

Amendments to the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003*

The Nuga Nuga decision

The Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) has previously released two fact sheets about the implications of the Supreme Court decision in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321 (Nuga Nuga decision).

This decision meant that the 'last claim standing' provision did not apply in the way decision-makers under the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* (Cultural Heritage Acts) understood it to apply.

Some decisions made by DATSIP were also rendered invalid as a result of the Nuga Nuga decision.

Amendments to Cultural Heritage Acts commenced 9 November 2018

DATSIP has responded to the uncertainty arising from the Nuga Nuga decision by amending the Cultural Heritage Acts and the amendments commenced on 9 November 2018.

The amendments to the Cultural Heritage Acts have reinstated the last claim standing provision. The effect of the amendments are that where there is no other registered native title claimant for an area and there is not, and never has been a registered native title holder, the native title party for cultural heritage purposes is the last registered native title claimant recorded on the Register of Native Title Claims.

The amendments validate previous actions and decisions made by the relevant decision-makers since the legislation came into effect in 2004 that were based on the interpretation of the 'last claim standing' provision prior to the Nuga Nuga decision. Transitional provisions ensure that stakeholders who commenced a process prior to the commencement of these amendments are not disadvantaged.

All previously recognised native title parties whose status as the last claim standing was affected by the Nuga Nuga decision have been reinstated by the amendments.

All cultural heritage management plans developed with native title parties who were the last claim standing based on the previous understanding of that provision and approved by the chief executive responsible for administering the Cultural Heritage Acts have been validated.

Broader Review of the Cultural Heritage Acts

DATSIP will be conducting a review of the Cultural Heritage Acts in 2019. The review will provide a valuable opportunity to examine whether the legislation is still operating as intended.