

Indigenous cultural heritage acts review

Effective legislation is central to ensuring that Aboriginal and Torres Strait Islander culture, traditions and customs are celebrated and protected.

A review paper on the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* was released in September 2008 which sought the community's views on the effectiveness of the legislation and how it could be improved.

As a result of this consultation, the Department of Environment and Resource Management (DERM) has released the *Indigenous Cultural Heritage Acts Review—key issues and draft recommendations* paper for public consultation.

Interested stakeholders are invited to comment on the paper, which is available on the DERM website <www.derm.qld.gov.au>.

The closing date for submissions is 19 February 2010.

Submit comments to:

Indigenous Cultural Heritage Acts Review
Department of Environment and Resource Management
GPO Box 2454, Brisbane QLD 4001

Fax: (07) 3330 6969

Email: ichar@derm.qld.gov.au

Review findings

In summary, the review found:

- generally, the Acts are working well
- clearer standards and processes are required to simplify compliance with the duty of care and increase its effectiveness
- awareness of the Acts and capacity to negotiate effective agreements about the management of cultural heritage is often limited.

Draft recommendations

The draft recommendations address issues raised in submissions to the review, and aim to:

- increase certainty for proponents and Aboriginal or Torres Strait Islander parties, in relation to the processes and timeframes for the management of cultural heritage
- improve the efficiency and fairness of the Acts
- provide more detail about how to comply with duty of care

- ensure the State has the necessary information to assess the effectiveness of the Acts, and support investigation and enforcement under the Acts.

The following overview of the draft recommendations has been organised under the parts of the Acts to which they most directly relate. The *Indigenous Cultural Heritage Acts Review—key issues and draft recommendations* paper contains the draft recommendations in-full.

Preliminary

- Implement a broad awareness and capacity-raising strategy enabling better outcomes under the Acts.
- Undertake an analysis of the interaction of the Acts and the *Queensland Heritage Act 1992*.

Protection of Aboriginal and Torres Strait Islander cultural heritage

- Require cultural heritage agreements and management plans be made with all or each Aboriginal or Torres Strait Islander party.
- Ensure only agreements with cultural heritage as a subject can be used to comply with the cultural heritage duty of care.
- Establish a code outlining when a proponent must seek to make a cultural heritage agreement with Aboriginal or Torres Strait Islander parties before proceeding with an activity.
- Develop a process to protect cultural heritage and allow projects to proceed (in limited circumstances) where cultural heritage agreements cannot be made with all or each Aboriginal or Torres Strait Islander party.
- Develop minimum standards for cultural heritage agreements, studies and plans, which must be demonstrated—including providing information about cultural heritage to DERM.
- Examine, in collaboration with other Queensland Government agencies, the possibility of cultural heritage duty of care being incorporated into the Integrated Development Assessment System.

Native title parties, Aboriginal and Torres Strait Islander parties and cultural heritage bodies

- Clarify the meaning of a 'failed' native title claim and limit the circumstances and time period such a claim is afforded exclusive procedural rights under the Acts.
- Require Aboriginal or Torres Strait Islander parties to be at least 18 years old.

- Allow for the option of a standard fee for services provided by cultural heritage bodies.
- Establish a link-up and mentoring program to build the capacity of cultural heritage bodies.
- Investigate opportunities for sharing administrative capacity between cultural heritage bodies and other organisations.

Collection and management of Aboriginal and Torres Strait Islander cultural heritage information

- Record cultural heritage information provided to DERM in cultural heritage agreements, studies and management plans on the cultural heritage databases and registers (as applicable).
- Allow public access to high-level cultural heritage information on the databases, with the exception of information identified as secret and sacred by an Aboriginal or Torres Strait Islander party.
- Investigate a cost-recovery charge for searches of the databases and registers.
- Include cultural heritage information from other sources on the databases by collaborating with government and external organisations.
- Implement a standard of 20 business days for returning database and register search requests.
- Establish a policy for including information on the databases.

Cultural heritage studies

- Make the Land Court's decision on cultural heritage studies final.
- Establish a process recognising previous cultural heritage studies when proponents seek to establish a cultural heritage agreement or management plan.
- Require land owners to allow reasonable access to their properties for the purpose of a cultural heritage study.
- Establish cultural heritage study guidelines.
- Establish a policy for recording a cultural heritage study.

Cultural heritage management plans

- Make the Land Court's decision on cultural heritage management plans final.
- Extend the cultural heritage management plan consultation period from 84 days to 84 *business* days.
- Allow authorised nominee/s for an endorsed party to sign a cultural heritage management plan.
- Place responsibility for the distribution of documents to relevant parties (following referral to the Land Court) with the sponsor of a cultural heritage management plan.

Investigation and enforcement

- Publish information about investigation and enforcement procedures, including successful prosecutions, on DERM's website.
- Investigate options for enhancing DERM's investigation and compliance effort.

Miscellaneous

- Require the Acts to be reviewed for effectiveness and efficiency in seven years.
- Consult with the Department of Justice and the Attorney-General with a view to removing the right of an accused person to elect to have a matter heard on indictment.

Further information

For further information or to make a submission, contact DERM:

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