights for Traditional Owners – have to ask permission and 9 times out of 10 permission is not granted.	* Land access matter—no proposal to amend current provisions.
What is the point of Native Title if the Traditional Owners don't actually own their cultural heritage?	* Ownership matter—no proposal to amend current provisions.
As many current Traditional Owners were removed from country they haven't been able to experience and retain the information like their elders — ACHA acknowledges the obligations of Aboriginal people to law and country in its key principles, but provides no access rights for Traditional Owners to fulfil these obligations or to reconnect with country.	* Land access matter
If legal ownership of ancestral remains applies regardless of where they are located, why can't this apply to artefacts as well, including artefacts still in the ground?	* Ownership matter—no proposal to amend current provisions.

Everything is connected (spiritual connections) — the legislation must take into account our stories and oral history in the definitions of cultural heritage.	<ul style="list-style-type: none"> * Recognition of intangible cultural heritage has been built into the proposed Cultural Heritage Assessment Framework, Section 3, Proposal 1 of the Options Paper. * Recognition of intangible elements of cultural heritage under the Cultural Heritage Acts is proposed, Section 3, Proposal 3.
Need to recognise and include our living culture— ACHA must somehow incorporate what we (TO's) say about intangible significance.	
Some of the most significant Aboriginal cultural heritage sites are <u>not</u> archaeological sites.	
Is there any move to link the Aboriginal Land Act to the cultural heritage Acts? Significant sites should be owned by Traditional Owners.	
IDENTIFYING WHO TO CONSULT	
Last claim standing – needs to be addressed and to be removed when claimant groups have been thrown out by the Federal Court Native Title process, especially if they are found not to be from that country - they should not be recognised as the contact people for cultural heritage forever— this needs to go.	<ul style="list-style-type: none"> * Options paper includes a proposal to 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. * Section 4 Proposal with provides two Options to amend the definition of an Aboriginal party. Both options would see negative determination claimants no longer recognised for party status.
Last claim standing should depend on the reasons why claims fail – for example, failure to meet onerous connection evidence or other requirements may not be the same as a finding that the claimants are not the right people for country.	
When the ACHA was developed in 2003 there was a proposal put forward by Traditional Owners which advocated for an Aboriginal and Torres Strait Islander representative body/council, similar to the built heritage legislation (Queensland Heritage Act), to be appointed to determine who speaks for country – at that time this idea was not considered but it should be looked at again now.	<ul style="list-style-type: none"> * Options provide includes a proposal for a First Nations led independent decision-making body. * Section 5 Proposal provides an Option for a decision-making body with functions that deal with matters in the management and protection of cultural heritage such as disputes in relation to party status.
Native Title is a 'divide and conquer' process imposed by a white European legal system –it should not be so closely linked to cultural heritage.	
LAND USER OBLIGATIONS	
Duty of Care guidelines allow proponents to 'self-assess' without any oversight or need to justify how they did this.	<ul style="list-style-type: none"> * Options paper includes proposals to improve the protection of Queensland's cultural heritage. * Section 3, Proposal 1 proposes to replace the duty of care guidelines with a new assessment framework which requires greater engagement, consultation and agreement making with the Aboriginal party or Torres Strait Islander party to protect cultural heritage is included under.
The current legislation is racist or, at best, totally contradictory – the key principles in section 5 state that Aboriginal people are the guardians, keepers and knowledge holders of Aboriginal cultural heritage yet it goes on to allow non-Aboriginal people to assess and destroy heritage without consulting with Traditional Owners.	
There are numerous proponents who use the duty of care self-assessment process to avoid engaging with traditional Owners.	
Duty of Care contradicts the legislation – self-assessment should be taken out.	
The reality is that significant cultural heritage survives past disturbance/clearing – duty of care guidelines do not recognise this.	

Should be more mandatory engagement/agreements with Traditional Owners, not just for EIS processes.	
What happens when CHMPs or agreements fall over – there is no requirement for DATSIP to be involved – DATSIP doesn't even know which Traditional Owner groups have agreements with who as it is not compulsory under the legislation to register the agreements except under an EIS process.	<ul style="list-style-type: none"> * Section 3, Proposal 5 provides an option for the mandatory reporting of compliance where land users would be required to document and register all agreements and consultation under the Cultural Heritage Acts. * Section 3, Proposal 6 provides the option for authorised officers to compel land user to provide evidence in conducting audits of mandatory reporting documents. * The employment of authorised officers, increased resourcing for their operations and oversight of CHMP approvals and mandatory reporting requirements are proposed functions for a newly established independent First Nations led decision-making body (Section 5 of the Options paper).
Who's monitoring the monitors? If an independent person/archaeologist carries out the monitoring/survey work, there is no requirement to provide Traditional Owners with copies of reports or to give them any information relating to sites or possible sites that may have been identified.	<ul style="list-style-type: none"> * The employment of authorised officers and increased resourcing for their operations could be a function of proposed establishment of a First Nations led decision-making body (Section 5 of the Options paper).
Where is the independent umpire –Traditional Owners have nowhere to go if negotiations break down.	<ul style="list-style-type: none"> * Section 5 Proposal provides an Option for an independent body proposing functions that include providing dispute resolution services and support to Traditional Owners.
Perception between good will and good faith is laughable - there is an imbalance of power between well-resourced proponents and poorly resourced Traditional Owner groups when negotiating agreements.	<ul style="list-style-type: none"> * The employment of authorised officers and increased resourcing for their operations could be a function of proposed establishment of a First Nations led decision-making body (Section 5 of the Options paper).
COMPLIANCE	
When prosecutions are successful the fines should go to the Traditional Owners.	<ul style="list-style-type: none"> * The objective of enforcing penalties under the Cultural Heritage Acts is to ensure the prevention of harm to cultural heritage. The Options paper explores options to better enforce penalties and monitor compliance.
There should be a greater level of mandatory enforcement requirements.	
Lack of access to areas is a key factor why prosecutions are not successful – property owners can destroy things without anybody knowing - need to provide mandatory access in the ACHA for Traditional Owners.	<ul style="list-style-type: none"> * Section 3, Proposal 6 provides options for greater capacity to monitor and enforce compliance including: <ul style="list-style-type: none"> ▪ New types of restorative justice orders that allow for rehabilitative and educational measures (e.g. educational orders, compulsory training). ▪ Expanding authorised officer roles to provide: entry to premises despite refusal of consent by land holders in circumstances where reasonable belief and immediate risk of harm to cultural heritage is occurring; investigating complaints of harm and providing information relevant to stop order requests; conducting audits of mandatory reporting documents; and issuing infringement notices. ▪ These greater powers for authorised officer would be aligned with other Acts such as the <i>Environmental Protection Act 1994</i> (e.g. power to compel employees and contractors to provide statements and verbal evidence). ▪ Authorised officers afforded the power to issue infringement notices (modelled on the Penalty

	<p>Infringement Notice System in Queensland) including notices issued for breach of current offences as well as introduced offences such as non-compliance with the proposed Cultural Heritage Assessment Framework (regardless of actual harm occurring).</p> <ul style="list-style-type: none"> ▪ The employment of authorised officers and increased resourcing for their operations could be a function of proposed establishment of a First Nations led decision-making body (Section 5 of the Options paper).
RECORDING CULTURAL HERITAGE	
<p>If a search is done and there are no previously recorded sites many proponents assume they are right to proceed – no contact made with TOs – this needs to change – need to look at mandatory contact requirements with TOs and not independent consultants</p>	<ul style="list-style-type: none"> * Section 3, Proposal 2 provides an option for integrating the mapping of cultural heritage into land planning to enable early identification of cultural heritage sites. Proposal 1 would see the increased mapping of sites in an early engagement process. * The management of cultural heritage register and database is a proposed function of a newly established First Nations led decision-making body (Section 5 of the Options paper).
<p>When the Act was being developed in 2003/4 one of the recommendations from Traditional Owners was that an independent body should manage the database/register – this was never considered.</p>	
<p>There should be funding for Traditional Owner groups to audit/investigate what's on the database for their country</p>	

Meeting notes: NQ Dry Topics TOMG Friday 25 February 2022.

Tony Cheng (TC)
Mel Cule (MC)
Emma Howel (EH)
Suzie Barton (SB)
Traditional Owner (TO)
Laurel James (notes)

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TC: Acknowledgement/ introductions of team / updates re the options paper out in public domain and the journey so far:

- CHA review commenced 2019.
- Act been in force since 2003
- needed a holistic review in line with gov agenda
- 2019 was initial consultations around the state.
- Following that release of options paper in 2020 based on 2019 consultations.
- Now the proposal in options seeking further input.
- Lots has changed however noted Juken gorge and other jurisdictions reviewing CH/ good driver to continue reforms.

TO Group

- What happened to first review of whole act ? back in 2017?
- Seems we doing review on review of review.
- “ Parks and wildlife do what they want with no consultation with TO’s Eg allow number of tourists/ access reivers etc but there is no consultation or negotiations with TO’s this results in desecrating CH sites.
- You (Govt depts) doing what we want to country without consulting TO/
- The Gov. Need to fix what rights we give to other proponents that we don’t give to the TO’s

MC responded

- spoke about getting rid of the DOC guidelines to replace with a more robust system that will require consultation with TO's etc to minimise harm etc (Proposal 1 in the options paper) get rid of DOC so there is more consultation with TO's
- MC spoke about various options in the paper again:

TO Group

- what are non Aboriginal parties saying ?

MC responded:

- no feedback as yet/ surmised however they probably won't like it?

TO Group

- indicating they are being denied access to CH sites.

TC Responded

- encouraged them to put their views into the review via survey or submissions.

TO Group

- saying that our Gov data base not accurate (cited an area called Greenvale) / sacred, ceremonial sites, rainforests he said that our site has two registered sites / but TO s located 400 sites/ our data base no credibility and no one wants to engage with it cause of relationship with aboriginal and QLD gov.
- Qld parks and wildlife don't do co management / TO don't look to gov. Gov failed them in many ways/ suggested gov need to get program we are doing something for TO's, not happy with GOV / nothing in the past has happened / no credibility/

MC Responded

- Acknowledged concerns
- Outlined what we are doing
- summaries of issues in the options paper we are trying to address.

TO group

- said we are going to have issues because line in sand was drawn (due to NT) but there are separate groups on both side of cultural heritage areas and cultural heritage on both sides
- TO said need review of shared country/ reporting requirements insufficient
- TO questioned is the review to achieve partnership or just review for sake of it ?
- Where is the indigenous participation??
- TO wants access to the data base and noted that a Common law holder cannot get access to the data base.

SB responded

- One of the proposal is a first nations body and have proposed that they manage that data base and liaise with TO's

TO group

- spoke about previous review response was given to Beattie government around proper management of CH and even in the NT they had a body.
- Said our dept and all other Gov Depts(eg wildlife etc-) giving permits away without any consultations with TO / then main roads etc, (offer some consult but often superficial consulting)
- All gov depts need to have real consultations
- gov has obligation to provide employment opportunities to these areas, and look to opportunities to engage with ATSI people.
- spoke about “ Turtle Rock” – spoke of graziers / landholders (table top mountain) there is a significant site, there before landowners had it / identified by (Dr John Campbell- University Rock overhang – excavated a burial site- mother and baby) that was destroyed and that needs to be returned to that side and so essentially want a way to deal with landholders in those circumstances.

TC responded

- identified that EH has put in a link to the options paper and again requested them to complete if possible and have their voice
- Enquired if there is anyway we can help? Mail out ?
- Really want you to put in your views

TO group

- asked: can we give them an understanding of issues the new leg will target?

MC responded

- to create a new framework to protect CH, involve mapping of high risk areas, and for prescribed areas consultation is required, stronger than is now , particularly for what is mapped (not relying on what we have not (working with TO to identify high risk areas) and that proponents cannot do anything in that area unless they speak to TO,
- Sort of followed other areas (Vic) there will be penalties if proponents don't follow new assessment framework , mapping and penalties if these rules not followed
- On top of that : other compliance issues, eg access to sites, mandatory reporting so proponents have to report on what process they followed, investigating complaints (expanding authorised offices) so more people to investigate . issues infringement notices, conduct audits to ensure proposants comply with obligations.
- There are a number of definitions and to summarise proposal if QLD mapped (by FN peoples) that you cant do anything without consultations, and then regardless of mapping can't do anything without consulting.

TO group

- don't think you will be able to map it like you think/ whole areas filled with CH sites.
- not sure mapping going to serve purpose we want cause everything is sacred to us/
- Not going to be simple like dots on a map/ sounds good in theory, but on the ground not that simple.
- indicated areas size of shopping centre (like garden city Mr Gravatt) with a million artifacts / cultural heritage everywhere.

TC responds

- Thanks participants
- Reminds re link and encourage to submit.

TO group

- Can we meet with a delegation from this committee?

MC responded

- possibly? indicated the contact from the CH unit of the department/ was advised by meeting coordinator

TO group coordinator Karen ?

- the lady in Townsville said that LP were doing the review so she could not say anything to them.

TO group

- said that she sent out the options papers/ and it was 36 pages, big document.
- But noted we did supply a summary link.
- Lots of volunteers so would be helpful if it was a word doc so they could copy and paste questions in their own response.
- around this table this group represents 1/8th of TO / lots of experience and would be great if we could take the time to meet with them, they would be helpful
- Pastoralist lease lands don't own it.

End of meeting/ last part of meeting suffered bad zoom reception.