

# Cultural Heritage Duty of Care Guidelines Review

The Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) is reviewing the Cultural Heritage Duty of Care Guidelines (the Guidelines).

The *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* (the legislation) affords blanket protection of Cultural Heritage, and establish a duty of care that requires all persons to take reasonable and practicable steps to prevent harm to Cultural Heritage.

The legislation sets out how the duty of care can be met by reference to the nature of the proposed activity, the likelihood of damage to Cultural Heritage, and the nature and extent of past land use.

This is articulated in section 23(2) of the legislation in defining what a court may consider in deciding whether a person has complied with the Cultural Heritage Duty of Care.

Section 28 of the legislation enables the Minister to notify guidelines to identify reasonable and practicable measures to avoid or minimise harm to Aboriginal or Torres Strait Islander Cultural Heritage. The key objective of the Guidelines is to assist people meet their duty of care.

While there is no offence in not complying with the Guidelines, section 23(3)(a)(iv) of the legislation states a person who carries out an activity is taken to have complied with the Cultural Heritage Duty of Care, if the person is acting in compliance with the Guidelines.

The Guidelines were gazetted on 16 April 2004.

The Guidelines were instrumental in ensuring the successful passage of the legislation through Parliament by allaying land users' concerns over how the Cultural Heritage Duty of Care provisions would operate in practice.

The compliance framework adopted in the legislation requires land users to assess their activities based on the nature of the activity and the likelihood of harming Cultural Heritage. The Guidelines define particular categories of activity and prescribe an appropriate (i.e. reasonable and practicable) approach to managing impacts on Cultural Heritage.

*Given the length of time since the original gazettal of the Guidelines, it is now considered appropriate to review the effectiveness of the Guidelines.*

In its role as the administrator of the legislation, the Cultural Heritage Unit, DATSIP, has heard the views of various proponents, Traditional Owners and their respective technical advisors, that the Guidelines and the current categorisation of activities fail to provide clarity and certainty of how best to proceed with an activity.

It has been suggested that the Guidelines in their current form fail to capture the residual Cultural Heritage values of an area, particularly those values existing within Developed Areas (as defined by the Guidelines).

Similarly, the failure to highlight the heightened risk of harm to Cultural Heritage in circumstances when an activity is inconsistent with current or previous land use, is seen as a major oversight. Therefore, a greater synergy between the potential Cultural Heritage values of an area and the nature of the proposed activity is needed to achieve the purpose of the legislation.

## Terms of Reference

The department is now seeking submissions from interested parties regarding the performance and operation of the Guidelines with specific focus on the following questions:

**How can the Guidelines be improved to best achieve the purpose of the legislation?**

**How can the current categories of activities in the Guidelines be amended to better reflect the need to manage residual Cultural Heritage values in developed or previously disturbed areas?**

**How can the Guidelines enable greater synergy between the Cultural Heritage values of an area and the nature of the proposed activity?**

**Are there any other elements you think should be included in a revised version of the Guidelines?**

## How will submissions be used?

Once the submission period has closed, a draft set of revised guidelines will be developed for consultation and discussion with key stakeholder groups during the latter half of 2016.

## Making a submission

All submissions made to the review must include the name and address of the person making the submission.

Submissions will be treated confidentially.

Submissions must be received by **16 September 2016**.

Submissions may be made by email or by post to the following addresses:

Email: [cultural.heritage@datsip.qld.gov.au](mailto:cultural.heritage@datsip.qld.gov.au)

Post: Cultural Heritage Duty of Care Guidelines Review

Cultural Heritage Unit  
Department of Aboriginal and Torres Strait Islander Partnerships  
PO Box 15397  
CITY EAST QLD 4002

For further information or to discuss the submission process, contact the Cultural Heritage Unit, DATSIP

Phone: 1300 378 401

Website: <https://www.datsip.qld.gov.au/people-communities/aboriginal-and-torres-strait-islander-cultural-heritage>