



Survey

Finalising the review
of Queensland's
Cultural Heritage Acts

December 2021

Acknowledgement

We pay our respects to the Aboriginal peoples and Torres Strait Islander peoples of this land, their spirits and their legacy. The foundations laid by these ancestors — the First Australians — give strength, inspiration and courage to current and future generations towards creating a better Queensland.

We recognise it is our collective efforts and responsibility as individuals, communities and governments to ensure equality, recognition and advancement of Aboriginal and Torres Strait Islander Queenslanders across all aspects of society and everyday life.

We are committed to working with, representing, advocating for and promoting the needs of Aboriginal and Torres Strait Islander Queenslanders with unwavering determination, passion and persistence.

As we reflect on the past and give hope for the future, we walk together on our shared journey of reconciliation where all Queenslanders are equal and the diversity of Aboriginal and Torres Strait Islander cultures and communities across Queensland is fully recognised, respected and valued by all Queenslanders.

Review of Queensland's Cultural Heritage Acts - Survey

This survey is asking for your views on proposed changes to the Cultural Heritage Acts (Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural Heritage Act 2003). The proposals are focused on three key areas based on consultation feedback to date and consideration of national, state and territory developments.

We will use your feedback to finalise the review of the Cultural Heritage Acts to ensure these Acts continue to protect and conserve Queensland's Aboriginal and Torres Strait Islander cultural heritage, while facilitating business and development activity

The proposals are focused on the following three key areas:

1. Providing opportunities to improve cultural heritage protection
2. Reframing the definitions of 'Aboriginal party' and 'Torres Strait Islander party'
3. Promoting leadership by First Nations peoples

Once you have completed your survey, please mail to:

Cultural Heritage Review Team

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
1 William Street
Brisbane 4000 QLD

The closing date for feedback is 31 March 2022.

Survey Sections

About You	1
Opportunities to improve cultural heritage protection	2
Reframing the definition of Aboriginal party and Torres Strait Islander Party	8
Promoting leadership by First Nations peoples in cultural heritage management and decision making.	10

About You

This section helps us to understand who you are and the feedback you are providing. By knowing a little bit about you, we are better able to ensure a diverse range of interests re represented.

1. Are you of Aboriginal and/or Torres Strait Islander descent?

- Yes, Aboriginal (*please go to question 1.a*)
- Yes, Torres Strait Islander (*please go to question 1.a*)
- Yes, both Aboriginal and Torres Strait Islander (*please go to question 1.b*)
- No
- Prefer not to say

a. If yes, which of the following best describes you?

- Member of an Aboriginal registered native title body
 - Member of a registered Aboriginal native title claimant
 - Aboriginal Traditional Owner
 - Member of a Torres Strait Islander registered native title body
 - Member of a registered Torres Strait Islander native title claimant
 - Torres Strait Islander Traditional Owner
 - Cultural heritage body
 - Local council
 - None of the above
 - Other Aboriginal and Torres Strait Islander body/ organisation (*please specify*)
-

b. If no, which of the following best describes your association with the protection of cultural heritage?

- Developer
 - Land user
 - Cultural heritage specialist
 - Peak body representative
 - Legal representative
 - Other (*please specify*)
-

2. What age group are you in?

- 18 – 25 years
- 26 – 64 years
- 65 years and over

3. Do you speak a language other than English at home?

- No
- Yes - Please specify _____

4. Which best describes your community?

- Remote
- Discrete
- Regional
- Urban

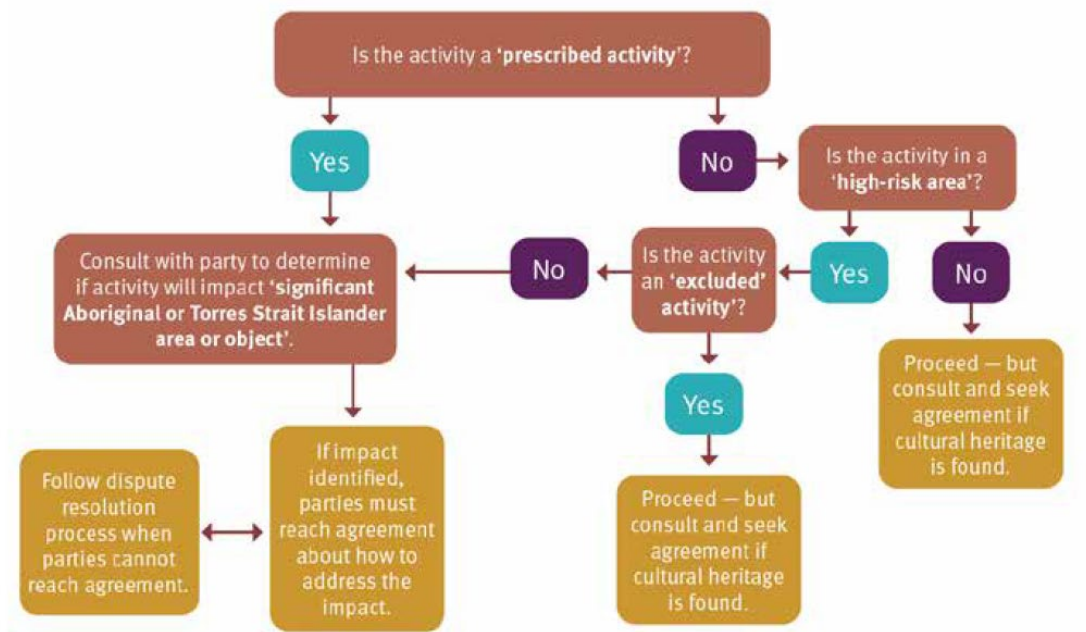
Opportunities to improve cultural heritage protection

This section seeks your feedback on opportunities to improve cultural heritage protection through increased consultation with Aboriginal and Torres Strait Islander people, including intangible cultural heritage, and strengthening compliance mechanisms. A suite of proposals (both legislative and non-legislative) has been developed to increase the role of Aboriginal and Torres Strait Islander people in managing and protecting their cultural heritage, and strengthen existing compliance mechanisms, as well as introduce new compliance mechanism.

5. Cultural Heritage Assessment Framework

The options paper proposes a Cultural Heritage Assessment Framework to improve cultural heritage protection which includes mapping of high-risk areas and mandatory consultation with Aboriginal or Torres Strait Islander people.

Proposed Cultural Heritage Assessment Framework



Do you support this proposal?

- Yes
- No
- Unsure

How could this be improved?

6. Proposed definition of a Prescribed Activity

Under the proposed regulatory framework, all prescribed activities would require consultation with the native title party or Aboriginal party or Torres Strait Islander party (similar to Category 5 in the Duty of Care Guidelines).

The proposed definition of a prescribed activity is: an activity that causes disturbance that would result in a lasting impact to ground that has not previously been disturbed or to the ground below the level of disturbance that currently exists.

Do you support this proposed definition of a Prescribed Activity?

- Yes
- No
- Unsure

a. If no, what do you think the definition of a Prescribed Activity should be?

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

- Yes
- No
- Unsure

Comment

8. How should Aboriginal and Torres Strait Islander parties be supported to manage increased consultation about cultural heritage protection?

9. Should the development of a new assessment framework be led by a First Nations advisory group (with other experts as required)?

- Yes
- No
- Unsure

Comment

10. Mapping System

It is proposed that the government would be responsible for organising and carrying out the mapping of Country in consultation with, and with consent of, Aboriginal parties and Torres Strait Islander parties.

This would mean that areas of high sensitivity would be identified on a public mapping system.

Do you agree that cultural heritage areas should be identified through a mapping system?

- Yes
- No
- Unsure

Comment

11. Cultural heritage mapping

It is proposed that cultural heritage mapping should be incorporated into planning processes for state and local governments so that risks to cultural heritage are identified and addressed in the early stages of project planning?

Do you support this proposal?

- Yes
- No
- Unsure

a. If no, what improvements if any, would you suggest?

12. High Risk areas

What areas and activities could be included in the proposed cultural heritage mapping of high-risk areas?

13. Excluded activities

It is proposed that there could be excluded activities in high-risk areas that do not require land users to consult with the relevant native title party or Aboriginal party or Torres Strait Islander party.

What could these excluded activities be?

14. Definition of significant area or object

It is proposed that as part of the consultation by a land user, the Aboriginal or Torres Strait Islander party is to determine if the activity will impact a significant Aboriginal or Torres Strait Islander area or object.

A significant Aboriginal or Torres Strait Islander area or object is currently defined in the Cultural Heritage Acts as:

A **significant Aboriginal area** is an area of particular significance to Aboriginal people because of either or both of the following—

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of any Aboriginal party for the area.

A **significant Aboriginal object** is an object of particular significance to Aboriginal people because of either or both of the following—

- (a) Aboriginal tradition;
- (b) the history, including contemporary history, of an Aboriginal party for an area.

A **significant Torres Strait Islander area** is an area of particular significance to Torres Strait Islanders because of either or both of the following—

- (a) Island custom;
- (b) the history, including contemporary history, of any Torres Strait Islander party for the area.

A **significant Torres Strait Islander object** is an object of particular significance to Torres Strait Islanders because of either or both of the following—

- (a) Island custom;
- (b) the history, including contemporary history, of a Torres Strait Islander party for an area.

Should this definition continue to be used when determining if the activity will impact significant Aboriginal or Torres Strait Islander areas or objects?

- Yes
- No
- Unsure

a. If no, how could this definition be improved?

15. Recognition of intangible cultural heritage

It is proposed that the Cultural Heritage Acts cover intangible cultural heritage. Amendments are proposed to:

- recognise that an area or object may be significant for both tangible and intangible reasons
- refer to intangible aspects of cultural heritage that Aboriginal or Torres Strait Islander peoples determine to be a significant part of their cultural heritage and identity such as: “practices, representations, expressions, beliefs, knowledge and skills”

Do you support this proposal?

- Yes
- No
- Unsure

a. If no, do you have any alternative suggestions or improvements to the definition?

16. Resolving Disputes

It is proposed that a First Nations body or an advisory group could assist with disputes arising under the Cultural Heritage Acts (including providing mediators when there is a disagreement).

Do you support this proposal?

- Yes
- No
- Unsure

Comment

17. Body to hear disputes

It is proposed that a body (such as the Land Court) could hear disputes about agreements with proponents and enforce them.

Do you support this proposal?

- Yes
- No
- Unsure

Comment

18. Documenting compliance

It is proposed that land users be required to document and register all agreements and consultations that must be undertaken under the Cultural Heritage Acts.

Do you support this proposal?

- Yes
- No
- Unsure

Comment

19. Infringement notices and penalties

Do you agree with introducing infringement notices and penalties to strengthen compliance?

- Yes
- No
- Unsure

Comment

20. Expanding the authorised officer role

Do you agree with expanding the authorised officer role to include such things as entry to premises and issuing of infringement notices?

- Yes
- No
- Unsure

Comment

Reframing the definition of Aboriginal party and Torres Strait Islander Party

This section seeks your feedback on reframing the definition of Aboriginal party and Torres Strait Islander Party in the Cultural Heritage Acts 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.

- *Option 1: Proposed changes in areas of Queensland where there is no registered native title holder or registered native title claimant.*
- *Option 2: Proposed changes in areas of Queensland where the Aboriginal Party or Torres Strait Islander party is a previously registered native title claimant subject to a negative determination.*

21. Option 1 – Changes in areas where there is no native title holder

Option 1 involves changes in areas of Queensland where there is no registered native title holder or registered native title claimant.

In these areas, it is proposed that:

- an Aboriginal person or a Torres Strait Islander person who claims to have a connection to the area under Aboriginal tradition or Ailan Kastom can request recognition as an Aboriginal party or a Torres Strait Islander party
- the Cultural Heritage Acts are changed so that a previously registered native title claimant is not a native title party of an area, and section 35(7) is removed.

There may be more than one Aboriginal or Torres Strait Islander party for these areas

Do you support changing the Cultural Heritage Acts so that a previously registered native title claimant is not a native title party for an area, and section 35(7) is removed?

- Yes
 No
 Unsure

Comment

22. Option 1 – Party status applications

Option 1 proposes that party status applications would be reviewed by a First Nations independent decision-making body.

Before applications could be made, this body — in partnership with Aboriginal and Torres Strait Islander peoples — would be responsible for establishing what type of entity can apply (e.g. individuals, or incorporated bodies) and what evidence is required in an application to demonstrate connection to an area under Aboriginal tradition or Ailan Kastom. In making a decision about applications, the body may consult with registered native title holders and registered native title claimants in the surrounding areas

The body may also consult with other culturally appropriate and necessary entities to assist them in their decision making (for example, other Traditional Owners, native title registered bodies, archaeologists, anthropologists, historians).

When the body makes a decision not to recognise party status, applicants could appeal.

Do you support this proposal?

- Yes
 No
 Unsure

Comment

23. Option 2

Option 2 involves changes in areas where the Aboriginal party or Torres Strait Islander party is a previously registered native title claimant subject to a negative determination (native title does not exist).

In these areas, it is proposed that:

- the Cultural Heritage Acts are changed so that a previously registered native title claimant subject to a negative determination (native title does not exist) is not a native title party.
- section 35(7) of the Cultural Heritage Acts applies instead.

Section 35(7) of the Cultural Heritage Acts section states that a person is an Aboriginal party or a Torres Strait Islander party for the area if:

- the person is an Aboriginal person or a Torres Strait Islander with particular knowledge about traditions, observances, customs or beliefs associated with the area; and
- the person:
 - has responsibility under Aboriginal tradition or Torres Strait Island custom for some or all of the area, or for significant Aboriginal or Torres Strait Islander 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 or Island custom for some or all of the area, or for significant Aboriginal or Torres Strait Islander objects located or originating in the area.

Under these existing provisions, a land user wishing to undertake an activity which requires a Cultural Heritage Management Plan would need to conduct a public notification process and invite any Aboriginal or Torres Strait Islander persons that respond to the notice to be an Aboriginal party or Torres Strait Islander party.

There can be more than one Aboriginal or Torres Strait Islander party for an area.

Do you support this Option 2?

- Yes
- No
- Unsure

Comment

24. Do you prefer option 1 or option 2?

- Option 1
- Option 2
- Unsure
- I don't support either option

Comment

Promoting leadership by First Nations peoples in cultural heritage management and decision making.

This section seeks your feedback on promoting leadership by First Nations peoples in cultural heritage management and decision making.

- *Proposal 1 is about establishing a First Nations-led entity with responsibilities for managing and protecting cultural heritage in Queensland. The entity could work with existing or future local Aboriginal and Torres Strait Islander groups who manage cultural heritage matters within their respective areas.*
- *Proposal 2 is about the First Nations independent decision-making entity, in partnership with Aboriginal and Torres Strait Islander peoples, exploring the most culturally appropriate approaches for recognising historical connection to an area for the purposes of cultural heritage management.*

25. Do you support the proposal to create a First Nations-led entity?

- Yes
- No
- Unsure

Comment

26. Alternative approach

An important purpose of establishing a new First Nations led Cultural Heritage entity is to increase self-determination for First Nations people in relation to cultural heritage management and decision-making responsibilities.

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?

- Yes
- No
- Unsure

a. If yes, what existing entity or body could this become a part of?

27. Responsibilities and functions of a First Nations-led entity

A First Nations-led entity would have facilitative, administrative and decision-making responsibilities.

A broad structure and possible functions of a First Nations-led entity has been outlined in this table.

Number of Entities	There could be one entity for Aboriginal cultural heritage, one entity for Torres Strait Islander cultural heritage, or one representing both (which can be flexibly and appropriately constituted depending on the type of cultural heritage). The entity would also need to be flexible to be appropriately constituted according to specific areas in Queensland.
Legal status of entity	Depending on the functions and powers of the entity, options for its legal status could include: <ul style="list-style-type: none"> • Statutory body (eg. council or board) • Advisory panel or advisory committee (created in legislation) • Non-statutory advisory body (created without legislation)
Funding	The Queensland Government would provide funding for the entity.
Leadership	The entity would be led by First Nations people with expertise, knowledge, connection to country, and skills relevant to protecting and managing cultural heritage.
Functions of the entity	The overall purpose of the entity could be to provide dispute resolution support, assistance, advice and/or decision-making for managing and protecting cultural heritage in Queensland. Specific functions could include: <ul style="list-style-type: none"> • Administer any proposed new legal frameworks of Cultural Heritage Acts • Assist local Aboriginal and Torres Strait Islander groups with decision making on matters such as applications for party status for an area where this is required (noting the entity would not override the status of native title holders and claimants), and determining whether to approve Cultural Heritage Management Plans and Cultural Heritage Studies • Manage and maintain the cultural heritage register and database • Manage compliance (employ compliance officers and conduct audits for investigations) • Assist with dispute resolution between proponents and Aboriginal and Torres Strait Islander people through mediations and conciliation • Provide recommendations and advice to the Minister and Land Court with input from local Aboriginal and Torres Strait Islander groups • Develop policy including co-designing policies and guidelines with local Aboriginal and Torres Strait Islander groups to support administration of the Cultural Heritage Acts; make recommendations for policy review (e.g., compliance and 'party' definitions) • Promote education and awareness – including promoting education and awareness about First Nations peoples' enduring cultural heritage and appreciation of this heritage; and advising proponents about consultation
Local Aboriginal and Torres Strait Islander groups	Local Aboriginal and Torres Strait Islander panels or groups could be established by the entity to manage cultural heritage matters. The entity could determine membership and develop roles and responsibilities consistent with the principles of traditional ownership and rights in land.

What do you think the responsibilities and functions of a First Nations-led entity should be?

28. Should a First Nations-led entity have decision-making responsibility for approving 'party status' for an area and approving Cultural Heritage Management Plans?

- Yes
- No
- Unsure

Comment

29. Is it culturally appropriate for a First Nations-led entity to have a role in cultural heritage management and protection?

- Yes
- No
- Unsure

Comment

30. Should a First Nations-led entity have a dispute resolution function?

- Yes
- No
- Unsure

Comment

31. Should a First Nations-led entity be independent of government?
Why or why not?

- Yes
- No
- Unsure

Comment

32. Do you think there should be two separate entities, one for Aboriginal cultural heritage and another for Torres Strait Islander cultural heritage?

- One entity for both Aboriginal and Torres Strait Islander cultural heritage
- Separate entities (one for Aboriginal cultural heritage and one for Torres Strait Islander cultural heritage)
- Unsure

Comment

33. Do you support a First Nations-led entity, in partnership with Aboriginal and Torres Strait Islander people, to explore the most culturally appropriate approaches for recognising historical connection to an area for the purposes of cultural heritage management?

- Yes
- No
- Unsure

Comment

Thank you

Thank you for taking your time to complete the survey on cultural heritage in Queensland. Your comments and ideas are very valuable and will help us to finalise the Cultural Heritage Acts Review. If you have any questions you can contact us on CHA_Review@dssdsatsip.qld.gov.au or [1800 469 166](tel:1800469166).