

# The cultural heritage duty of care

The *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* (the Acts) require anyone who carries out a land-use activity to exercise a duty of care.

Land users must take all reasonable and practicable measures to ensure their activity does not harm Aboriginal or Torres Strait Islander cultural heritage.

The duty of care applies to any activity where Aboriginal or Torres Strait Islander cultural heritage is located. This includes cultural heritage located on freehold land and regardless of whether or not it has been identified or recorded in a database.

Consultation with the Aboriginal or Torres Strait Islander party for an area may be necessary if there is a high risk that the activity may harm Aboriginal or Torres Strait Islander cultural heritage.

The cultural heritage duty of care can be met by acting:

- in compliance with gazetted cultural heritage duty of care guidelines [duty-of-care-guidelines]
- under an approved Cultural Heritage Management Plan (CHMP) developed under Part 7 of the Acts
- under a native title agreement or another agreement with an Aboriginal or Torres Strait Islander party that addresses cultural heritage
- in compliance with native title protection conditions (for low-impact mineral exploration)—but only if the conditions address cultural heritage.

An activity is taken to have complied with the cultural heritage duty of care if the activity is necessary because of an emergency such as a natural disaster.

Fines of up to \$117 800 for an individual and \$1 178 000 for a corporation apply for causing unlawful harm to Aboriginal and Torres Strait

Islander cultural heritage or for breaching the duty of care.

## Duty of care guidelines

Guidelines have been developed to assist land users in assessing reasonable and practicable measures for meeting the cultural heritage duty of care.

Land users should consult the duty of care guidelines before undertaking a land-use activity.

The guidelines recognise that:

- some activities are unlikely to harm Aboriginal or Torres Strait Islander cultural heritage.
- the nature and extent of past land uses in an area may mean that any further activity in the area is unlikely to harm Aboriginal or Torres Strait Islander cultural heritage.

However, land users should exercise greater caution before proceeding with an activity in circumstances where the nature and extent of the past land use of an area is not inconsistent with the continued presence of Aboriginal or Torres Strait Islander cultural heritage.

The cultural heritage duty of care guidelines can be viewed at [www.datsip.qld.gov.au/ch](http://www.datsip.qld.gov.au/ch)

## Further information

For further information on the cultural heritage duty of care, contact the Cultural Heritage Unit on telephone 1300 378 401 or email [cultural.heritage@datsip.qld.gov.au](mailto:cultural.heritage@datsip.qld.gov.au)

Visit the DATSIP website [www.datsip.qld.gov.au/ch](http://www.datsip.qld.gov.au/ch)