Cultural Heritage Duty of Care Guidelines Review

Submission analysis

Revised

28 February 2017

Department of Aboriginal and Torres Strait Islander Partnerships

Queensland Government

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Comments relating to the review of the Cultural Heritage Duty of Care Guidelines

Submissions

Written submissions relating to the review of the Cultural Heritage Duty of Care Guidelines (the Guidelines Review) were received during the six week submission period.

At this stage, the Department has not formed a view on any of the recommendations and proposals tabled in this document. The Department is of the view that the distribution of this information will promote a greater understanding of the factors affecting the effective and efficient management of cultural heritage through the current application of the Guidelines.

The Department will conduct an analysis of the submissions in the New Year and will release an issues paper in late February 2017 to frame the next phase of consultation.

The Department thanks the stakeholders who have provided written submissions to the Guidelines Review. The depth, breadth and quality of submissions gives an indication of the importance of this process and the commitment of those who collectively seek to manage the impacts of various activities on Aboriginal and Torres Strait Islander cultural heritage.

Submissions were received from:

- Agforce Queensland
- PhD Candidate (Archaeology), College of Arts, Education and Social Science, James Cook University
- Ashurst
- Aurizon
- Australia ICOMOS
- Australian Archaeological Association (Queensland members)
- Australian Heritage Specialist on behalf of the Jinibara People
- Traditional Custodian, Sunshine Coast
- Butchulla Men’s Business Aboriginal Association Incorporated
- Cape York Land Council Aboriginal Corporation
- Central Queensland Cultural Heritage Management
- Chuulangun Aboriginal Corporation
- Commonwealth Department of Defence

- Department of Agriculture and Fisheries
- Department of Infrastructure, Local Government and Planning
- Department of National Parks, Sport and Racing
- Department of Transport and Main Roads
- Independent Consultant
- Dugalunji Aboriginal Corporation
- Ergon Energy
- Everick Heritage Consultants Pty Ltd
- Student, University of Queensland
- Gidarjil Development Corporation Limited
- Girringun Aboriginal Corporation
- Jabree Ltd
- Traditional Owner, Maiawali People
- Just Us Lawyers
- Independent Consultant
- Traditional Owner, Wakka Wakka People
- Turnstone Archaeology
- Local Government Association of Queensland (LGAQ)
- MacDonells Law
- Student, School of Social Sciences, University of Queensland
- p&e law
- McCullough Robertson Lawyers
- Independent Lawyer and Consultant
- NBN Co
- Niche Environment and Heritage
- School of Humanities, Languages and Social Science, Griffith University
- Humanities and Languages, Place, Evolution and Rock Art Heritage Unit, Griffith University
- Noosa Council
- North Queensland Land Council Native Title Representative Body Aboriginal Corporation
- Olkola Aboriginal Corporation
- Powerlink

- Quandamooka Yoolooburrabee Aboriginal Corporation
- Queensland Rail
- Queensland Resource Council
- Queensland South Native Title Services
- Rio Tinto
- Telstra
- Toowoomba Regional Council
- Torres Strait Regional Authority
- University of Queensland, School of Social Sciences
- Wet Tropics Authority
- Yugara-Yugarapul Aboriginal Corporation

Methodology

The material has been sorted alphabetically by theme and stakeholder type. The entries included in the tables are direct or abridged quotations from the submissions – allowing for minor edits to abbreviations to enhance readability. It is for this reason that capitalisation of words and some terminology may be inconsistent.

Relevant comments have been collated into five major themes:

- **Structure of the Current Guidelines**
- **Cultural Heritage Assessment**
- **Compliance and Regulation**
- **Resourcing**
- **General Comments**

A separate list of matters that are considered outside the scope of the Terms of Reference established for the Guidelines Review is also included.

Part 1 - Comments relating to the current structure of the Guidelines

Categorisation of activities

Proposals-Recommendations-Comments	Stakeholder description
Recommended that categories 3 and 4 may be amalgamated to improve the clarity of the Guidelines	Academia
Category 1 Activities - relevant Aboriginal parties should be notified of the activities regardless	Academia
Categories of heritage: - [4.7, 4.8, 4.9, 4.10, 5.8, 5.9, 5.10, 5.11, 5.17, 5.18, 5.19 and 5.20] - should be moved to the introduction of Part 2 of the Guidelines and should be the same for each of the categories. There should be a solution for not reaching an agreement. If an agreement is not reached, the party should not be able to continue activity without consulting either Aboriginal Party of authoritative person (anthropologist/archaeologist).	Academia
Category 3: Developed Areas and Category 4: Areas previously subject to Significant Ground Disturbance are very similar. Recommendation: they become one category.	Academia
All Category definitions are revised to ensure that each category requires an assessment of the likely impact of development activity on cultural heritage, not impact on land surface. Such an assessment must be undertaken by a person trained, skilled and experienced in archaeological site identification, Aboriginal heritage place identification, and cultural heritage management generally, in consultation with Traditional Owners and Aboriginal Parties.	Consultant
Category 1 developments be redefined to recognise the nature of their effects on cultural heritage, rather than effects on ground surface.	Consultant
That even for current Category 1 developments, there be provision for a Cultural Heritage Management Plan (CHMP) to be prepared to take account of potential cultural heritage impacts on places of social or spiritual significance to Traditional Owners should initial assessment of the effects of development indicate that such a study is required.	Consultant
Category 2 developments be redefined to recognise the nature of their effects on cultural heritage, rather than effects on ground surface.	Consultant
That even for Category 2 developments, there be a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners or Aboriginal Parties, to assess the potential for even a minor change in land use to impact on tangible heritage.	Consultant
That Categories 3 and 4 developments are redefined to recognise the nature of their effects on cultural heritage, rather than effects on ground surface.	Consultant
That definitions for Categories 3 and 4 are redefined to ensure a clear distinction between each category, or alternatively, that the two categories be amalgamated, as both relate to development on disturbed ground.	Consultant
That for developments that are classed under current Categories 3 and 4, there is a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners or Aboriginal Parties, to assess the potential for development to impact on buried cultural heritage.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
That for developments that are classed under current Categories 3 and 4, there is a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners and Aboriginal Parties, to assess the potential for development to impact on all aspects of cultural heritage, including impacts on intangible heritage and places of social and/or spiritual significance to Traditional Owners.	Consultant
That Category 5 developments are redefined to recognise the nature of their effects on cultural heritage, rather than effects on ground surface, and that the definition developed is clearly articulated in its own right.	Consultant
That for developments that are classed under the current Category 5, there is a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners and Aboriginal Parties, to assess the potential for development to impact on all aspects of cultural heritage.	Consultant
That for developments that are classed under the current Category 5, there is a requirement for an assessment to be undertaken by trained and accredited heritage professionals to assess the potential for development to impact on intangible heritage and places of social and/or spiritual significance to Traditional Owners.	Consultant
That the Guidelines develop new categories for large-scale developments, with such large-scale developments required to be assessed holistically, and development impacts on tangible and intangible heritage (both surface places and buried heritage) being the subject of assessment by trained and accredited heritage professionals, in consultation with Traditional Owners and Aboriginal Parties, to assess the potential for development to impact on tangible and intangible heritage, cultural landscapes, and places of social and/or spiritual significance to Traditional Owners.	Consultant
The categories used in the Guidelines to identify the potential impact of development on Aboriginal cultural heritage are poorly defined and confusing.	Consultant
The difference between Categories 3 and 4 is particularly difficult to disentangle, as each category recognises that previous ground surface disturbance has occurred	Consultant
Category 5 is arguably the most significant of all the categories, as it is the only category that actively encourages a cultural heritage assessment (Section 5.14 of the Guidelines), such as that provided in Part 7 of the Act. Yet this category is very poorly defined as “any activity … that does not fall within category 1, 2, 3 or 4”. This needs urgent rectification, particularly as it is vital that any development in this category clearly identifies the potential impact of a development on cultural heritage (both tangible and intangible; both on the ground surface and buried). This should be undertaken by a person skilled and experienced in cultural heritage site and place identification, and trained in cultural heritage management practices.	Consultant
The definition for Category 4 Significant Ground Disturbance is too broad and ill defined. It requires a two dimensional analysis to what is a complex three dimensional problem (i.e. surface as well as buried sites).	Consultant
Category 4 should be significantly revised, or removed, or failing that, as a minimum should include a requirement for an Aboriginal Party and qualified archaeological consultant to undertake the assessment. The application of Category 4 assessments should be subject to independent review.	Consultant
The existence of Category 4 makes it extremely difficult to encourage land users to move beyond strict legislative compliance.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines develop new categories for large-scale developments, wherein these developments are required to be assessed holistically.	Consultant
Many of the categories established in Sections 4 and 5 of 'The Guidelines', as the basis for determining impacts of proposed developments, are poorly defined. In particular, all the category definitions are based on the potential impact a development may have on land surface rather than the likely impact on cultural heritage. To meet the aims (and principles) of 'The Act', the definitions of proposed impacts needs to consider potential effects on cultural heritage rather than land surfaces. Additionally, there are no Guidelines provided for proponents, untrained and unskilled in cultural heritage management, to assess whether a proposed land use might adversely affect cultural heritage (e.g. scarred trees may be affected differently by the cultivation of different crops). In general, there remains inadequate guidance on when and how cultural heritage assessments are required.	Consultant
Also of concern is the focus on past impact (Category 3 and Category 4 developments) and the recognition of the potential for cultural heritage to survive different levels of past impact.	Consultant
The duty of care categories conflate the issues of previous impacts (previous disturbance) and activity (proposed disturbance) in an attempt to capture a wide range of activity scenarios. This has resulted in a certain amount of uncertainty in the correct application of categories to projects and project areas.	Consultant
A short, workable document might be possible, using the following approach: Category 1: No Surface Disturbance As per current Duty of Care Guidelines Category 2: No Additional Disturbance - As per current Duty of Care Guidelines and definitions, but should not be limited to just the ground surface. - Check Register and Database. If something on Register or Database, then cannot be Category 2 (must be treated under Category 4). - Must develop an agreement or CHMP if cultural heritage is found. Category 3: Where Additional Disturbance is required, and Ground Disturbance has already occurred. - Ground Disturbance needs a new definition that includes: - Intended disturbance is no more than what has already occurred in the area, e.g., disturbance may be made differently to previous disturbance but the depth of both past and planned disturbance should be the same. An example would be a field that has previously been ploughed and cropped, and now a new road is planned. Works for the construction of the road should not enter into the soil layer lower than what has already been disturbed by ploughing and cropping. - Before any actions are taken, the person proposing the activity must search the Database and Register, and must write to the Aboriginal Party requesting them to inform them by a certain date of any known significance (tangible or intangible). - If something is on the Register or Database, or the Aboriginal Party responds with information that Aboriginal cultural heritage is present, then the project cannot be given compliance through Category 3 (must be treated as Category 4). Category 4: An agreement or Cultural Heritage Management Plan (CHMP) with the Aboriginal Party is required before the activity occurs.	Consultant
There are issues with Category 2 and 3. It does not give protection for significant sites from current land use. For example, [a] bora ground is being deteriorated by cattle camping on the ring. Even though a company offered to pay to have the rings fenced, the landowner declined. Cattle also cause major damage to rockshelters and art sites. Cultivation may be impacting on a known artefact concentration. Existing tracks on foreshores and in parks may also fail to protect known cultural heritage values.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Category 4 is one used frequently by developers to justify a project without the need for further investigation. Yet as recent experience has shown, sub surface investigations (test pitting – which we believe is becoming mandatory in southern states in certain instances) has produced dramatic results, greatly enhancing our knowledge of past landscapes. For example, only one surface site was located in an assessment (2016/17)…located in paddocks that had been ploughed since the 1850s. Yet more than 2000 stone artefacts were located in three test pits in locations identified using a predictive landscape model. This produced previously unrecorded tool types, pristine artefacts and identified contact period artefacts including lead musket balls. Another test pit recovered a date of nearly 7000 year BP making it the oldest open air site in southeast Queensland.	Consultant
Generally speaking, I like the current Category structure as it provides guidance on a broad range of activities and provides some assurance on how to best proceed for each type of activity – I recommend maintaining the Category structure but refine certain sections of it.	Government agency
The current Guidelines categories do not adequately deal with broad scale, low impact / intensity primary industry related activities such as mustering stock or selective thinning of native forests, etc.	Government agency
Greater clarity around the categories and how they apply to low impact / intensity primary industry related activities is required as any full and on-site assessment of likely cultural heritage is likely to be cost prohibitive thus making the primary production uneconomic.	Government agency
The Duty of Care categories need to be simplified to both protect cultural heritage and to make their use more workable for a range of projects. The categories are largely focused on managing physical heritage. The Duty of Care categories do not address the management of residual heritage, such as in developed areas where heritage values may remain.	Government agency
The differentiation of the Duty of Care categories is problematic. The categories are confusing in their overall composition and in particular in their differentiation.	Government agency
Category 1 should be removed	Government agency
The categories may be improved by subsuming Category 2 and Category 3 into one category, focusing only on the relationships between past and planned activities.	Government agency
Categories - it could be argued that either the existing categories 2 and 3, or categories 2, 3 and 4 could be collapsed into the one category by the use of the subcategories - as long as there was no change to the current substance within the Guidelines	Government agency
Staff noted the current definitions of the five categories are difficult to interpret, particularly for activities that fall within a Category 3 (developed areas) and Category 4 (areas previously subject to significant ground disturbance). It was suggested the number of categories be simplified and reduced in number (e.g. 1. No disturbance, 2. Previous disturbance and 3. New disturbance) however, the ‘nature of the activity’ to cause ground disturbance should not be the only factor to consider when determining ‘likelihood of harm’.	Government agency
Staff noted that the use of categories to assess the ‘likelihood of harm’ is problematic because it is not possible to define categories for all scenarios. Applying the current Duty of Care Guidelines results in a significant number of subjective ‘grey area’ assessments. Respondents suggested, a better approach may be to direct land managers to undertake an assessment of the ‘likelihood of risk’ using a risk assessment matrix (similar to the ‘likelihood’ and ‘consequence’ risk assessment used for workplace health and safety).	Government agency

Proposals-Recommendations-Comments	Stakeholder description
While ground disturbance is an important consideration, it does not always give an accurate indication of the 'likelihood of harm'...When applying the current Guidelines, installing a new sign falls out as a 'high risk' Category 5 because it involves new ground disturbance. In reality, this activity is unlikely to cause harm to cultural heritage due to the scale of impact and that the process (use of hand tools) can facilitate an immediate Find-Stop-Manage-Notify process should any cultural heritage be revealed. Alternatively, a large scale project requiring the use of heavy machinery in a developed area, that currently falls out as an 'unlikely to cause harm' Category 3, may actually pose a greater risk of harm to significant residual cultural heritage.	Government agency
Category 4 and Category 5 could also be incorporated into a category alongside Category 2 and 3. There would be a move away from determining ground disturbance and would instead focus only on comparisons of proposed and planned activities, as set out in the above paragraph.	Government agency
Can be improved clarifying the specific details and meanings of the Duty of Care categories	Government agency
Category 2 and 3 are confusing in their definition and similarity. Category 2 (activities causing no additional surface disturbance) focuses on proposed activities. Category 3 (developed areas) concentrates on ground disturbance. Category 3 also encompasses activities that cause no additional surface disturbance (s 5.3) which is similar to the definition of Category 2.	Government agency
Retention of the Duty of Care categories (or a similar approach) as a way to assess the potential for the project to harm Aboriginal cultural heritage and guide users to undertake further assessment/consultation only where appropriate is supported. Officers would not support changes to the Duty of Care Guidelines that require consultation on all projects irrespective of the type of project or level of existing site disturbance.	Government agency
The current five categories need substantial revision. For those areas where there has been previous surface disturbance or significant ground disturbance and proposed activities do not intend any additional disturbance, there should still be some consideration as to whether a change in the use of the land might impact upon Aboriginal cultural heritage.	Lawyer
Category 2 - definition of 'no additional surface disturbance' is vague and open to interpretation. The real issue is whether ground that may have already once been disturbed is going to be further disturbed by the proposed activity. Traditional owner groups have identified significant cultural heritage finds below the surface on sites that were previously subject to surface disturbance or significant ground disturbance.	Lawyer
Category 3 and the relevant definitions are a little vague in that they can be interpreted to suggest an activity can be undertaken in a developed area - should be clarified to include only those activities that are consistent with the existing use of the developed area	Lawyer
Category 4 should be substantially revised to: - Acknowledge that despite an area being subject to significant ground disturbance, an area may contain residual sub-surface or intangible Aboriginal cultural heritage - A party must notify the Aboriginal Party for an area and seek their advice and agreement as to how best to manage, minimise or avoid harm to Aboriginal cultural heritage. - Record the terms of any agreement with an Aboriginal Party.	Lawyer
All category 5 activities should be subject to the highest level of protection under the Act	Lawyer
Categorisation itself, in our submission, is problematic and often unhelpful. The categories themselves are not mutually exclusive and rely upon subjective valuation concepts.	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
The activity categories within the Guidelines do not in our view provide for Aboriginal Parties' input to the assessment of residual values, particularly for categories 2 & 3.	Lawyer
The more "user friendly" the Guidelines are, the more likely they will be utilised to achieve the purpose of the Act. In our view that could be achieved by reducing the number of categories in the Guidelines, to, as follows: Category 1 - activities that can proceed on the basis that it is unlikely that the activity will harm Aboriginal cultural heritage. A category that makes clear what activities can lawfully proceed, reduces the risk of dispute between the proponent and the Aboriginal Party. Category 2 - activities over an area of previous significant ground disturbance. The current definition of "significant ground disturbance" by reference to disturbance by prior machinery in the removal of vegetation has, in our experience, been generally helpful. However definitions of "topsoil" or "surface rock layer of the ground" referred to in that definition would aid certainty. Category 3 - any activities that do not fall within Categories 1 or 2.	Lawyer
It would not be appropriate to remove or contract categories 2, 3 or 4 or require agreement with an Aboriginal party to be reached in relation to activities falling within those categories. To do so would effectively negate the purpose of the Guidelines and be inconsistent with the compliance model established under the ACHA.	Proponent
The Guidelines could be amended to include: circumstances in which, and the conditions according to which, a find under categories 2, 3 and 4 may be relocated by the land user to enable works to proceed while ensuring protection.	Proponent
Specificity around the term ‘No Additional Surface Disturbance’ would be valuable to interpreting and better understanding the scope of Category 2 activities.	Proponent
Category 3 - The process of “ruling out” further cultural heritage value is difficult to define and erring on the side of caution may incur unnecessary costs through arranging cultural heritage survey (etc) that may not be justified by the level of risk of potential impacts on cultural heritage. A framework on how to actually proceed under section 5.3 of the Guidelines is not provided.	Proponent
Improve the Guidelines through: - Improved clarity of activities that are unlikely to pose a risk to Aboriginal cultural heritage - Removal of ambiguity of intention of categories - provide greater clarity and certainty through the development of industry specific Guidelines or, including specific, practical examples of activities within the existing Guidelines.	Proponent
Category 1 could be reinforced with industry specific examples of activities to provide greater clarity.	Proponent
Category 2: Whilst paragraph 4.6 of the Guidelines provides examples that emphasise consistency of use, these should be reinforced with industry specific examples to assist land users as well as provide guidance to Aboriginal Parties about where land users might rely on this category. Category 2 could also be improved through a stronger alignment between paragraphs 4.4, which refers to 'No Additional Surface Disturbance', and 4.6, which focuses on consistency of activity. This ambiguity should be addressed through the Guidelines leading the land user to consider the categories in conjunction with each other i.e. that minor additional ground disturbance (which would not meet category 2, yet could be included in the examples under 4.6) should be considered in the context of existing development and land use and consideration of whether the features of the area are likely to comprise or contain Aboriginal cultural heritage.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Guidelines should be amended to make clear that the proposed activity should be consistent with the current level and nature of development and the level of ground disturbance i.e. categories 3 and 4 should be read in conjunction with each other. Further, industry specific examples could be provided to promote a consistent interpretation	Proponent
The Guidelines tend to lead a land user to read the categories in order and stop when one category is met. A land user should be required to consider what is reasonable and practicable in the totality of the steps taken to assess the risk of harm to Aboriginal cultural heritage -i.e. a 'weight of evidence' approach, or a 'cumulative effect' approach to assessing their activity.	Proponent
Category 5 be amended to better encourage consultation and agreement making with the Aboriginal Party on the method of identifying and managing any Aboriginal cultural heritage values that could be impacted by an activity.	Proponent
Category 4: Similarly to category 3, consideration of 'significant ground disturbance' needs to be considered in the context the existing level and nature of development. For example, farmland may be subject to significant prior disturbance, however there is a real risk that heritage material or values exist that could be subject to harm if a more intensive disturbance or substantially different development were to occur. In such circumstances this category should not apply.	Proponent
Category 5 activities include any activity, or activity in an area, that does not fall within category 1, 2, 3 or 4. The focus should be more on the impact of the activity and the potential risk it poses to Aboriginal cultural heritage.	Proponent
Clarification and amalgamation of some definitions, amalgamation of categories 1 and 2 and expansion and clarification of category 4 will also improve the current drafting of the Guidelines.	Proponent
[Land user] believes that categories 3 and 5 are clear in their definitions, processes and examples and require no changes... [and] recommends that consideration be given to amalgamating categories 1 and 2 and clarifying and restructuring category 4...Any amalgamation of these categories should also consider the clarification, amalgamation and possible removal of the ‘surface disturbance’ definitions. Having three definitions of disturbance (No Additional Surface Disturbance, Surface Disturbance and Significant Ground Disturbance) within the Guidelines is confusing and unnecessary.	Proponent
Section 5.3 of the Guidelines presents a risk regarding use and maintenance of existing roads, use and maintenance of existing services and utilities.	Proponent
[Land user] asserts that it is acceptable that the current examples of category 3 activities should remain and no changes to this category or the definition of Developed Area should occur. Attempts to revise this category would have significant impacts in terms of cost and time on land users undertaking use and maintenance activities as well as other works consistent with the use of a Developed Area.	Proponent
Category 4: We suggest DATSIP consider separating this category into activities that are consistent and inconsistent with previous significant ground disturbance, with the latter category being subject to further cultural heritage assessment...We suggest this would alleviate concerns from many Aboriginal Parties regarding residual cultural heritage being harmed where land users undertake inconsistent ground disturbance (such as development of housing estates on agricultural land).	Proponent

Proposals-Recommendations-Comments	Stakeholder description
The current categorisation system provides a good balance between the need for land users to complete activities in a timely and efficient manner, and the opportunity for Aboriginal Parties to be involved in the management of cultural heritage in those instances where there is a heightened risk of harm, or it is likely Aboriginal cultural heritage is present.	Proponent
Category 3 - Any changes that would force proponents to undertake mandatory consultation, negotiation and/or survey in Developed Areas would not provide a balance between the need to establish timely and efficient processes for the management of activities that may harm Aboriginal cultural heritage, and the premise that an activity proposed on an area previously subject to significant ground disturbance is unlikely to cause any additional harm than that which has already occurred.	Proponent
[Land user] asserts that category 4 of the Guidelines is unclear and therefore problematic for both land user and Aboriginal Party.	Proponent
Another issue we have relates to those activities under Category 2 of the Guidelines, in particular, the following activities that are permitted to proceed under this category: - Use and maintenance of…power lines within the existing infrastructure alignment, or other infrastructure footprint; - Use, maintenance and protection of services and utilities (such as electricity infrastructure; water or sewerage disposal) on an area where such services and utilities are currently being provided; - Use, maintenance and protection of services and utilities (such as electricity infrastructure; water or sewerage disposal) on an area immediately adjacent to where such services and utilities are currently being provided providing the activity does not involve additional surface disturbance. It is our submission that there should not be a presumption that the ground beneath the electricity wires between the poles has been previously disturbed. Whilst we understand the importance of maintenance of utilities across the State, undertaking these activities on the ground underneath telecommunications lines should not automatically be considered to cause 'No Additional Surface Disturbance'. In fact, we submit that there may not have been Significant Ground Disturbance of these areas either, which means any activities on these areas would not be categorised as Category 4.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Section 2.2 of the Guidelines which recognises that it is unlikely that cultural heritage will be harmed where the current or proposed activity is on an area previously subject to significant ground disturbance and the activity will impact only on the area subject to the previous disturbance; or the impact of the current or proposed activity is unlikely to cause any additional harm to Aboriginal cultural heritage than that which has already occurred. The Guidelines as currently drafted do not acknowledge that these birthing trees or boundary marker trees are significant cultural artefacts or acknowledge the fact that just because part only of the tree has been cut down, that further harm may not be caused. In fact, the opposite is often the case. The clearing of trees on Traditional Owners' country often involves cutting most of the trunk down, but leaving a stump and not necessarily removing the entire root system. This means that the destruction of, or damage to, the tree does not satisfy the definition of Significant Ground Disturbance. It is also the case that the assessment of whether 'Significant Ground Disturbance' has occurred is subjective. Section 5.6 of the Guidelines (referring to Category 4 activities) recognises that despite an area having been previously subject to Significant Ground Disturbance (allowing activities to go ahead unfettered), certain features of the area may have residual cultural heritage significance. This section refers us to section 6.0, which lists types of features likely to have cultural heritage significance. The types of trees listed included scarred or carved trees only. Additionally, it is of concern to Traditional Owners that the Guidelines state that the control and maintenance of native vegetation is allowed to proceed if the vegetation is not on the Aboriginal Cultural Heritage Register or if it is not considered to be a 'scarred tree'. We submit that the examples under the Guidelines do not include enough detail of other types of trees and vegetation that should be 'exempted' in this case from control and maintenance in accordance with the provisions of the Vegetation Management Act 1999.	Traditional Owner and/or Representative
Categories should be re-described according to the proposed activity, not previous activity in that area	Traditional Owner and/or Representative
Overhaul categories by completely removing assessments of 'likely' or 'unlikely' to cause harm and replacing the current 5 categories with the following three categories: - Category 1: Prior Disturbance - same use and no additional disturbance - requires cultural heritage inspection or evidence of a cultural heritage inspection not more than 5 years old - Category 2: Prior Disturbance - different use - requires cultural heritage inspection, subject to any recommendations contained within the cultural heritage inspection report, may require cultural heritage monitoring in initial stage of activity - Category 3: New Disturbance - requires cultural heritage inspection, subject to any recommendations contained within the cultural heritage inspection report, may require cultural heritage monitoring in initial stage of activity, subject to any recommendations contained within the cultural heritage inspection report, may require cultural heritage re-assessment at agreed intervals throughout the term of conduct of the activity	Traditional Owner and/or Representative
Current categorisations and assessments of harm are fundamentally flawed insofar as assuming prior disturbance has obliterated all Aboriginal cultural heritage, failure to appreciate the potential for the existence of (residual) cultural heritage, and the silence on the fact that cultural heritage not limited to items and objects. Consequently the current regime does not achieve recognition or facilitate protection of cultural heritage	Traditional Owner and/or Representative
The existing categories do not actually protect all Aboriginal Cultural Heritage. Aboriginal people may have knowledge of cultural sites which are never registered with DATSIP for a range of reasons...Cultural responsibility may dictate that information must be kept secret, fear of government involvement, lack of resources or political conflicts are all reasons for this.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Land users often adopt a broad interpretation of the various categories of the Guidelines to ensure activities can proceed to satisfy project timeframes. The Guidelines must be drafted in plain English to leave little room for interpretation [1.16]	Traditional Owner and/or Representative
Category 1: Grazing cattle on an area where cattle are currently grazed. This is assuming that all activities associated with grazing cattle are permitted under Category 1. For example building a fence to keep the cattle in an area. Must specify that category 1 only applies to the impact the actual cattle have on the land and doesn't include repairing or relocating fences or building dams on a property. In the Torres Strait walking is only permitted along existing public roads. Land users must seek permission from the relevant Traditional Owner before walking, driving in areas that are off existing public roads. The development of any specific Guidelines for the Torres Strait must incorporate the existing cultural protocol and existing permission process. Any such Guidelines must be developed in consultation with Torres Strait Islander peoples. Any training to land users about the Guidelines for the Torres Strait must be presented with representatives from the Torres Strait Islander cultural heritage bodies.	Traditional Owner and/or Representative
There are also uninhabited islands, reefs, cays and water areas within the Torres Strait that are cultural significant to Torres Strait Islanders. This must be incorporated into the Guidelines for the Torres Strait.	Traditional Owner and/or Representative
Category 2 and Category 3 are very similar. It is unnecessary to keep them as separate categories. Recommendation to combine category 2 and 3 into one category.	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 2 and 3]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
Category 4: The description of "in an area which has previously been subject to Significant Ground Disturbance…." is unclear and open to broad interpretation for the benefit of the land user. Infrastructure footprints include built expansion or buffer areas. It is not acceptable to assume because a road was built on one part of the footprint that similar ground disturbance can occur 100m away with little harm on cultural heritage. Must clearly define an area surrounding developed area where activities can be undertaken. Include a positive obligation on the land user to undertake a physical site inspection of the area to be the subject of the proposed surface disturbance in order to assess the impact.	Traditional Owner and/or Representative
Category 5: Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category. The current wording suggests that activities should not be undertaken without a prior cultural heritage assessment. The word "should" must be replaced with the word "must". More information must be included on how land users can contact the relevant Aboriginal or Torres Strait Islander party. Land users need to have an understanding of how Cultural Heritage Bodies can assist them in identifying the relevant Aboriginal or Torres Strait Islander party. Contact details of Representative Bodies for the State should also be made readily available.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The [Traditional Owner representative's] comments in relation to how categories of activities could be amended to better reflect the need to manage residual cultural heritage values are in addition to the recommendations set out above as follows:- A common problem faced by Aboriginal and Torres Strait Islander Parties is that land users fail to appreciate that prior to the legislation enactment in 2003 the duty of care obligation did not exist. Therefore, works were undertaken without consultation with the Aboriginal and Torres Strait Islander Party. Any amendments to the Guidelines must require early engagement and consultation with the Aboriginal and Torres Strait Islander Party. As iterated above, consultation and engagement could take the form of a notice detailing who, what, where, when, why and how.	Traditional Owner and/or Representative
As highlighted in CHU's discussion paper, the Guidelines and the current categorisation of activities fail to provide clarity of how best to proceed with an activity.	Traditional Owner and/or Representative
Category 5 disturbances should attract mandatory cultural heritage agreements and cultural clearance procedures. These agreements and procedures need to: a. Provide Traditional Owners with access to country to undertake pre work clearances b. Provide fair payment to Traditional Owners to undertake clearance and monitoring work Provide standardised procedures in relation to i. cultural clearances; ii. monitoring during land use activity; and iii. processes when a Cultural Heritage Find occurs.	Traditional Owner and/or Representative
The Guidelines could go further to acknowledge that cultural heritage values and features can continue to exist and co-inhabit space within a developed landscape (Category 3 & 4). Activities occurring in Developed Areas such as a redevelopment, material change of use or operational work must be undertaken within a consultative cultural heritage management framework.	Traditional Owner and/or Representative
The Guidelines for Category 2, 3 & 4 need to be more robust in providing for the management and protection of residue and intangible cultural heritage values and materials, the occurrence of which can be particularly high where the original ground disturbance activity or past use is historic and has not been substantially reworked over the preceding years.	Traditional Owner and/or Representative
Further consideration should be given to 'existing tourism and visitation activities' being an example of a Category 2 activity. Our experience and observation is that domestic and international tourism is continually increasing at culturally significant and sensitive areas which in turn is causing additional degradation and harm to cultural heritage values and features – this harm is not consistent with past use ground disturbance.	Traditional Owner and/or Representative

Definitions/Terminology

Proposals-Recommendations-Comments	Stakeholder description
[1.2, 1.6, 1.10] - A clearer definition of what due diligence and reasonable precaution are. A suggestion for the party to contact the Aboriginal party before undertaking such activities.	Academia
In (c) of 1.13 - a clearer definition of what an emergency is.	Academia
In 5.3, it gives examples of activities that generally may proceed. What is generally may proceed? Does this mean that there are exceptions? Should it be recommended that an agreement of plan should be discussed with the Aboriginal party before the undertaking of such activities?	Academia
Cultural Heritage Find: The definition is not consistent with section 8(a) of the Act in that it makes no reference to a significant Aboriginal area.	Consultant
Significant Ground Disturbance The definition restricts disturbance to that …"by machinery". The reality is that significant disturbance can be caused by person with hand held implements such as a hammer, pick, shovel	Consultant
The definition for Category 4 'Significant Ground Disturbance' is too broad and ill defined. It requires a two dimensional analysis to what is a complex three dimensional problem (i.e. surface as well as buried sites).	Consultant
The Guidelines' be reviewed and updated to encompass the full range of definitions of Cultural Heritage and consider implementing a mechanism for protecting intangible cultural heritage.	Consultant
All Category definitions are revised to ensure that each category requires an assessment of the likely impact of development activity on cultural heritage, not just land surface. Such an assessment must be undertaken by a person trained, skilled and experienced in archaeological site identification, Aboriginal heritage place identification, and cultural heritage management generally, in consultation with Traditional Owners and Aboriginal Parties. Definitions of impact be expanded to recognise indirect impacts, such as the desecration of ceremonial sites or gender exclusive areas by unauthorised access.	Consultant
Recommend that this term 'residual cultural heritage' is explained clearly	Consultant
Guidelines be reviewed and language be revised using common terminology or additional definitions be provided to remove or limit opportunity for idiosyncratic interpretations or misunderstandings.	Consultant
Section 3.2: In 'Significant ground disturbance' it would be suggested that the word 'native' is removed as ploughing exotic grasslands and paddocks also impacts on cultural heritage.	Consultant
Significance and what constitutes 'significance' is poorly defined in the Guidelines. While it may be ideal for Aboriginal people to be the definers of significance, across the State there are varying degrees of competency in recognising, assessing and determining the values of significance. It is also misunderstood by archaeologists who still use the Burra Charter as a format for determining the values for Aboriginal people. Perhaps a secondary development for the Review would be seek to develop- a shared concept of significance. Obviously this would vary considerably from group to group, but there can be common denominators. For example, grindstones, stone axes, backed blades/blades appear to have greater cultural significance than reduction flakes, even if the identification of reduction processes can add significantly to the human story. However, not every scarred tree can be preserved and perhaps a staged process of determining significance would assist in making mitigation strategies easier.	Consultant
Duty of Care Guidelines to include definitions for 'surface', 'lasting impact' and 'developed area'.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Guidelines need clear definitions, clear protocol and consistent fee structures for assessments, strategy that will also assist to grow storyline knowledge	Government agency
A definition of "Aboriginal Party" be included in the Guidelines for ease of reference. We acknowledge that this is defined in the legislation.	Government agency
The Duty of Care Guidelines pretence that the likelihood of harm to Aboriginal cultural heritage is 'unlikely' if an activity is conducted on an area previously subject to significant ground disturbance or may not cause additional harm where harm has already occurred, is problematic. This definition does not adequately acknowledge activities that 'do not cause ground disturbance' but have the potential to be harmful to cultural heritage (e.g. a prescribed burn is an activity that may pose a risk to scarred trees and/or culturally significant vegetation). It also does not acknowledge the significance of residual cultural heritage in areas that have had past disturbance.	Government agency
The current definition of 'significant ground disturbance' only refers to 'man-made' disturbance from machinery and the removal of vegetation. The definition does not recognise 'natural' disturbance such as the widespread impact of natural erosion to coastal dunes and coastlines.	Government agency
Category 2 - definition of 'no additional surface disturbance' is vague and open to interpretation. The real issue is whether ground that may have already once been disturbed is going to be further disturbed by the proposed activity. Traditional owner groups have identified significant cultural heritage finds below the surface on sites that were previously subject to surface disturbance or significant ground disturbance.	Lawyer
Clarify the definitions in the Guidelines, particularly definitions of "Surface Disturbance" and "No Additional Surface Disturbance", to allow for a practical interpretation of these terms. Under the current definitions, whether surface disturbance has been caused and the meaning of "no additional surface disturbance" are not entirely clear. Examples could be included or the definitions could be amended to make it clear that short-term, de minimus disturbance (such as from the storage of equipment or temporary facilities) is excluded.	Proponent
There is currently some ambiguity on the meaning of 'surface disturbance' and 'lasting impact'. It is recommended that the Guidelines provide further clarity on the meaning of these terms.	Proponent
Improve the Guidelines through: - Improved clarity of activities that are unlikely to pose a risk to Aboriginal cultural heritage - Removal of ambiguity of intention of categories - Provide greater clarity and certainty through the development of industry specific Guidelines or, including specific, practical examples of activities within the existing Guidelines	Proponent
DATSIP provide better direction on actions that can be taken where the land user must be informed about cultural heritage significance that may attach to landscape features (s5.7 and s5.15). Further, DATSIP should consider clarifying the definition of some landscape features set out in section 6.2 – specifically 'areas of biogeographical significance, such as natural wetlands', 'particular types of native vegetation' and 'some hill and mound formations'. These definitions are broad and in some circumstances can apply to almost any environment.	Proponent
Clarification and amalgamation of some definitions, amalgamation of categories 1 and 2 and expansion and clarification of category 4 will also improve the current drafting of the Guidelines.	Proponent
[Land user] believes that categories 3 and 5 are clear in their definitions, processes and examples and require no changes... [and] recommends that consideration be given to amalgamating categories 1 and 2 and clarifying and restructuring category 4...Any amalgamation of these categories should also consider the clarification, amalgamation and possible removal of the 'surface disturbance' definitions. Having three definitions of disturbance (No Additional Surface Disturbance, Surface Disturbance and Significant Ground Disturbance) within the Guidelines is confusing and unnecessary.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Definitions at current paragraphs 1.4 and 1.5 and 1.6-1.9 be moved to Part 2	Traditional Owner and/or Representative
References in the Guidelines to ‘on an area where such services and utilities are currently being provided’ in sections 4.6 and 5.3 should be amended to state: ‘on an area where such services and utilities are currently being provided (where this relates to electricity or telecommunications wires, this area does not include the ground immediately beneath the wires)’.	Traditional Owner and/or Representative
We submit that: - the definition of Significant Ground Disturbance under the Guidelines be amended to include any interference with native vegetation, not strictly limited to the disturbance of root systems and underlying soil. - That section 6.1 of the Guidelines be amended to include ‘birthing tree’ and ‘boundary marker tree’ as examples of the types of features that are highly likely to have cultural heritage significance.	Traditional Owner and/or Representative
The addition of Cultural Heritage Assessment and Consultation Matrix and associated new definitions for significant ground disturbance, combined with the new list of Sensitive Landscape Forms and Landscape Categories, will provide greater synergy between cultural heritage values and the nature of the proposed activity.	Traditional Owner and/or Representative
The following existing clauses and definitions should be removed from the Duty of Care Guidelines 1.15: “There is no offence in not complying with the cultural heritage duty of care Guidelines…” should be removed as it is perceived as another “green light” to land users regarding cultural heritage compliance. 3.2: 'Developed Area' definition and 'No Additional Surface Disturbance' definition and 'Significant Ground Disturbance' definition - new definitions 4.1-5.21: Categories 1 – 5 replaced with new 'Aboriginal Cultural Heritage Assessment and Consultation Matrix' 6.2: Landscape features replaced with new list of “Sensitive Landforms and Landscape Categories”	Traditional Owner and/or Representative
Recommended Amendment to Existing Duty of Care Guidelines Clauses / Definitions 1.5 - This clause appears to be referring to “intangible cultural heritage values” but this may not be obvious to a Guidelines user who is unfamiliar with cultural heritage assessment. Amend this section or provide a cross reference to the definition of “Intangible Aboriginal Cultural Heritage” below.	Traditional Owner and/or Representative
Recommended Amendment to Existing Duty of Care Guidelines Clauses / Definitions 1.6 - Insert at start of clause: “In keeping with the Act’s main purpose and underlying principles” (see 1.1 and 1.2) …	Traditional Owner and/or Representative
It is also unclear whether a “significant object” also includes flora and fauna. Many Aboriginal and Torres Strait Islander cultures include flora and fauna as totems. Clarify in both the legislation and the Guidelines that both flora and fauna may constitute cultural heritage [1.4].	Traditional Owner and/or Representative
The definition of “no additional surface disturbance” is ambiguous and is open to interpretation. In particular, “surface disturbance not inconsistent with previous surface disturbance”. The change between the use of the term Surface Disturbance and Ground Disturbance.	Traditional Owner and/or Representative
Existing infrastructure footprint is very broad. There are often parts of an infrastructure footprint where no surface disturbance has taken place. Must specify surround area of existing ground disturbing activities that additional activities can be undertaken to fit within this category.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The description of “use and maintenance of …within an existing footprint….” is unclear and open to broad interpretation for the benefit of the land user. Infrastructure footprints include built expansion or buffer areas. It is not acceptable to assume because a road was built on one part of the footprint that similar ground disturbance can occur 100m away with little harm on cultural heritage. Recommendation to clearly define an area surrounding a developed area where activities can be undertaken. Include a positive obligation on the land user to undertake a physical site inspection of the area to be the subject of the proposed surface disturbance in order to assess the impact.	Traditional Owner and/or Representative
The definition of “no additional surface disturbance” is ambiguous and is open to interpretation. In particular, “surface disturbance not inconsistent with previous surface disturbance”. The change between the use of the term Surface Disturbance and Ground Disturbance.	Traditional Owner and/or Representative
Definitions for ‘surface’, ‘lasting impact’ and ‘developed area’ unclear and open to interpretation	Government agency
Another problematic area in the Guidelines that crosses over with the activity categories 1-5 are the ground disturbance definitions.	Traditional Owner and/or Representative
The definition of significant ground disturbance is too vague and nonspecific. Particularly it creates a conflict of interest tension within developer’s self-assessment process, and therefore risks a bias. The definition does not take into consideration the sub-surface material which may still be intact, and noting that the deeper an archaeological deposit, the more scientifically significant the find is. Sites are being destroyed every day. These sites which are important to Aboriginal People, however, these sites are also important to the scientific community and the greater Australian community.	Traditional Owner and/or Representative

Structure/Layout

Proposals-Recommendations-Comments	Stakeholder description
4.11, 5.12 and 5.21 - statements be moved to either of both the introduction of Part 2 and/or the ‘other information’ section in the preamble (1.17-1.20).	Academia
In 8.6 explains that Aboriginal Party must be given the opportunity to be involved in the undertaking of a study or survey. Recommendation: this section is moved to the preamble under the section that states this importance of the Aboriginal party in the assessing of cultural heritage sites.	Academia
Section 9.0 – This section has been repeated many times throughout the Guidelines.	Academia
More structure in the Duty of Care Guidelines will assist Aboriginal Parties and land users engage in a constructive dialogue.	Consultant
As a general comment we find the Guidelines incredibly repetitive whereas we believe that the provisions with how to deal with the Categories could be coalesced into a single section that provides guidance about consultation, who to contact and penalties for non-compliance.	Consultant
We would also advise that the language becomes more positive, emphasising win-win situations through the value of negotiated strategies, awareness of a shared heritage and the need to know who the relevant Aboriginal cultural heritage body is.	Consultant
As a general comment there is a need for the Guidelines to reflect a better understanding of the Categories. As noted above, the way the Guidelines are written, while possibly legalistic, have little relevance for Aboriginal people.	Consultant
A change to the formatting and presentation of the Guidelines would aid comprehension.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
The Duty of Care Guidelines does not provide land users with guidance on who 'the Aboriginal Party' is or how to contact them. The Authority recommends that the Guideline provide further information and contact details for relevant search tools that could help land users seeking this information: • Cultural Heritage Bodies - https://www.datsip.qld.gov.au/people-communities/Aboriginal-and-torres-strait-islander-cultural-heritage/cultural-heritage-bodies • Registered native title claimant or party - http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-National-Native-Title-Register.aspx or http://www.oric.gov.au/ • Land Councils - https://www.qld.gov.au/atsi/environment-land-use-native-title/native-title-representative-body/ • National Native Title Tribunal - www.nntt.gov.au.	Government agency
It is very important that the revised Guidelines retain a simple format. The current Guidelines contain a lot of repetition (e.g. repeated clauses within the categories sections about reaching agreement etc.), and do not provide a sequential process for implementation. It was suggested by many respondents that the revised Guidelines include a step-by-step process or flowchart, to ensure land managers have a clear understanding of the process for undertaking a cultural heritage risk assessment and have confidence that they can diligently meet their 'Duty of Care' obligations.	Government agency
User-friendly and simplification of the Guidelines - Although the Guidelines are of assistance, I believe that there is the ability for simplification to make the Guidelines easier to read and pull out the information to identify the process and the information that a Project proponent should be considering as part of its project. It would be of great assistance if there was a defined process of "How to comply with the Duty of Care Guidelines" and "What is required when proceeding under the Duty of Care Guidelines". The provision of information for a Project proponent whom is proceeding under the Duty of Care to provide to its Contractors or onsite workers to help them with potential finding of remnant artefacts, etc.	Proponent
There is no information contained in Part 1 about the role and function of Cultural Heritage Bodies. Inclusion of this information will assist land users in identifying the relevant Aboriginal or Torres Strait Islander party to contact about proposed activities [1.6-1.9].	Traditional Owner and/or Representative
Many land users prefer to rely on the Guidelines rather than engage with the Aboriginal or Torres Strait Islander parties. More information should be included in Part 1 about other legal options available to land users to satisfy the duty care obligation, such as simple cultural heritage management agreements, or terms of references. This information should also be included earlier on in Part 1. This must also include information on the expectation of resourcing assistance the land user will provide to the Aboriginal or Torres Strait Islander party [1.16]	Traditional Owner and/or Representative
There are no examples or templates that land users can access to understand the process of negotiating a cultural heritage agreement or what is involved in a cultural heritage assessment. The CHU could provide templates on their website for land users to use as a starting point. This information could include a summary of steps (like a flowchart) for a cultural heritage assessment or to negotiate an agreement [1.16].	Traditional Owner and/or Representative
The footnotes for this section explaining that being present in a cultural significant area may cause offence. This needs to be removed from the footnotes and placed in Part 1. More information must be available to land users educating them about the relationship between Aboriginal and Torres Strait Islander peoples and their land.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Category 5: Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category. The current wording suggests that activities should not be undertaken without a prior cultural heritage assessment. The word “should” must be replaced with the word “must”. More information must be included on how land users can contact the relevant Aboriginal or Torres Strait Islander party. Land users need to have an understanding of how Cultural Heritage Bodies can assist them in identifying the relevant Aboriginal or Torres Strait Islander party. Contact details of Representative Bodies for the State should also be made readily available.	Traditional Owner and/or Representative
Land users need to be reminded of their duty of care obligation under the legislation. The consequences of failure to comply with the Guidelines must be reiterated at the end of each section.	Traditional Owner and/or Representative

Templates

Proposals-Recommendations-Comments	Stakeholder description
Formal documentation of Guidelines decision making can be eased for proponents / land users by provision of a suitable pro forma and some additional guidance notes in the use of the pro forma and the background information that should be collated to substantiate any decision. The pro forma would require two stages: the first stage to addresses the original decision making process, land use background and risk to Aboriginal cultural heritage, and a second that addresses implementation and any reasonable and practicable measures adopted to manage Aboriginal cultural heritage.	Consultant
The Guidelines should make reference to native title and should note that even where a proponent / land user satisfies themselves that they fall within a certain category under the Guidelines, in certain circumstances the Guidelines will simply not apply. The guidance notes should make this clear and the pro forma should require a formal response on this question. The ethical dimension of engagement with determined native title holders is matter that also requires further attention.	Consultant
The issue of inconsistency should be addressed by the development of a pro forma that must be completed by the proponent in a staged manner. That the pro forma be available as a web-based tool. Completion of the pro forma should be mandatory. The State should reserve to itself the right to review any and all pro formas in line with its claimed ownership of Aboriginal cultural heritage and the risks that land use poses to that heritage. The data can be analysed by the regulatory agency as required for other purposes of the legislation. Such a system can be tailored such that is can be integrated as another element within the overall State Aboriginal cultural heritage management system (?)	Consultant
A threshold should be developed and applied to limit the scale of a project to which the Guidelines can be applied. This test needs to be structured in such a way that it deals with both single large projects and projects that incrementally ultimately can affect large areas of land. The threshold test needs to be included on the pro forma to assist the proponent / land user to determine whether their proposal falls within the ambit of the Guidelines or instead crosses the threshold.	Consultant
Residual or intangible heritage should be considered and researched for every project. To allow this to occur a separate section needs to be created within the Duty of Care Guidelines, providing a research template for exploring residual heritage. This section should also indicate that these studies should be undertaken by qualified researchers with a degree in anthropology and history, and in collaboration with Aboriginal groups.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Pro-forma templates for the assessment, response and compliance notices/advice should be developed to limit the administrative burden on parties. These need not be mandatory but could be accessed and used on an 'as needs' basis.	Lawyer
The Guidelines should support the Proponent (as the initiator of the proposed activity) in the use of their own internal cultural heritage management processes including the use of standard agreement templates.	Proponent
Standardised Cultural Heritage Agreements and Cultural Heritage Clearance Procedures should be mandated and resourced for land use activities that are likely to impact Aboriginal Cultural Heritage. If standard processes and procedures dealing with Cultural Heritage were mandated for high risk activities it would provide certainty to land users who would know exactly what they have to do to meet their duty of care, and it would provide Traditional Owners with a system they could become familiar with in ensuring their cultural heritage is protected.	Traditional Owner and/or Representative
Guidelines need to deal with protection of Significant Aboriginal Areas more effectively...Land Users to engage with Aboriginal Parties under standardised agreements, with standardised terms and conditions.	Traditional Owner and/or Representative
There are no examples or templates that land users can access to understand the process of negotiating a cultural heritage agreement or what is involved in a cultural heritage assessment. The CHU could provide templates on their website for land users to use as a starting point. This information could include a summary of steps (like a flowchart) for a cultural heritage assessment or to negotiate an agreement [1.16].	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 4]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
There are no examples or templates that land users can access to understand the process of negotiating a cultural heritage agreement or what is involved in a cultural heritage assessment. The CHU could provide templates on their website for land users to use as a starting point. This information could include a summary of steps (like a flowchart) for a cultural heritage assessment or to negotiate an agreement [1.16].	Traditional Owner and/or Representative

Terminology

Proposals-Recommendations-Comments	Stakeholder description
Phrases such as “it is generally unlikely” (section 3, page 6) are featured in regard to activities that have the potential to harm Aboriginal cultural heritage. As well as being vague and uncertain, such a phrase carries connotations of being dismissive. With people’s cultural values at stake, clearer phrasing is needed.	Academia
Recommend that phrases such as “generally unlikely” are replaced with a degree of certainty in respect to the activities that are permissible as they are deemed to not disturb cultural heritage.	Academia

Proposals-Recommendations-Comments	Stakeholder description
In 8.2, the Guidelines state that 'a cultural heritage study or survey can be undertaken as part of the process for developing a Cultural Heritage Management Planer under Part 7 of the Act'. Recommendation: perhaps a cultural heritage study or survey should be taken or recommended to be undertaken.	Academia
Category 5 Activities 5.14 In the 3rd line the words "should not proceed" are used. The word "should" has been repeatedly used to say that it is not mandatory or compulsory and that it connotes a lesser standard than had the words "must" been used. Again it has been repeatedly pointed out that "must" is used in 5.17 but the word "should" is used in 5.14. 5.17 The word "must" is used. But this only occurs when excavating, relocating, removing or harming a Cultural Heritage Find.	Consultant
Include an updated Preamble in the Guidelines that clearly defines its purpose and intent. The Duty of Care Guidelines do not clearly state its purpose, though it is implied throughout, that the purpose is to provide guidance to proponents who are proposing to undertake activities that may result in harm to Aboriginal cultural heritage on how to effectively manage such heritage when their activity does not require a CHMP.	Consultant
The use of words such as "residual significance" in the Duty of Care Guidelines implies that where previous land use, such as development or farming practices, have impacted on a significant Aboriginal area, the level of significance left is only small. Frankly, this is insulting to...all traditional owners, as significance of an area is something only they can judge or interpret.	Consultant
The terminology used at various points in the Duty of Care Guidelines is idiosyncratic and open to various interpretations. Use of terminology that commonly informs land use planning may assist in tightening this and removing the inconsistency of interpretation. For instance, the clear understandings around the concept of 'material change of use'.	Consultant
Some terms used in Duty of Care Guidelines vague and open to interpretation. This causes immense difficulties because the system is self-regulating. It relies upon land users interpreting the Guidelines in a fair and reasonable way in order to ensure Aboriginal cultural heritage is properly protected and managed. The difficulty with this approach is that it is easy for a land user to interpret the requirements broadly giving considerable weight to their own interests over and above the need to protect Aboriginal cultural heritage.	Lawyer
Presently, the wording of category 4 is unclear, vague and open to interpretation	Lawyer
Further clarity with respect to Section 4.6 of the Guidelines. This section of the Guidelines provides an opportunity for those activities which should be able to proceed without further need of assessment to be identified on the basis that they will not require additional surface disturbance.	Proponent
Specificity around the term 'No Additional Surface Disturbance' would be valuable to interpreting and better understanding the scope of Category 2 activities.	Proponent
Section 2.2 of the Guidelines should be amendment to remove ambiguity as to where potential for harm to cultural heritage values exists.	Proponent
Residual risk of harm is not appropriately accounted for in this situation and, concurrently, there is not sufficient clarity around "prior ground disturbance" (and the activities which are not inconsistent with or additional to such disturbance) to enable proponents to make an informed decision as to the likely risk of harm under these principles. The concept of further harm should be addressed further by the Guidelines.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Take away the wishy washy wording and replace them with definite instructions of requirements and clear accountability and responsibilities for non-Aboriginal people as well as specific requirements and clear accountability and responsibilities of Aboriginal peoples to care for country and protect our culture.	Traditional Owner and/or Representative
As the Guidelines are quite outdated, the current review is most welcome. One other suggestion is that the wording of the Guidelines could be improved to be more respectful of Aboriginal parties and acknowledge their intrinsic ownership of cultural heritage as well as be set out in clear and plain language to be a more user friendly document.	Traditional Owner and/or Representative
Land users often adopt a broad interpretation of the various categories of the Guidelines to ensure activities can proceed to satisfy project timeframes. The Guidelines must be drafted in plain English to leave little room for interpretation [1.16]	Traditional Owner and/or Representative
Guidelines must be drafted in clear, precise user friendly language. Where possible examples should be used. Any definitions must be clear and concise.	Traditional Owner and/or Representative
Any amendments to the Guidelines must reflect the rights of Indigenous Peoples as set out in Articles 11, 12, 25, 27, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”). In particular, explaining that it is recognised at an International level that cultural, intellectual, religious and spiritual property of Indigenous Peoples should not be taken without their free, prior and informed consent or in violation of their laws, traditions and customs. The Australian Government announced its support for the UNDRIP in 2009. Any revised version of the Guidelines must incorporate standards contained in the UNDRIP because:- a) It is sourced from existing international human rights law. b) It is widely supported by both governments and Indigenous Peoples globally. c) It is the result of a democratic and open process. d) It uses language similar to a treaty. Any amendments must clearly articulate that it is recognised at an International level that cultural, intellectual, religious and spiritual property of Indigenous Peoples should not be taken without their free, prior and informed consent or in violation of their laws, traditions and customs.	Traditional Owner and/or Representative

Definition of cultural heritage

Proposals-Recommendations-Comments	Stakeholder description
Cultural sites should not be separated from the wider environment which maintains cultural significance	Academia
Definitions of Aboriginal Cultural Heritage are updated and expanded in order to include a specific explanation of the nature of intangible heritage. We recommend the definition by the United Nations Educational, Scientific and Cultural Organisation’s (UNESCO) convention for the safeguarding of intangible heritage is adopted: [intangible heritage] includes traditions or living expressions inherited from our ancestors and passed on to our descendants, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts	Academia
The definitions of cultural heritage used in the ACHA be reviewed, with updated, more relevant definitions included throughout the Guidelines.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines do not recognise the breadth of definitions of Aboriginal heritage used in modern cultural heritage management or in the legislation itself	Consultant
The ACHA in general, and the Guidelines in particular, fail to offer protection to living heritage.	Consultant
We are at a loss to know why the three types of places that demand agreement – namely rock art, scarred trees and carved trees – were given priority over all other types of heritage places. To our knowledge these three types of sites are not categorically (in the formal sense of this word) viewed as more significant than any other form of Aboriginal cultural heritage sites, hence the management proscriptions given them appear largely arbitrary.	Consultant
The weight of protection is given to visible sites – i.e. stone artefact concentrations, scarred trees, stone arrangements, etc. However, we would argue that there should be a new section that specifically deals with cultural sites that may have greater significance. Some of these are captured with a vague corollary in Section 6.2 which notes that some landscape features may have significance. However, there is no mention of cultural features like creation sites, dreaming tracks (responsible for changes to a major bridge construction… or concern by [Traditional Owners] members over [an activity]; magic or story places, bad places, birthing places, healing places, rain making places, increase sites, ancestral and recent camping places.	Consultant
Significance and what constitutes 'significance' is poorly defined in the Guidelines. While it may be ideal for Aboriginal people to be the definers of significance, across the State there are varying degrees of competency in recognising, assessing and determining the values of significance. It is also misunderstood by archaeologists who still use the Burra Charter as a format for determining the values for Aboriginal people. Perhaps a secondary development for the Review would be seek to develop- a shared concept of significance. Obviously this would vary considerably from group to group, but there can be common denominators. For example, grindstones, stone axes, backed blades/blades appear to have greater cultural significance than reduction flakes, even if the identification of reduction processes can add significantly to the human story. However, not every scarred tree can be preserved and perhaps a staged process of determining significance would assist in making mitigation strategies easier.	Consultant
6.1, 6.2 - Suggest reviewing these categories of features and landscape features against sites on the register or database – are there any categories of sites on the register or database that are not covered under 6.1-6.2? What about more modern notions of Aboriginal heritage and intangible places (dreaming tracks or story lines)? The current list in 6.1-6.2 is very focused on tangible, archaeological places however it needs to target the intangible as well.	Government agency
Lack of reference to specific cultural heritage sites in Duty of Care Guidelines especially intangible places	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The following new clauses and definitions should be added to the Duty of Care Guidelines. Areas of Cultural Heritage Sensitivity: Areas of Cultural Heritage Sensitivity are defined as: 1) registered Aboriginal sites or places; 2) identified sensitive landforms and landscape categories; or 3) sites and places associated with Intangible Aboriginal Cultural Heritage ('intangible values'). Relevant definitions for these three categories follow below: 1. Registered Aboriginal Sites or Places These are sites and places listed on the DATSIP database, Register of the National Estate (former), National or Commonwealth Heritage Lists, or local heritage databases, and any other statutory or non-statutory database which may contain evidence of a place identified as having cultural meaning to Aboriginal people. 2. Sensitive Landforms and Landscape Categories Within 200m of (or the feature itself): - a waterbody or watercourse (including existing watercourses, prior waterways, but does not include man-made bodies of water such as dams) - a river, creek, stream, channel or watercourse including prior, perennial, intermittent and ephemeral watercourses) - a natural lake, lagoon, swamp or marsh (including ancient lakes), - a natural depression through which water can be collected, or which forms part of an intermittent channel - Coastal fringe high water mark (dune systems, rocky points, areas of coastal vegetation) - Dunes (inland, riverine or coastal) - Ridges (including ridgetops and saddles, stony rises, promontories) - Declared Ramsar wetlands - Remnant vegetation - Caves and rock-shelters - Sand hills - Unique landscape features such as inter alia: the Great Barrier Reef, waterfalls, gorges, escarpments, stony rises, volcanic plugs, lava flows. N.B. It is intended that this list replaces the existing clause 6.2 but the contents of existing clause 6.1 should be kept. 3. Intangible Aboriginal Cultural Heritage Aboriginal intangible heritage means any knowledge of or expression of Aboriginal tradition, other than Aboriginal cultural heritage, and includes oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts, and environmental and ecological knowledge, but does not include anything that is widely known to the public (This definition is taken from the new amendments to the Victorian Aboriginal Heritage Act (S.79B in Part 5A)	Traditional Owner and/or Representative
A second fundamental flaw of the Guide is that Part 2, 2.3 notes that the Guidelines do not permit activities which harm rock art or scarred trees. Why have these particular types of sites been singled out? There is no difference between an isolated stone artefact and a scarred tree. This differentiation may be the case for a historian, archaeologist, anthropologist who is abiding by the principals of ICOMOS, but to an Aboriginal Person, all sites are equal. Furthermore it is internally inconsistent with the Aboriginal party being the determinant of the significance of cultural heritage.	Traditional Owner and/or Representative

Definition of Aboriginal and Torres Strait Islander Party

Proposals-Recommendations-Comments	Stakeholder description
Section 35 of the Act is more specifically referenced and explained in the Guidelines, and that specific Guidelines for dispute resolution are developed.	Academia
Currently, there is no reference to the identification of the Aboriginal party in the Guidelines.	Academia
Insert paragraph giving direction to means of identifying the native title party through the relevant Native Title Representative Body or National Native Title Tribunal and recommendation to commence the consultation process parallel with meeting other administrative requirements to secure permits/approvals	Traditional Owner and/or Representative

Intangible heritage

Proposals-Recommendations-Comments	Stakeholder description
Definitions of Aboriginal Cultural Heritage are updated and expanded in order to include a specific explanation of the nature of intangible heritage. We recommend the definition by the United Nations Educational, Scientific and Cultural Organisation's (UNESCO) convention for the safeguarding of intangible heritage is adopted: [intangible heritage] includes traditions or living expressions inherited from our ancestors and passed on to our descendants, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts	Academia
As the Guidelines stand currently, there is inadequate information in reference to intangible heritage and offers no examples as to intangible aspects of heritage areas	Academia
There should be a greater emphasis on and recognition of the cultural landscape that is being disturbed and the cumulative effect of all development on the cultural landscape not just the proposed development. Development should be restrained and prohibited in areas where it is proposed there be destruction of a significant portion of the cultural landscape. Retention of the integrity of the cultural landscape of areas of Qld is just as important as retention of environmental values of an area.	Consultant
Greater emphasis on cultural heritage landscapes and intangible places - dreaming tracks, story places	Consultant
The definitions of categories do not take adequate account of the potential for intangible heritage to have survived previous development activity	Consultant
Despite the definition of Aboriginal heritage in the ACHA being broad enough to recognise the tangible and intangible heritage places outlined here, and s. 12 of the ACHA expressly recognising that Aboriginal heritage does not require physical evidence, the Guidelines focus almost entirely on archaeological sites, particularly surface archaeological sites.	Consultant
The ACHA in general, and the Guidelines in particular, fail to offer protection to intangible heritage.	Consultant
That even for Category 2 developments, there be provision for a Cultural Heritage Management Plan (CHMP) to be prepared to take account of potential cultural heritage impacts on places of social or spiritual significance to Traditional Owners, should initial assessment of the effects of development indicate that such a study is required.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
The Duty of Care Guidelines need to greatly expand on the concept of 'residual heritage' and intangible heritage values, and how these values should be assessed and managed.	Consultant
6.1, 6.2 - Suggest reviewing these categories of features and landscape features against sites on the register or database – are there any categories of sites on the register or database that are not covered under 6.1-6.2? What about more modern notions of Aboriginal heritage and intangible places (dreaming tracks or story lines)? The current list in 6.1-6.2 is very focused on tangible, archaeological places however it needs to target the intangible as well.	Government agency
The Duty of Care Guideline excludes a wide range of intangible cultural heritage that are of considerable value to Aboriginal people and contemporary cultural heritage management. The [land manager] recommends that the Guideline promote a more holistic approach to cultural heritage values of an area by providing specific reference to 'living cultural landscapes'. Further information about the categories and sub-categories of cultural landscapes are available at http://whc.unesco.org/en/culturallandscape/#1. Land users could be referred to the on-line Australian Heritage Database for further information and/or to search for cultural heritage interests in an area - http://www.environment.gov.au/heritage.	Government agency
The Duty of Care Guidelines pretense that the likelihood of harm to Aboriginal cultural heritage is 'unlikely' if an activity is conducted on an area previously subject to significant ground disturbance or may not cause additional harm where harm has already occurred, is problematic. This definition does not adequately acknowledge activities that 'do not cause ground disturbance' but have the potential to be harmful to cultural heritage (e.g. a prescribed burn is an activity that may pose a risk to scarred trees and/or culturally significant vegetation). It also does not acknowledge the significance of residual cultural heritage in areas that have had past disturbance.	Government agency
Staff noted a better definition for 'intangible' cultural heritage is required, as is a prompt for land managers to seek advice from Traditional Owners if their proposed activity takes place in areas with these landscape features.	Government agency
[Land manager] is committed to working with Traditional Owners and actively seeks their advice about how to best manage and protect Indigenous cultural heritage. Staff are generally well skilled at identifying tangible cultural heritage for the purpose of doing a Duty of Care risk assessment however, it is often not possible to identify intangible cultural heritage as it is a case of 'you don't know what you don't know'. The Guidelines currently define various 'landscape features' that may have significant cultural heritage but no explanation as to why these areas may be significant (e.g. dreaming and story places).	Government agency
The current Guidelines do not capture opportunities to discover any storyline information that may remain in areas disturbed pre 2003 (i.e. pre Duty of Care Guidelines).	Government agency
The Guidelines' be reviewed and updated to encompass the full range of definitions of Cultural Heritage and consider implementing a mechanism for protecting intangible cultural heritage.	Consultant
'The Guidelines' focus almost entirely on archaeological (i.e. tangible) sites. Even in cases where intangible heritage is well documented, 'The Act' in general, and the Guidelines in particular, fail to offer adequate protection.	Consultant
The current categories focus almost exclusively on physical Aboriginal cultural heritage values. A land user considering their obligations under the Act and having regard to the Guidelines might reasonably be led to consider the risk of harming only tangible Aboriginal cultural heritage. The Guidelines do not sufficiently highlight the need to consider the residual, intangible values of a significant area so that its significance and value is not harmed by inappropriate or inconsistent land uses.	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines for Category 2,3 & 4 need to be more robust in providing for the management and protection of residue and intangible cultural heritage values and materials, the occurrence of which can be particularly high where the original ground disturbance activity or past use is historic and has not been substantially reworked over the preceding years.	Traditional Owner and/or Representative
Recommended Amendment to Existing Duty of Care Guidelines Clauses / Definitions 1.5 - This clause appears to be referring to “intangible cultural heritage values” but this may not be obvious to a Guidelines user who is unfamiliar with cultural heritage assessment. Amend this section or provide a cross reference to the definition of “Intangible Aboriginal Cultural Heritage” below.	Traditional Owner and/or Representative
Lack of some cultural sites and places in the ‘Guidelines’ (archaeological sites are well represented but no emphasis is given to non-visible sites, such as story places, creation places, birthing sites, dreaming tracks, etc.)	Traditional Owner and/or Representative
I understand that DATSIP may have an opportunity to enhance the ‘residual’ cultural heritage aspects within these Guidelines so that areas presently not triggering an assessment will be included. Generally, this should include a greater emphasis on cultural places and sites that may not be visible – dreaming tracks, story places etc.; and possibly triggering better and more frequent assessments by linking cultural heritage to the Planning process. DATSIP is to be commended for this.	Traditional Owner and/or Representative
Lack of reference to specific cultural heritage sites in Duty of Care Guidelines especially intangible places	Traditional Owner and/or Representative

Residual heritage

Proposals-Recommendations-Comments	Stakeholder description
The definitions of categories do not take adequate account of the potential for buried tangible heritage to have survived previous development activity	Consultant
Despite the definition of Aboriginal heritage in the ACHA being broad enough to recognise the tangible and intangible heritage places outlined here, and s. 12 of the ACHA expressly recognising that Aboriginal heritage does not require physical evidence, the Guidelines focus almost entirely on archaeological sites, particularly surface archaeological sites.	Consultant
The consequences of identifying a development as a Category 3 or Category 4 development is that there is no recognition in the definitions in either category of the potential for the existence of buried heritage.	Consultant
The discussion paper prepared around the review of the Duty of Care Guidelines raised questions regarding the management of (residual) cultural heritage issues. Here there is high level of inconsistency and as a result uncertainty and lack of clarity. The Duty of Care Guidelines in some places requires, and in others suggests, that these be dealt with in various ways. One suggested approach is the use of a CHMP. This can be expensive, might not deliver timely outcomes and of itself does not guarantee an uncontested outcome. All of these points seem to be at odds with the purpose of the Duty of Care Guidelines. We also note that there is a certain circularity in suggesting a CHMP: if it had been required then one could not be seeking to use the Duty of Care Guidelines in the first place.	Consultant
The Duty of Care Guidelines need to greatly expand on the concept of ‘residual heritage’ and intangible heritage values, and how these values should be assessed and managed.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Cultural values can be retained despite extensive past use of an area, e.g. surface disturbance does not preclude the existence of significant objects beneath the surface	Consultant
The current model also assumes that if something is disturbed, that any significance is 'extinguished'. This is contrary to any accepted understanding of cultural heritage significance as espoused by national and state policy and Guidelines	Consultant
The degree and depth of any past disturbance must also be considered before any area is determined to no longer contain (or have potential to contain), significant Aboriginal cultural heritage areas or objects. The existing reliance on surface only indicators to determine whether Aboriginal cultural heritage may or may not be present and the risk of harm to Aboriginal cultural heritage by proposed activities is therefore completely inadequate to meet the objectives of the ACHA.	Consultant
The move to re-define 'residual cultural heritage values' is welcomed. Many sites are located in areas that are currently not recognised by the Guidelines as requiring assessment. Many sites are located in highly disturbed areas that still can provide significant heritage values. For example, a site…that [had] been used as a go kart track, an army training camp and a migrant camp and would have been classed as a disturbed site still produced in situ earth ovens and hundreds of stone artefacts. Under the present Guidelines this would have been considered a disturbed site had there not been historical knowledge of the location's importance.	Consultant
Perhaps 'residual' could be qualified in terms or either cultural content or the scope of archaeological content. For example, a hill may have houses on it yet still retain residual cultural significance but not require more than notification of a development to the relevant Aboriginal Party. Conversely, an artefact concentration may only consist of one or two reduction flakes and also have low impact concerns.	Consultant
Category 4 is one used frequently by developers to justify a project without the need for further investigation. Yet as recent experience has shown, sub surface investigations (test pitting – which we believe is becoming mandatory in southern states in certain instances) has produced dramatic results, greatly enhancing our knowledge of past landscapes. For example, only one surface site was located in an assessment (2016/17) …located in paddocks that had been ploughed since the 1850s. Yet more than 2000 stone artefacts were located in three test pits in locations identified using a predictive landscape model. This produced previously unrecorded tool types, pristine artefacts and identified contact period artefacts including lead musket balls. Another test pit recovered a date of nearly 7000 year BP making it the oldest open air site in southeast Queensland.	Consultant
It would be recommended that sub surface investigation become a greater focus of developing certainty about the potential for residual cultural heritage.	Consultant
Recommend that the assessment of residual heritage should operate separately to the management of tangible heritage.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Managing residual heritage is a complex process and needs to involve a two stage process of assessment and management agreement. Assessment should involve a range of different mechanisms for assessing and considering the values of residual heritage in project areas. The processes employed in the assessment of residual heritage should be stringent and be structured to critically evaluate all claims for the existence of residual heritage. The methods would need to involve a range of techniques including ethnography, interviews with key Aboriginal knowledge holders, and archival research. This process would allow all claims of residual heritage to be critically evaluated by accepted academic methods, rather than be accepted without any critical evaluation. The assessment process would also determine if the claims of residual heritage are grounded in the traditions and beliefs of the Aboriginal party and therefore determine the need for a management agreement. The second stage of the process would be to create a Residual Heritage Management Agreement. Management options of residual heritage should be guided by past land use to a certain degree. Options for management embedded in the Duty of Care Guidelines should consider areas where physical heritage has, and has not, been destroyed.	Government agency
The current categories focus almost exclusively on physical Aboriginal cultural heritage values. A land user considering their obligations under the Act and having regard to the Guidelines might reasonably be led to consider the risk of harming only tangible Aboriginal cultural heritage. The Guidelines do not sufficiently highlight the need to consider the residual, intangible values of a significant area so that its significance and value is not harmed by inappropriate or inconsistent land uses.	Lawyer
Traditional Owner groups have identified significant cultural heritage finds below the surface on sites that were previously subject to surface disturbance or significant ground disturbance	Lawyer
The residual cultural heritage values of an area are best assessed and determined by the relevant Aboriginal Party. For this reason, we believe that the Guidelines should afford Aboriginal Parties a right to respond to the assessment notice (the "Aboriginal Party's response") indicating whether they agree or disagree with it and the basis for their views. A statutory right will provide an opportunity for Aboriginal Parties to advise of any residual cultural heritage values for an area of which the land user may not otherwise be aware. It would also avoid the issues caused by activities being undertaken that are low impact but may still harm the cultural heritage values of a place or area as well as cause offence (for example, taking photographs of art sites, ceremonial sites, burials and other areas subject to particular cultural sensitivities).	Lawyer
Section 6.2 of the Guidelines deals with landscape features which may also have cultural heritage significance. There is an opportunity here to outline the role of these landscape features in determining residual risk. Clarity could also be provided as to the circumstances wherein these should be considered and the circumstances where landscape features could be excluded (i.e. diversion or damming of watercourse, etc).	Proponent
It is recommended that the Guidelines include criteria for placing items/areas on the DATSIP cultural heritage Register so that only items with significant residual cultural heritage are placed on the Register.	Proponent
Residual risk of harm is not appropriately accounted for in this situation and, concurrently, there is not sufficient clarity around “prior ground disturbance” (and the activities which are not inconsistent with or additional to such disturbance) to enable proponents to make an informed decision as to the likely risk of harm under these principles. The concept of further harm should be addressed further by the Guidelines.	Proponent
The Guidelines could be amended to include: greater particularity about the risk of residual cultural heritage	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Concerns about residual cultural heritage in Developed Areas and activities inconsistent with current or previous land use do no warrant change to the Guidelines	Proponent
[Land user]asserts that the presumption outlined in section 2.2 of the Guidelines is still appropriate...Due to the current self-regulatory environment, DATSIP encounters these situations often while rarely encountering situations where this is not an issue. This provides a skewed perception of the actual proportion of cases where this is an issue. In the last 7 years [land user] has undertaken hundreds of self-assessments within Developed Areas and has only come across the issue of residual cultural heritage within a Developed Area twice. In both cases the sections within the Guidelines that required [land user] to cease work and consult were applied. [Land user] suggests that its experiences with this issue prove that the current Guidelines provide the right balance between the obligation to cease work and involve the Aboriginal Party when cultural heritage is encountered, and land users continuing with activities in Developed Areas.	Proponent
[Land user] acknowledges that there is some likelihood that residual cultural heritage continues to exist in areas that are less developed, such as areas that have been subject to previous significant ground disturbance (category 4).	Proponent
Current categorisations and assessments of harm are fundamentally flawed insofar as assuming prior disturbance has obliterated all Aboriginal cultural heritage, failure to appreciate the potential for the existence of (residual) cultural heritage, and the silence on the fact that cultural heritage not limited to items and objects. Consequently the current regime does not achieve recognition or facilitate protection of cultural heritage	Traditional Owner and/or Representative
The Guidelines could go further to acknowledge that cultural heritage values and features can continue to exist and co-inhabit space within a developed landscape (Category 3 & 4). Activities occurring in Developed Areas such as a redevelopment, material change of use or operational work must be undertaken within a consultative cultural heritage management framework.	Traditional Owner and/or Representative
The Guidelines for Category 2,3 & 4 need to be more robust in providing for the management and protection of residue and intangible cultural heritage values and materials, the occurrence of which can be particularly high where the original ground disturbance activity or past use is historic and has not been substantially reworked over the preceding years.	Traditional Owner and/or Representative
There is acknowledgement of the intangible cultural heritage present in the area and the presumption that as the area has already been developed, then the intangible heritage will not change with further development. However, the tangible cultural heritage which is still likely to be present in the area still has importance to Aboriginal People today - as a significant Aboriginal object.	Traditional Owner and/or Representative
Guidelines should describe the process for developers to gain the knowledge and develop an appropriate management regime to understand/assess the residual cultural heritage values in developed and previously disturbed areas.	Traditional Owner and/or Representative
The Guidelines must explain that cultural heritage can still exist regardless of the underlying tenure not the existence of native title. This way land users must incorporate cultural heritage assessments as part of their land tenure assessments instead of a separate native title process [1.3].	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Categories 1-4 don't allow for the residual cultural heritage in the area to be protected, managed by the Aboriginal or Torres Strait Islander party. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). By providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity and provide a response to the land user whether or not there is any known cultural heritage within that area.	Traditional Owner and/or Representative
Any suggestions by an Aboriginal or Torres Strait Islander Party that there is residual cultural heritage – particularly if it is intangible – is something land users would prefer to ignore and rely on the impact of any previous disturbance. This further agitates already often strained relationships between the land user and the Aboriginal and Torres Strait Islander Party. The CHU must collaborate with various industry peak bodies to provide training on the legislation and the operation of the amended Guidelines. Any training needs to incorporate discussions around the principles and main purposes of the legislation. Any training must be undertaken with assistance from Aboriginal and Torres Strait Islander parties to educate land users about the various mediums cultural heritage takes. It is important for land users to understand that Aboriginal and Torres Strait Islander peoples' traditional knowledge is knowledge concerning the environment in which they live; and is passed from one generation to the next in written and oral form on the basis of their own cultural codes. The knowledge is intangible, inalienable, imprescriptible and non-seizable. These [i.e. significant areas that do not contain physical markings] are often the areas where prior to the commencement of the legislation activities took place without consultation. Obviously this means there is still residue cultural heritage values of that area to the Aboriginal or Torres Strait Islander party. Training to be provided on the role of the Aboriginal and Torres Strait Islander parties under the legislation and the Guidelines.	Traditional Owner and/or Representative

Section 6 – The nature of the Aboriginal cultural heritage likely to be harmed by the activity – section 23(2)(b)

Proposals-Recommendations-Comments	Stakeholder description
The list of so-called "sites" provided in Section 6.1 of the Duty of Care Guidelines is far from comprehensive. We also question why it is even necessary to list sites and places, as they are already covered by definitions for Aboriginal cultural heritage and significant Aboriginal areas. By giving such a list, the impression is also given that these are the only types of sites that may ultimately be of significance, allowing proponents to treat this as a checklist.	Consultant
Strong reservations about the list provided in section 6.2 of the Duty of Care Guidelines. Indeed any landscape may have layers of significance known to its traditional owners.	Consultant
The weight of protection is given to visible sites – i.e. stone artefact concentrations, scarred trees, stone arrangements, etc. However, we would argue that there should be a new section that specifically deals with cultural sites that may have greater significance. Some of these are captured with a vague corollary in Section 6.2 which notes that some landscape features may have significance. However, there is no mention of cultural features like creation sites, dreaming tracks (responsible for changes to a major bridge construction… or concern by [Traditional Owners] members over [an activity]; magic or story places, bad places, birthing places, healing places, rain making places, increase sites, ancestral and recent camping places.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
With regard to Section 6.1 we would suggest that this needs an overhaul. 'Artefact scatters' while in common parlance, infers a wide distribution that is not really significant. Indeed residual stone artefacts are likely to be found across the landscape. Using the term 'artefact concentrations' to denote areas where there is a greater concentration of stone tools/flakes (perhaps more than 2 per square metre) assists in determining significance. However, obviously single stone axes/grindstones, etc , may have considerable significance. Earth ovens/hearths/fireplaces are omitted from the current list of sites, as are smoke signal places, pathways and lookouts. We would also recommend changing 'Quarries and artefact scatters' to 'Quarries, stone sources and reduction sites'.	Consultant
6.1, 6.2 - Suggest reviewing these categories of features and landscape features against sites on the register or database – are there any categories of sites on the register or database that are not covered under 6.1-6.2? What about more modern notions of Aboriginal heritage and intangible places (dreaming tracks or story lines)? The current list in 6.1-6.2 is very focused on tangible, archaeological places however it needs to target the intangible as well.	Government agency
Paragraph 6 of the Guidelines contains a non-exhaustive list of features that are highly likely to have cultural heritage significance. We recommend consultation with Aboriginal Parties and other Traditional Owner and First Nation Peoples of Queensland to ensure that the list of features and landscape features is comprehensive and that it includes reference to the contemporary or post contact nature of significance that may attach to an area or object.	Lawyer
Section 6.2 of the Guidelines deals with landscape features which may also have cultural heritage significance. There is an opportunity here to outline the role of these landscape features in determining residual risk. Clarity could also be provided as to the circumstances wherein these should be considered and the circumstances where landscape features could be excluded (i.e. diversion or damming of watercourse, etc).	Proponent
Exclusion distances could also assist if nominated. A description of the nature of development that would affect landscape features, or conversely, landscape features that might be harmed by any development might assist with interpretation of these changes.	Proponent
Currently, the categories under the Guidelines lead land users to assess the proposed activity and current development and disturbance of the land. We supports this approach. However, paragraphs 5.6 and 5.8 point to a list of features at paragraph 6.0 that are highly likely to have cultural heritage significance (note an apparent inconsistency where 5.8 refers to these as examples but 5.6 appear to limit the list). Paragraph 5.15 also refers to the features listed at 6.0 as requiring 'particular care' where an activity is proposed causing additional surface disturbance 'to these features'. Category 5 requires that the Aboriginal Party is notified for advice on whether the features [referred to in para 6.0] constitute Aboriginal cultural heritage and, if so, how best to manage it. Category 5, therefore, does not necessarily require or encourage consultation with the Aboriginal Party unless these features have already been identified and it is necessary to remove, relocate or harm them. Whilst a land user can assess the nature of their activity on land and the consistency of that activity with development and prior disturbance, only the Traditional Owners can determine cultural significance.	Proponent
Section 6.0 of the Guidelines be amended to include photographs or depictions of the types of features that are listed in this section, to assist land users with a better understanding of what these significant features may look like (noting that many non-Indigenous persons rarely have knowledge of these matters). For instance, photographs of different ceremonial places, scarred trees and the types of artefacts commonly located at occupation sites.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
That section 6.1 of the Guidelines be amended to include ‘birthing tree’ and ‘boundary marker tree’ as examples of the types of features that are highly likely to have cultural heritage significance.	Traditional Owner and/or Representative
On a number of occasions, the existing Duty of Care Guidelines outline and reinforce the option of achieving legislative compliance through consultation and agreement making with Aboriginal Parties (see clauses 1.6, 1.16, 1.17, 7.0 and 8.0). However, the case studies included with this submission and anecdotal evidence over twelve years indicates that land users (and their advisors) prefer the option of self-assessing a project as Category 1, 2, 3 or 4 and moving to the conclusion that: - “it is generally unlikely that the activity will harm Aboriginal cultural heritage” and / or - “it is reasonable and practicable that the activity proceeds without further cultural heritage assessment”. Category 4 activities are particularly contentious because land users and their advisors take the (seemingly legal) option that the activity can proceed under the Guidelines clause 5.4 without considering residual cultural heritage related to significant landscape features. That is, they don’t consider clauses 5.5, 5.6 and 6.0 or they don’t understand the concepts outlined in clause 6.0.	Traditional Owner and/or Representative
The existing Guidelines outlines Landscape Features in clauses 6.0-6.2. Clause 6.2 is not an inclusive list of landscape features that are considered apt for any predictive model of Aboriginal cultural heritage assessment.	Traditional Owner and/or Representative

Torres Strait Guidelines

Proposals-Recommendations-Comments	Stakeholder description
Guidelines must be developed and gazetted that are tailored to the unique characteristics of the Torres Strait region to enable the legislation's purpose to be achieved there	Lawyer
The Guidelines do not currently apply to the Torres Strait. The Minister should gazette Guidelines for the Torres Strait under the Torres Strait Islander Cultural Heritage Act 2003.	Lawyer
Supports the creation of Guidelines addressing Torres Strait heritage as similar in approach as practicable as for Aboriginal cultural heritage. We submit that consistency of approach and interpretation is desirable for supporting the aims of the Torres Strait Islander Cultural Heritage Act 2003.	Proponent
In the Torres Strait walking is only permitted along existing public roads. Land users must seek permission from the relevant Traditional Owner before walking, driving in areas that are off existing public roads. The development of any specific Guidelines for the Torres Strait must incorporate the existing cultural protocol and existing permission process. Any such Guidelines must be developed in consultation with Torres Strait Islander peoples. Any training to land users about the Guidelines for the Torres Strait must be presented with representatives from the Torres Strait Islander cultural heritage bodies.	Traditional Owner and/or Representative
There are also uninhabited islands, reefs, cays and water areas within the Torres Strait that are cultural significant to Torres Strait Islanders. This must be incorporated into the Guidelines for the Torres Strait.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
It is imperative that the Torres Strait region have a separate set of Guidelines developed that reflect the uniqueness of the region. The Torres Strait region is a unique part of Australia and as such requires the need for all visitors to follow cultural protocols to ensure social cohesion and understanding. It is important to understand the Torres Strait has native title over the majority of land and sea. Each inhabited island community has a cultural protocol that visitors must abide by. In addition to this there is a protocol requiring prior notice of a visit to be provided to the RNTBC and the Torres Strait Islands Regional Council.	Traditional Owner and/or Representative
It is important for the development of any Guidelines for the Torres Strait to recognise the significance of the relationship between Torres Strait Islanders and the reefs and waters surrounding their islands. It also requires emphasis that, to the Torres Strait Islander peoples, the land and sea are seamlessly and culturally associated - there is no “sea-land dichotomy”	Traditional Owner and/or Representative
The development of any Guidelines specific to the Torres Strait must acknowledge that an important element of Torres Strait culture is totems. A “totem” is an animal or natural object with which a group of persons acknowledge a definite relationship. For most Torres Strait Islander communities their totems include marine animals. For this reason it is vital that the development of any Guidelines specific to the Torres Strait recognise and protect their totems as cultural heritage. As part of the development of Guidelines for the Torres Strait consultation must be undertaken on each Island community. The CHU must ensure that it has sufficient resources available to undertake this consultation properly. The TSRA NTO is willing to coordinate with the CHU to share resources where possible. The development of Guidelines for the Torres Strait must involve representatives from the Torres Strait in all stages. This will ensure that Ailan Kastom is incorporated in any finalised Guidelines. On these grounds we invite the CHU to engage directly with the PBC Chairs to commence discussion around the development of Guidelines independent and specific to the Torres Strait.	Traditional Owner and/or Representative

Part 2 - Comments relating to the assessment of cultural heritage

Agreement making

Proposals-Recommendations-Comments	Stakeholder description
Guidelines misused as an alternative to agreement making	Consultant
In the first instance, parties should be required to seek agreement no matter the nature of the Aboriginal cultural heritage. This affords an opportunity to the relevant Aboriginal party to be the primary advisor on the significance of Aboriginal cultural heritage, consistent with provisions of the ACHA, and hence how it should be managed. Where agreement cannot be secured there needs to be some clear guidance as to what actions should be taken as reasonable and practicable measures binding on parties. This will necessarily require the State to determine what constitutes reasonable and practicable measures. Some of these measures can be done in guidance notes that give effect to the purposes of the ACHA to avoid or minimise harm to Aboriginal cultural heritage. In other cases it will require case by case assessment. Is this necessarily a bad thing? In our estimation it is not. The regulator should assist parties to meet the duty of care and should use their knowledge and experience to do so. Secondly, a lay party should not be expected to develop reasonable and practicable measures in relation to Aboriginal cultural heritage. Thirdly, there should be some independent assessment of whether any management measure actually is reasonable and practicable in any particular case. Fourthly, it is consistent with the State's assertion of ownership of Aboriginal cultural heritage. The State should develop its reasonable and practicable measures informed by the purposes of the ACHA.	Consultant
If the Aboriginal Parties do manage to convince land users to consult, it is more often-than-not late in the development planning process, and heritage management decisions focus on monetary solutions rather than on incorporating heritage values into a particular development.	Consultant
Create a section in the Guidelines formalising processes for negotiating agreements with Aboriginal parties. [This] would provide details about the responsibilities and roles of stakeholders during negotiations; would also need to provide conflict resolution measures for any issues between stakeholders during negotiations of agreements.	Government agency
The Guidelines should support the Proponent (as the initiator of the proposed activity) in the use of their own internal cultural heritage management processes including the use of standard agreement templates.	Proponent
There is little discussion, however, in the Guidelines about alternatives where an agreement cannot be reached. Whilst reference is made to a CHMP under Part 7 of the Act only, this is often not practicable in the context of minor works or low cost works. It is recommended that consideration be given to other 'reasonable and practicable measures', that could be employed in this circumstance and that examples be listed. This could include a further breakdown of category 5 activities taking into account the scope and scale of the activity to provide further guidance about what is reasonable and practicable (with or without reference to industry specific activities).	Proponent

Proposals-Recommendations-Comments	Stakeholder description
...one or more of the following issues are needed to be addressed, increasing both the costs and time associated with completing the proposed activity: - party does not respond to the initial notice - number of people suggested as monitors - fees and incidentals (including an additional service fee) - payment of travel fees when Traditional Owner lives a considerable distance [from activity] - Party expects [land user] to pay all expenses incurred by the Aboriginal party in seeking advice from lawyers, anthropologist or other experts even when there is no apparent need to involve such experts - monitors do not attend work sites at the time agreed - conflicts with other traditional owner group or between groups	Proponent
Recommend that the revised Guidelines do more to highlight and promote CHMPs as best practice for reaching agreement on new and existing development and the ongoing use and maintenance of said development/activity.	Traditional Owner and/or Representative
Voluntary agreements, such as a Cultural Heritage Management Plan, as described in section 1.16 of the Guidelines are often initiated as way to comply with the Act. However, if the State wishes to force an agreement with an Aboriginal party where they are either not willing or ready to agree, there is still a threat of 'compulsory acquisition' by the State Government. This is not clearly understood or defined but can be a very threatening concept. This element needs to be taken into consideration and explained clearly in the Guidelines.	Traditional Owner and/or Representative

Ask First

Proposals-Recommendations-Comments	Stakeholder description
That the Duty of Care Guidelines reflect the management principles of the Ask First Guidelines (see especially pages 14-15) which encourage the integration of the assessment process (e.g. a Part 6 style Cultural Heritage Study) and the management process (e.g. a Part 7 style CHMP).	Consultant
The Guidelines specifically relate to principles 5 (a), 5 (b), 5 (d) and 5 (e), but it is only principle 5 (e) that is actually addressed by the Guidelines. The other principles are largely ignored by the provisions of the Guidelines, which allow development proponents to make decisions about the impact of development land surfaces (rather than on cultural heritage) without any reference back to Traditional Owners and/or Aboriginal Parties. This process in the Guidelines is contrary to the principles of the legislation, and is also contrary to the Principles of Aboriginal consultation as outlined on page 6 of the Ask First Guidelines developed by the Australian Heritage Commission and specifically referenced as best practice in Section 7 of the Duty of Care Guidelines. By ensuring that it is proponents of the development that may harm cultural heritage who make the initial assessment of the likelihood of their projects impacting heritage, Aboriginal people are denied the opportunity to meet their obligations to assess effects on their land, resources and heritage (Principle 5 (d)) and Aboriginal knowledge is not made the primary source of information about heritage (Principles 5 (a) and 5 (c)).	Consultant

Proposals-Recommendations-Comments	Stakeholder description
At present, the Guidelines contain only a brief and poorly articulated Dispute Resolution process (Section 7.5). The Guidelines indicate that a duty of care requirement will continues despite an absence of agreement between a proponent and the Aboriginal Party. But the Guidelines also imply that a proponent may proceed with development, even without the consent of an Aboriginal Party, providing that the proponent (who is usually unskilled in matters pertaining to the identification of Aboriginal cultural heritage) does not harm Aboriginal cultural heritage, without any requirement for the activity to be monitored by a person with skills and training in heritage identification. This is entirely contrary to the principles of the Act, and to the principles of the Ask First Guidelines to which the Duty of Care Guidelines makes specific reference.	Consultant
A minimum standard for Aboriginal party consultation be included in the revised Guidelines. The standard is to be based on the Ask First guideline process and should provide the accepted framework for consultation under the Duty of Care process in Queensland.	Consultant
Section 7.0 of the existing Guidelines does not provide sufficient clarity in process for consultation with Aboriginal parties. If you fail to reach agreement, no rigour is provided on how any of these scenarios is managed or what expectations are for achieving them to ensure compliance. The Guidelines (7.2) do refer to the Ask First guideline prepared by the Commonwealth but makes no statement as to the whether this process must be following. The Ask First guideline already provides an accepted approach for undertaking such consultation and is already used when undertaking heritage assessments on Commonwealth land under EPBC Act requirements.	Consultant
The link between the Duty of Care provisions generally and the requirements for a Cultural Heritage Study (CHS) and Cultural Heritage Management Plan (CHMP) is more clearly articulated. This would include provisions to ensure that appropriately skilled and experienced cultural heritage professionals are involved in a CHS and CHMP (anthropologists are more appropriate for assessing intangible cultural heritage sites, while archaeologists are more appropriate for tangible cultural heritage sites), and that such heritage professionals are professionally trained and accredited and have the required qualifications to undertake the necessary assessments. In other States, such provisions are regulated by a permit or registration process - A similar permitting regime should be considered for Queensland. The Guidelines reflect the management principles of the Ask First Guidelines (see especially pages 14-15) which encourage the integration of the assessment process and the management process.	Consultant
7.2 - The Ask First guide is great, but surprisingly unknown amongst Traditional Owners and Cultural Heritage Officers – suggest referring to the guide in sections 5.7 and 5.16 as well so that it forms basis for consulting with Aboriginal Parties	Government agency
[Land user] uses the Ask First Policy as a guiding document for consultation with Aboriginal Parties.	Government agency

Assessment of cultural heritage

Proposals-Recommendations-Comments	Stakeholder description
[1.7] - that regard should be had in order to demonstrate that information in regards to the area is consistent between Aboriginal Party and authoritative information.	Academia
The ability of a Proponent to send a Notification to a Land Council (who then takes some weeks to pass it on) and in the absence of a timely reply, the Proponent then proceeds to undertake the work purportedly in compliance with the Guidelines - should be removed	Consultant

Proposals-Recommendations-Comments	Stakeholder description
In essence, the most consistent users of the Guidelines are those who do not wish to engage with the Aboriginal parties and who seek a minimalist approach to the effective long-term management, protection and conservation of Aboriginal Cultural Heritage. The Guidelines are misused as they are used as an alternative to an agreement or in many cases to avoid agreement with an Aboriginal party. Duty of Care Guidelines do not make it compulsory for assessments to be carried out in conjunction with the Aboriginal Party or an archaeologist	Consultant
The ability of the Proponent to unilaterally use the Duty of Care Guidelines is consistently used to avoid involving the Aboriginal Party in undertaking a Cultural Heritage Assessment	Consultant
There has consistently been instances where an assessment is undertaken purportedly in compliance with the Guidelines in circumstances where the Aboriginal Party have not been notified or contacted.	Consultant
Aboriginal Party not privy to assessment and therefore unaware of the activity	Consultant
Consistent users of the Duty of Care Guidelines are those who do not wish to engage with the Aboriginal Party and who seek a minimalist approach to cultural heritage management	Consultant
Emphasis should be shifted away from whether the area is developed or disturbed to whether the area has previously had a cultural heritage assessment carried out on it. At present, despite the evidence - Proponents will not entertain any form of assessment in Developed or previously Disturbed Areas because the Guidelines say they do not have to carry out such an assessment.	Consultant
The Guidelines do not make it compulsory for the assessment to be carried out in conjunction with the Aboriginal party or by an Archaeologist or for the assessment to make recommendations about the effective long-term management, protection and conservation of Aboriginal Cultural Heritage or for the Development to proceed in conformity with the Recommendations. In essence, where the Guidelines are used there is no credible consultation with the Aboriginal parties and there are no recommendations made as the assessment is all about identifying and relocating artefacts rather than undertaking effective measures for the long-term management, protection and conservation of Aboriginal Cultural Heritage or of the cultural landscape of the development site. Invariably the Aboriginal party knows nothing about the content of the assessment or the site or that an assessment has been undertaken. Consequently the Proponent proceeds with the development without any care of the cultural heritage values of the area.	Consultant
The Guidelines do not meet the requirements of Best Practice cultural heritage management	Consultant
Many of the categories established in Sections 4 and 5 of Duty of Care Guidelines, as the basis for determining impacts of proposed developments, are poorly defined. In particular, all the category definitions are based on the potential impact a development may have on land surface, and none of the definitions is based on the likely impact of development on cultural heritage.	Consultant
There is no recognition that even a low impact activity could adversely affect intangible heritage, especially sacred sites and gender-restricted places.	Consultant
That even for Category 2 developments, there be provision for a Cultural Heritage Management Plan (CHMP) to be prepared to take account of potential cultural heritage impacts on places of social or spiritual significance to Traditional Owners, should initial assessment of the effects of development indicate that such a study is required.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Category 5 is arguably the most significant of all the categories, as it is the only category that actively encourages a cultural heritage assessment (Section 5.14 of the Guidelines), such as that provided in Part 7 of the Act. Yet this category is very poorly defined as "any activity … that does not fall within category 1, 2, 3 or 4". This needs urgent rectification, particularly as it is vital that any development in this category clearly identifies the potential impact of a development on cultural heritage (both tangible and intangible; both on the ground surface and buried). This should be undertaken by a person skilled and experienced in cultural heritage site and place identification, and trained in cultural heritage management practices.	Consultant
The Guidelines specifically relate to principles 5 (a), 5 (b), 5 (d) and 5 (e), but it is only principle 5 (e) that is actually addressed by the Guidelines. The other principles are largely ignored by the provisions of the Guidelines, which allow development proponents to make decisions about the impact of development land surfaces (rather than on cultural heritage) without any reference back to Traditional Owners and/or Aboriginal Parties. This process in the Guidelines is contrary to the principles of the legislation, and is also contrary to the Principles of Aboriginal consultation as outlined on page 6 of the Ask First Guidelines developed by the Australian Heritage Commission and specifically referenced as best practice in Section 7 of the Duty of Care Guidelines. By ensuring that it is proponents of the development that may harm cultural heritage who make the initial assessment of the likelihood of their projects impacting heritage, Aboriginal people are denied the opportunity to meet their obligations to assess effects on their land, resources and heritage (Principle 5 (d)) and Aboriginal knowledge is not made the primary source of information about heritage (Principles 5 (a) and 5 (c)).	Consultant
There is no consideration of scientific values of Aboriginal heritage places, for example, where scientific values may differ to social values.	Consultant
Guidelines should provide greater certainty for Proponents by providing clear direction on expectations for further assessment requirements.	Consultant
Additional Guidelines be prepared for cultural heritage assessment requirements and associated timeframes, or the Guidelines include such requirements.	Consultant
Additional cultural heritage assessment must consider the significance of Aboriginal areas and objects identified within the activity area (by the Aboriginal party), any evidence of archaeological or historical significance within the activity area (by a suitably qualified person), as well as measures for managing any impacts identified such as testing, salvage, avoidance or other mitigation actions.	Consultant
Section 1.10 – 1.13 should be revised to more clearly articulate the role of the Proponent in the Duty of Care process. The revisions should ensure that expectations are clearly stated, including acceptable processes to ensure that the Duty of Care has been met. Acceptable processes must include: a) Evidence to show that the views of the Aboriginal party on the significance of Aboriginal areas and objects within the activity area have been sought in the Duty of Care process. b) Participation of a suitably qualified person in the Duty of Care process, engaged by the Proponent, to assess the likelihood of evidence of archaeological or historical significance of Aboriginal occupation of an area.	Consultant
The likelihood of mutually agreeable heritage outcomes are greater when all people who participate in the duty of care process are aware of their cultural heritage obligations, clearly understand expectations set of them, and when consultation between Proponents, Aboriginal stakeholders, and Technical advisors is undertaken early and in a meaningful and transparent manner...guided by an ethical desire to ensure improvements to the practice of Aboriginal cultural heritage management in Queensland for the betterment of all relevant stakeholders.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Proponents often assess their own duty of care without any technical input from heritage specialists, and/or without specific input from people with specific cultural knowledge from the project area.	Consultant
Proponents regularly proceed with projects, assuming they have met their duty of care obligations, without seeking any technical input into the archaeological or historic significance of an area (part c of the ACHA definition).	Consultant
At present there is no clear process in the Guidelines for assessing significance (a – c clauses in the ACHA definition of Aboriginal cultural heritage) or any expectation set for who is qualified to assess such matters. This weakness has resulted in the concept of significance being largely excluded or oversighted from any assessments undertaken, with a stronger focus on the presence or absence of archaeological materials (whether significant or not), and at times presentation of unsubstantiated and uninformed claims about the importance of some areas and objects.	Consultant
When Aboriginal cultural heritage is identified and a project has been determined to have potential to cause harm to Aboriginal cultural heritage, there is no clarity on what would meet the requirement for a "cultural heritage assessment" other than that it "may consider under section 23(2) of the Act, set out in paragraph 1.12 of the Preamble to these Guidelines." We argue that this is too broad, too readily open to interpretation, and result in inconsistencies in approach. Therefore we argue that the Guidelines should provide greater certainty for Proponents by providing clear direction on expectations for further assessment requirements. We further argue that for any activity where ground disturbance is expected, Aboriginal cultural heritage cannot be sufficiently identified without a visual inspection or 'survey' of the area to be impacted. Desktop review is wholly insufficient and unable to achieve an acceptable degree of certainty of the presence, absence or potential for Aboriginal cultural heritage to exist in any area.	Consultant
Demands for further cultural heritage assessment (esp. under Category 5) are more often than not based on the mere presence (and sometime absence) of surface only Aboriginal cultural heritage, without any consideration as to the potential for subsurface finds, intangible heritage aspects, and especially without regard to the significance of the area or objects. This often leads to outlandish requests for extensive and costly archaeological testing and salvage that cannot be justified. It can also lead to demands for what may be unnecessary changes to a Proponents proposed activity, which may also be costly and place projects at risk of not proceeding.	Consultant
While the Guidelines notes the importance of the Due Diligence approach (1.10), Duty of Care (1.11 – 1.12) and Meeting that Duty of Care (1.13), it is not explicit enough about the role of the Proponent in the Duty of Care process and hence expectations of them.	Consultant
Enormously misleading for those people [not cultural heritage professionals] who consider their Duty of Care exercised once they have completed a search of the database.	Consultant
The Duty of Care Guidelines should not allow the potential impacts on Aboriginal and Torres Strait heritage to be self-assessable.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
The Duty of Care Guidelines provide approaches, through its five categories and acceptable responses, that: - assume that cultural heritage will not be present (contrary to the ACH Act itself that assumes it may be present); and - do not acknowledge intangible significance, which can only be defined through consultation with Aboriginal parties. Effectively, by implicitly ignoring intangible significance in its assessment categories, the Duty of Care Guidelines are providing a flawed process that does not even acknowledge the definitions in the ACH Act or its purpose and principles. Indeed, the disregarding of intangible heritage in the Duty of Care Guidelines provides a pathway for proponents to undertake their project without any regard to cultural heritage, whether in areas that have been previously disturbed or not. Further, the interpretation of the Guidelines by proponents is subjective, and given the almost complete absence of a risk of prosecution (due to almost non-existent enforcement, due to politics, resourcing or both), taking the approach that is most favourable to the proponent under the Guidelines can be (and is routinely) done with impunity. Where a proponent has made no contact with the Aboriginal parties for a project, it is then difficult to believe that, were the proponent or any of their personnel to uncover an item of cultural heritage, that they would recognise it for what it is. Even if they were able to recognise it, it is again difficult to believe that they would protect the item, cease their activities, and contact the Aboriginal parties to discuss the item and negotiate the further conduct of the project in light of the find.	Consultant
Category 4 is regularly being assessed against a project area by people with little or no understanding of Aboriginal cultural heritage	Consultant
Many of the categories established in Sections 4 and 5 of 'The Guidelines', as the basis for determining impacts of proposed developments, are poorly defined. In particular, all the category definitions are based on the potential impact a development may have on land surface rather than the likely impact on cultural heritage. To meet the aims (and principles) of 'The Act', the definitions of proposed impacts needs to consider potential effects on cultural heritage rather than land surfaces. Additionally, there are no Guidelines provided for proponents, untrained and unskilled in cultural heritage management, to assess whether a proposed land use might adversely affect cultural heritage (e.g. scarred trees may be affected differently by the cultivation of different crops). In general, there remains inadequate guidance on when and how cultural heritage assessments are required.	Consultant
We raise no issues regarding the use of categories within the Guidelines. However, a fundamental issue we see relates to transparency of proponents / land users proposing to operate under any particular category of the Guidelines. Transparency of the process should be increased by requiring that a party using the Duty of Care Guidelines to meet the Duty of Care be required to formally document the application of the Guidelines.	Consultant
Formal documentation of Guidelines decision making can be eased for proponents / land users by provision of a suitable pro forma and some additional guidance notes in the use of the pro forma and the background information that should be collated to substantiate any decision. The pro forma would require two stages: the first stage to addresses the original decision making process, land use background and risk to Aboriginal cultural heritage, and a second that addresses implementation and any reasonable and practicable measures adopted to manage Aboriginal cultural heritage.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
In the current circumstances, it is conceivable that a proponent / land user can arrive at a decision as to the category and the consequent outcome without needing to formally document both the category under which they consider they are operating, how they arrived at this determination nor explain previous land use history or exactly how and in what circumstances the proposed activity might affect Aboriginal [or Torres Strait Islander] cultural heritage. This creates a level of uncertainty for Aboriginal parties in particular, who might wish to challenge how a proponent arrived at a decision that could exclude the Aboriginal parties from an exercise to evaluate a proposed action and the cultural heritage consequences. It also creates a problem for a regulatory agency that is seeking to establish whether a proposed or implemented course of action is appropriately proportionate to the likely risks to Aboriginal cultural heritage, something central to deciding whether further action on their part is necessary to give effect to the purpose of the Aboriginal Cultural Heritage Act (ACHA).	Consultant
The Duty of Care Guidelines allows a party to draw on previous land use history where landscape modification has taken place in an unregulated environment as a justification for them self-assessing that no further action in relation to Aboriginal cultural heritage is warranted. Was this the intention of the ACHA, noting the definitions of Aboriginal cultural heritage in the ACHA? This might be reasonable response if there was no material change of use. But it is less so where the proposed action involves a material change of use and the proponent / land user is only required to consider residual heritage in a surface context. Their proposed activities may well disturb cultural sites about which they can have little or no understanding in areas where there has been no Harm or the Harm may have diminished but has removed the significance of the site. In such circumstances how can one assess the risk such that reasonable and practicable responses can be developed?	Consultant
The move to re-define ‘residual cultural heritage values’ is welcomed. Many sites are located in areas that are currently not recognised by the Guidelines as requiring assessment. Many sites are located in highly disturbed areas that still can provide significant heritage values. For example, a site…that [had] been used as a go kart track, an army training camp and a migrant camp and would have been classed as a disturbed site still produced in situ earth ovens and hundreds of stone artefacts. Under the present Guidelines this would have been considered a disturbed site had there not been historical knowledge of the location’s importance.	Consultant
There are issues with Category 2 and 3. It does not give protection for significant sites from current land use. For example, [a] bora ground is being deteriorated by cattle camping on the ring. Even though a company offered to pay to have the rings fenced, the landowner declined. Cattle also cause major damage to rockshelters and art sites. Cultivation may be impacting on a known artefact concentration. Existing tracks on foreshores and in parks may also fail to protect known cultural heritage values.	Consultant
While covered by a ‘material change of land use’ there appears little or no protection from a farmer or land user bulldozing large areas of native bushland without the recourse of consultation and assessment. However, when native vegetation is being cleared on private land, there is no protection for Aboriginal heritage sites. The legislation should reflect the need that when remnant vegetation is cleared there should be a dialogue with the relevant Aboriginal cultural heritage body.	Consultant
The development of high quality predictive modelling using multi layer landscape approaches assists the recognition of the potential or otherwise in disturbed or developed areas.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Self assessment is not the answer to protection of cultural heritage especially in the lack of teeth to any penalties resulting from the destruction of heritage. In the first instance, assessments are being conducted by the developer with the result that only minimal efforts are made to either contact the relevant Aboriginal Party or protect any sites. Secondly, the persons conducting the assessments largely do not have the specialised knowledge required to make such assessments. Thirdly, how can an environmental officer or land user know about cultural sites without consultation with the relevant Aboriginal Party? Self assessment for cultural heritage by developers or even government bodies is catastrophic for heritage protection.	Consultant
5.1 – 5.3 (Developed Areas) - Significant cultural heritage can frequently be located in 'developed areas' hence I think it isn't always reasonable or practicable for activities in these areas to proceed without further assessment – I recommend that an assessment process be put in place for activities in developed areas. The assessment for developed areas may be less than that for Category 4 or 5 activities, but some assessment should occur.	Government agency
Improve links between the values of an area and the potential activity impacts.	Government agency
Unpredictable and costly handling of some matters with no change to the outcome	Government agency
If proposed activities are similar to those activities conducted in the past, there may not be a need to undertake a cultural heritage assessment. If the proposed activities are different to those activities conducted in the past, a cultural heritage assessment and possible agreement is needed.	Government agency
Application of historical studies would provide more details about the correlation of past and proposed activities and would stop areas being generically assessed as disturbed and provide a means of assessing the heritage potential of project areas.	Government agency
The Duty of Care Guidelines pretense that the likelihood of harm to Aboriginal cultural heritage is 'unlikely' if an activity is conducted on an area previously subject to significant ground disturbance or may not cause additional harm where harm has already occurred, is problematic. This definition does not adequately acknowledge activities that 'do not cause ground disturbance' but have the potential to be harmful to cultural heritage (e.g. a prescribed burn is an activity that may pose a risk to scarred trees and/or culturally significant vegetation). It also does not acknowledge the significance of residual cultural heritage in areas that have had past disturbance.	Government agency
Some terms used in Duty of Care Guidelines vague and open to interpretation. This causes immense difficulties because the system is self-regulating. It relies upon land users interpreting the Guidelines in a fair and reasonable way in order to ensure Aboriginal cultural heritage is properly protected and managed. The difficulty with this approach is that it is easy for a land user to interpret the requirements broadly giving considerable weight to their own interests over and above the need to protect Aboriginal cultural heritage.	Lawyer
Duty of Care Guidelines do not sufficiently highlight the need to consider the residual, intangible values of a significant area so that its significance and values is not harmed by inappropriate or inconsistent land uses	Lawyer
Self-assessment of both the impact of an activity and the residual cultural heritage value of a site (absent an entry on the database/register) has led to misapplication of the Guidelines", exclusion of Aboriginal Parties (This is despite paragraphs 5.8 and 5.16 stating that it is "necessary" to notify and engage with the Aboriginal party for category 4 and 5 activities) and harm being caused to cultural heritage.	Lawyer
Any amendments to the Guidelines must also address what we see as over-reliance by land users upon the database and register. The absence of a recorded site should not lead to an assumption that there is no cultural heritage or cultural heritage values within an area.	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
Assessing whether an area contains cultural heritage, irrespective of the nature and extent of previous disturbance, is a matter best determined by Aboriginal Parties and appropriately qualified experts...inadequate assessments are currently being conducted by many land users, their employees, contractors and consultants. Reliance upon unsound assessments has led to the Guidelines being used by land users to frustrate or circumvent the objectives of the ACHA.	Lawyer
Cultural heritage assessments are too often conducted by persons who are not qualified to determine relevant matters, particularly the significance of cultural heritage under Aboriginal tradition	Lawyer
Over-reliance upon narrow interpretations of the Guidelines has led to a pre-occupation with surface disturbance in assessing whether or how an activity may proceed. Land users tend to assume that activities may immediately proceed in the absence of observable heritage material or discernible features.	Lawyer
The duty of care applies to persons undertaking activities that may harm cultural heritage. They are often an operator of plant and other heavy machinery contracted by development proponents and other land users. In a rural context, such activities are often undertaken by landholders themselves. It is generally not in their interests to cease the works they are undertaking or contracted to perform. It is also practically impossible for operators to observe artefacts and objects when undertaking such works. Despite being the persons to whom the duty of care strictly applies, they are the least likely to comply. In our view, this underlines the need for rural landholders and the principal in a contractual relationship (ie. the proponent/land user) to carefully assess whether cultural heritage exists within surface and sub-surface areas before ground disturbance occurs. The best way to do this in our submission is to seek the assistance of the relevant Aboriginal Party.	Lawyer
The Guidelines include "exceptions", in paragraphs 5.6 and 5.15, to the right of a proponent to proceed with activities on the basis of prior disturbance. A proponent is required to take "extra care" when proceeding with an activity that may cause harm or damage to a feature of cultural heritage significance. This is generally referred to as the protection of "residual cultural heritage". There is an issue regarding the practical application of those paragraphs. A proponent of works in an area that has been the subject of previous significant ground disturbance is unlikely to be aware of the presence of any features that may have residual cultural heritage significance, unless an Aboriginal party has specifically made them aware. As currently framed, the Guidelines presume that a proponent has knowledge of or is able to identify such features. In our view, the only reasonable and practical way to ensure that any "features" of asserted cultural heritage significance are protected is if they are significant Aboriginal cultural heritage, capable of being and entered on the Register of Aboriginal Cultural Heritage. The Guidelines should protect residual cultural heritage as an "exception" to (our) proposed Category 2, only if it has been entered on the Register of Aboriginal Cultural Heritage.	Lawyer
In our submission, there can only be a greater synergy between the cultural heritage values of an area and the nature of a proposed activity if the values are known to the proponent before the activity commences. A frequently experienced problem is that proponents are simply not aware of the cultural heritage values of an area including, as submitted above, any "features". Again, the only practical way in which to address this with confidence and certainty is to enable proponents of works to search a public register that confirms the values.	Lawyer
Guidelines should be amended to acknowledge this by providing additional guidance on the types of activities that could pose a substantive risk of harm to heritage values and provide greater clarity about those activities that are unlikely to pose a substantive risk of harm.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Guidelines should place greater emphasis on clarifying that where activities are consistent with current land use and disturbance they are unlikely to cause harm, or additional harm, to cultural heritage; but where activities are inconsistent with the level of disturbance to land and native environmental features (e.g. mature native trees) a higher risk exists.	Proponent
Guidelines are, in essence, about assessing the consistency of a proposed activity with existing land use and level of prior disturbance. We submit that the Guidelines should place greater emphasis on clarifying that where activities are consistent with current land use and disturbance they are unlikely to cause harm, or additional harm, to cultural heritage; but where activities are inconsistent with the level of disturbance to land and native environmental features (e.g. mature native trees) a higher risk exists.	Proponent
Development alone should not determine risk. Rather, the focus should be on the impact of the activity and its potential to harm Aboriginal cultural heritage, rather than whether there is prior development.	Proponent
Although the Guidelines are of assistance, there is the need for some fine tuning in certain areas, such as: It is only a guideline which in turn does not provide certainty of process and from a Project perspective is not fail safe e.g. The representative Traditional Owner Group has become aware that the Project Works and argue that the company has incorrectly categorised the works as a Category 2 and advising that a Stop Work Order will be requested to be placed on the Project due to their being cultural heritage significance in the area. ...detailing (maybe mandatory content items) what should be included in an internal assessment for it to be used as a compliance tool would be of great assistance. I believe that providing mandatory content items would allow for the internal risk assessment to have a high level of weight applied to it in situations of disagreement. I do not believe that those completing the internal assessment would need qualifications to do so if there is detailed provision of information and a good understanding of what is required for the internal assessment.	Proponent
Providing guidance documents on appropriate management measures – and importantly, inappropriate management measures – for dealing with residual and intangible cultural heritage in areas subject to previous significant ground disturbance. This could assist in promoting constructive partnerships if recommended measures did not significantly affect project timeframes and budgets (for instance, recognition of traditional custodianship or project inductions by Aboriginal Parties).	Proponent
[Land user] asserts that the current Guidelines provide some guidance regarding when further cultural heritage assessment is required but no guidance on how to undertake further assessments. [Land user] suggests that clarification on what constitutes further cultural heritage assessment be incorporated into the Guidelines. As part of this clarification, [Land user] recommends that land users be specifically granted the ability to engage and rely on suitably qualified experts (such as archaeologists) to undertake additional cultural heritage assessment in areas where proposed ground disturbance is inconsistent with previous significant ground disturbance.	Proponent
Category 3 - Any changes that would force proponents to undertake mandatory consultation, negotiation and/or survey in Developed Areas would not provide a balance between the need to establish timely and efficient processes for the management of activities that may harm Aboriginal cultural heritage, and the premise that an activity proposed on an area previously subject to significant ground disturbance is unlikely to cause any additional harm than that which has already occurred.	Proponent
Pastoral areas and farmland must be included in areas requiring assessments, there is within the indigenous community concern over large areas of native bushland cleared by land users without consultation	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Assessments can be done without consultation with Aboriginal people (major issue)	Traditional Owner and/or Representative
Aboriginal Party not privy to assessment and therefore unaware of the activity	Traditional Owner and/or Representative
Need for better predictive modelling	Traditional Owner and/or Representative
Support a practical tool such as the Duty of Care Guidelines ("the Guidelines") to assist the parties to: • recognise the foundational principle intent of protecting Aboriginal Cultural Heritage as prescribed at section 14(2) of the ACHA; • identify when a cultural heritage inspection should be conducted; and • develop a considered, cohesive and consistent approach to achieving the intent of protection. However, the current drafting of the Guidelines is such that they do not satisfactorily guide the parties to achieving the above goals.	Traditional Owner and/or Representative
Inherent disconnect between the ACHA and the Guidelines with respect to valuing the cultural knowledge and authority of the native title party. The entirety of clause 5 is reproduced in the Guidelines then renders those principles ambiguous on three fundamental levels: - assessment on the likelihood of harm based on levels of disturbance as unlikely to harm CH ignores that no CH inspection undertaken prior to that disturbance, prior disturbance does not of itself indicate the absence of cultural heritage, does not preclude items being revealed between period of initial prior disturbance and proposed activity	Traditional Owner and/or Representative
Discovery in the course of an activity falls to the discoverer - generally the proponent who lacks the cultural knowledge to identify and authority to determine cultural value of the item. The presumption offends the stated principle of the ACHA that Aboriginal people should be recognised as the primary guardian, keepers and knowledge holders of cultural heritage (5(b)). It also places an unreasonable burden on the proponent to make such assessments. It sets up the temptation for self-assessing proponents to assess the item as of no value and therefore proceed with their project without the need (or expense) of further engagement with the indigenous knowledge holders.	Traditional Owner and/or Representative
Guidelines play scant attention to the recognition of Significant Aboriginal Areas - at 1.5 and 6.2 - operate to elevate the knowledge and authority of the proponent over that of the native title party to identify and assess Aboriginal cultural heritage	Traditional Owner and/or Representative
Activities in many areas could fall into all three categories (2,3,4) and the assumptions that 'it is generally unlikely that the activity will harm Aboriginal cultural heritage are unfounded and appear unaware of the nature of Aboriginal cultural heritage	Traditional Owner and/or Representative
The provisions of the Guidelines related to Cultural Heritage Finds are premised on an assumption that a land user is capable of identifying those objects or areas that are cultural heritage. In our experience, it is often the case that land users are unable to accurately identify cultural heritage features, or that they even possess a level of knowledge preliminary to identifying cultural heritage.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The Cultural Heritage Assessment and Consultation Matrix assists in determining whether a Cultural Heritage Assessment is required. The matrix asks only three questions: - Is the activity proposed in an area of identified cultural heritage sensitivity (yes or no)? - Is the activity proposed in an area subject to prior significant ground disturbance (yes or no)? - Are the intangible cultural heritage values within the area of the proposed activity (yes or no)? 'Sensitivity' is determined by whether or not a proposed activity causing Significant Ground Disturbance falls in whole or in part within an Area of Cultural Heritage Sensitivity. For the purposes of the Duty of Care Guidelines, Significant Ground Disturbance means disturbance of— (a) the topsoil or surface rock layer of the ground; or (b) a waterway— by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping (to a depth of 60cm or more, but to 80 cm or more within dune systems). Ploughing, other than deep ripping, is not considered significant ground disturbance (This definition is taken from Aboriginal Heritage Regulations 2007 (Vic)). The words "topsoil or surface rock layer" include the former topsoil or former surface rock layer if that topsoil or surface rock layer is a naturally occurring surface level that is readily ascertainable and does not include the current topsoil or current surface rock layer if established by the mere filling of the land. References to an "area" above may not necessarily mean the entirety of the area of the proposed activity (the project area). That is, the project area may include: - distinct sub-areas or parts that have been subject to significant ground disturbance - distinct sub-areas or parts that have not been subject to significant ground disturbance - distinct sub-areas or parts that are culturally sensitive	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Proving Significant Ground Disturbance (Taken from Practice Note: Significant Ground Disturbance Vic AHA) The burden of proving that an area has been subject to significant ground disturbance rests with the land user proposing the activity. DATSIP should require evidence of support for claims that there has been significant ground disturbance of an area. The levels of inquiry outlined below provide some guidance about what information should be required to satisfy DATSIP that significant ground disturbance has occurred. The levels of inquiry are listed in order of the level of detail that may be required. An assessment of whether significant ground disturbance has occurred should be dealt with at the earliest possible phase of the project lifecycle in order to avoid unnecessary delay or cost to land users. Little weight should be given to mere assertions by land users that an activity area has been subject to significant ground disturbance.	Traditional Owner and/or Representative
Level 1 – Common knowledge The fact that land has been subject to significant ground disturbance may be common knowledge. Very little or no additional information should be required from the responsible authority. Level 2 – Publicly available records If the existence of significant ground disturbance is not common knowledge, DATSIP may be able to provide assistance from its own records about prior development and use of land, or advise the land user about other publicly available records, including aerial photographs. These documents may allow a reasonable inference to be made that the land has been subject to significant ground disturbance. In such event, no further inquiries or information would be needed by DATSIP. The particular records and facts relied upon should be noted by DATSIP as a matter of record. Level 3 – Further information If 'common knowledge' or 'publicly available records' do not provide sufficient information about the occurrence of significant ground disturbance, the land user may need to present further evidence either voluntarily or following a formal request from DATSIP. Further evidence could consist of land use history documents, old maps or photographs of the land or statements by former landowners or occupiers. Statements should be provided by statutory declaration or similar means. Level 4 – Expert advice or opinion If these levels of inquiry do not provide sufficient evidence of significant ground disturbance (or as an alternative to level 3), the land user may submit or be asked to submit a professional report with expert advice or opinion from a person with appropriate skills and experience. Depending on the circumstances, this may involve a site inspection and/or a review of primary documents. If there is sufficient uncertainty some preliminary sub-surface excavation or geotechnical investigation may be warranted. An expert report should comply with DATSIP's policy on expert evidence. DATSIP must be reasonably satisfied that the standard of proof presented by the land user shows that all of the land in question has been subject to significant ground disturbance. There will be cases when DATSIP is simply not persuaded or where there remains genuine doubt about significance ground disturbance regardless of the level of inquiry. In these circumstances the default position is that consultation with the Aboriginal Party is required in order to develop an agreement or CHMP under the Act.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The Cultural Heritage Assessment and Consultation Matrix outlines situations where a Cultural Heritage Assessment should be required. The Cultural Heritage Assessment process must include engagement with the recognised Aboriginal Party/Cultural Heritage Body for the area (as per sections 34-36 of the Act) where the project is proposed. The process must be transparent, such that the Aboriginal Party / Cultural Heritage Body have input into the management of their own cultural heritage. 'Due Diligence' reporting that effectively cuts out the Aboriginal Party is no longer acceptable (i.e. the current status quo). If a Due Diligence report is undertaken, the Aboriginal Party must be consulted and given a chance to review the report and provide comment on the assessment's methodology, execution, conclusions and recommendations. DATSIP should act as the facilitator of this process to ensure that the opinion of the Aboriginal Party / Cultural Heritage Body can be given a genuine voice.	Traditional Owner and/or Representative
On a number of occasions, the existing Duty of Care Guidelines outline and reinforce the option of achieving legislative compliance through consultation and agreement making with Aboriginal Parties (see clauses 1.6, 1.16, 1.17, 7.0 and 8.0). However, the case studies included with this submission and anecdotal evidence over twelve years indicates that land users (and their advisors) prefer the option of self-assessing a project as Category 1, 2, 3 or 4 and moving to the conclusion that: - "it is generally unlikely that the activity will harm Aboriginal cultural heritage" and / or - "it is reasonable and practicable that the activity proceeds without further cultural heritage assessment". Category 4 activities are particularly contentious because land users and their advisors take the (seemingly legal) option that the activity can proceed under the Guidelines clause 5.4 without considering residual cultural heritage related to significant landscape features. That is, they don't consider clauses 5.5, 5.6 and 6.0 or they don't understand the concepts outlined in clause 6.0.	Traditional Owner and/or Representative
It is not "reasonable and practicable" from the Aboriginal perspective, for an activity to proceed without cultural heritage assessment, in areas that have already been disturbed (for example, Guidelines 5.1).	Traditional Owner and/or Representative
Concerned that previously disturbed country still contains materials and artefacts but proponent is allowed to proceed under the current Guidelines. Should be changed so that proponent should still have the area cleared despite previous heavy disturbance.	Traditional Owner and/or Representative
Ideally any change of land use which has environmental assessment requirements should be automatically considered a matter requiring assessment by the correct Aboriginal cultural heritage body to ensure there are no known sites requiring protection. To limit the understanding of cultural heritage to static and sedentary objects or locations is inherently flawed. For instance, native wildlife considered culturally significant totem species by Aboriginal people may be threatened and endangered by processes which impact on and reduce animal numbers and available habitat to support those species. This is a very important concept under customary law.	Traditional Owner and/or Representative
Many sites are located in areas that are currently not recognised by the Guidelines as requiring assessment. Many sites that are located in highly disturbed areas can still provide significant heritage values. Self-assessment of cultural heritage values by developer, landholders and government bodies can be catastrophic for cultural heritage protection. For example, agricultural land that has been ploughed is currently not recognised under the Guidelines as requiring assessment unless there is a change in land use. However, when native vegetation is being cleared on private land, there is no protection for Aboriginal heritage sites. The legislation should stipulate that when remnant vegetation is cleared there should be a dialogue with the relevant Aboriginal cultural heritage body.	Traditional Owner and/or Representative
Under a stronger guideline, a development assessment process for identifying all significant Aboriginal cultural heritage and genuinely protecting those values from 'significant ground disturbance' or 'surface disturbance' would prevent 'a lasting impact to the land or waters during the activity or after the activity has ceased', and would 'incorporate the interests of Aboriginal people to assure the protection of their cultural heritage values.'	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines must explain that cultural heritage can still exist regardless of the underlying tenure not the existence of native title. This way land users must incorporate cultural heritage assessments as part of their land tenure assessments instead of a separate native title process [1.3].	Traditional Owner and/or Representative
Item 2.3 clarifies that the Guidelines do not permit activities which may cause no additional surface disturbance but still may harm scarred trees etc. without the agreement of the Aboriginal or Torres Strait Islander party. Item 2.3 must include reference to significant Aboriginal and Torres Strait Islander areas. Again emphasising on the important role Aboriginal and Torres Strait Island Parties have in managing their cultural heritage.	Traditional Owner and/or Representative
The description of “use and maintenance of …within an existing footprint….” is unclear and open to broad interpretation for the benefit of the land user. Infrastructure footprints include built expansion or buffer areas. It is not acceptable to assume because a road was built on one part of the footprint that similar ground disturbance can occur 100m away with little harm on cultural heritage. Recommendation to clearly define an area surrounding a developed area where activities can be undertaken. Include a positive obligation on the land user to undertake a physical site inspection of the area to be the subject of the proposed surface disturbance in order to assess the impact.	Traditional Owner and/or Representative
Category 4: The description of “in an area which has previously been subject to Significant Ground Disturbance….” is unclear and open to broad interpretation for the benefit of the land user. Infrastructure footprints include built expansion or buffer areas. It is not acceptable to assume because a road was built on one part of the footprint that similar ground disturbance can occur 100m away with little harm on cultural heritage. Must clearly define an area surrounding developed area where activities can be undertaken. Include a positive obligation on the land user to undertake a physical site inspection of the area to be the subject of the proposed surface disturbance in order to assess the impact.	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 4]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
The [Traditional Owner representative's] comments in relation to how categories of activities could be amended to better reflect the need to manage residual cultural heritage values are in addition to the recommendations set out above as follows:- A common problem faced by Aboriginal and Torres Strait Islander Parties is that land users fail to appreciate that prior to the legislation enactment in 2003 the duty of care obligation did not exist. Therefore, works were undertaken without consultation with the Aboriginal and Torres Strait Islander Party. Any amendments to the Guidelines must require early engagement and consultation with the Aboriginal and Torres Strait Islander Party. As iterated above, consultation and engagement could take the form of a notice detailing who, what, where, when, why and how.	Traditional Owner and/or Representative

Engagement with Aboriginal and Torres Strait Islander Party

Proposals-Recommendations-Comments	Stakeholder description
Before being able to use the Guidelines a sophisticated Proponent (like a mining, infrastructure, or government Proponent) should have to objectively demonstrate the efforts they went to engage the Aboriginal Party	Consultant
Consistent users of the Duty of Care Guidelines are those who do not wish to engage with the Aboriginal Party and who seek a minimalist approach to cultural heritage management	Consultant
One of the main reasons developers explain to us that they are reluctant to consult with Aboriginal Parties is the lack of certainty over process and costs. At present, the legislation allows for what is effectively a statutory monopoly of trade by the Aboriginal Party. We support the rights of Aboriginal people to be compensated for their time in managing cultural heritage. If this was regulated in a more structured manner, it would save many initial arguments over money, and help to focus discussions on effective heritage management, and not financial remuneration...[There is] often an undue focus on monetary gain over heritage protection. In essence, a system of paying Aboriginal people for the destruction of their heritage has been the outcome in many instances.	Consultant
Section 7.0 of the existing Guidelines does not provide sufficient clarity in process for consultation with Aboriginal parties. If you fail to reach agreement, no rigour is provided on how any of these scenarios is managed or what expectations are for achieving them to ensure compliance. The Guidelines (7.2) do refer to the Ask First guideline prepared by the Commonwealth but makes no statement as to the whether this process must be following. The Ask First guideline already provides an accepted approach for undertaking such consultation and is already used when undertaking heritage assessments on Commonwealth land under EPBC Act requirements.	Consultant
Assessment of Archaeological significance could be undertaken on a predictive modelling. Anthropological assessment can achieved by interaction with the relevant cultural heritage body/ Aboriginal Party.	Consultant
Experience of how the Duty of Care Guidelines are being used has not been positive. Effectively, the Guidelines are regularly interpreted to mean that no consultation whatsoever is required	Consultant
The Guidelines should make reference to native title and should note that even where a proponent / land user satisfies themselves that they fall within a certain category under the Guidelines, in certain circumstances the Guidelines will simply not apply. The guidance notes should make this clear and the pro forma should require a formal response on this question. The ethical dimension of engagement with determined native title holders is matter that also requires further attention.	Consultant
Officers would not support changes to the Guidelines that require consultation on all projects irrespective of the type of project or level of existing site disturbance.	Government agency
The [land user] would not support any amendment to the Guidelines which would require [land user] to consult with an Aboriginal and Torres Strait Islander party to a greater extent than is already required about a proposed activity in an area which falls within the existing categories 1,2,3 or 4 of the Guidelines and when a register/database search indicates no heritage exists...the time and cost associated with such additional consultation would be so onerous that it could significantly impact on both [land user] financial sustainability and human resources.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Timeframes - the Guidelines provide no guidance about either: - the number of times an Indigenous party should be notified for the purpose of consultation (suggested that if no response within 3 weeks, the Guidelines have been met, or no response within 2 weeks, a second notice sent; if no response within a week, the Guidelines have been met [i.e. compliance] - whether the duty of care would require [land user] to take any other action before commencing an activity when monitors do not arrive at a work site at the time agreed. It would be helpful for examples to indicate the Guidelines have been met if monitors do not arrive within say 2 hours of the agreed time.	Government agency
The Duty of Care Guidelines does not provide land users with guidance on who 'the Aboriginal Party' is or how to contact them. The Authority recommends that the Guideline provide further information and contact details for relevant search tools that could help land users seeking this information: • Cultural Heritage Bodies - https://www.datsip.qld.gov.au/people-communities/aboriginal-and-torres-strait-islander-cultural-heritage/cultural-heritage-bodies • Registered native title claimant or party - http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-National-Native-Title-Register.aspx or http://www.oric.gov.au/ • Land Councils - https://www.qld.gov.au/atsi/environment-land-use-native-title/native-title-representative-body/ • National Native Title Tribunal - www.nntt.gov.au.	Government agency
The requirement to deal with and through the cultural heritage corporate body or their legal representative, rather than directly with the advertised, appointed or known local traditional people / person with cultural heritage knowledge to protect the cultural heritage, can unfortunately at times result in considerable delays, additional costs, confusion and frustration that collectively undermine confidence in the process and the requirements.	Government agency
Land users are often concerned that engaging Aboriginal Parties engenders unreasonable costs and other imposts. This has led to the Guidelines being used to keep Aboriginal Parties out of assessment and management processes	Lawyer
The Guidelines could assist to significantly reduce potential disputes by: - Clarifying the circumstances in which Aboriginal parties, or their representatives, must be engaged to undertake site inspections and/or monitoring of works by reference to the likelihood of Aboriginal cultural heritage existing in the area. This comes back to the issue of placing cultural heritage on the Register. - What is "reasonable and practical", insofar as terms of engagement? For instance, clarifying what is a reasonable engagement "fee" (or a default rate if the parties are not be able to agree on a fee); and to what extent must a proponent be required to engage persons from "out of town" (with the resultant increase in costs) when there is a local Aboriginal representative available. - Make clear that, if the parties are unable to reach agreement on reasonable and practical compliance steps under Category 5 (our category 3) that the proponent may undertake their own compliance steps, including to engage their own expert to assess the likelihood of the activities harming or damaging Aboriginal cultural heritage.	Lawyer
It would not be appropriate to remove or contract categories 2, 3 or 4 or require agreement with an Aboriginal party to be reached in relation to activities falling within those categories. To do so would effectively negate the purpose of the Guidelines and be inconsistent with the compliance model established under the ACHA.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
[Land user] would not support changes to the Guidelines: - which limit the effective usefulness of the existing categories, such that agreement with an Aboriginal Party is required in all or the majority of cases where the Guidelines are utilised for compliance; or - which give the Aboriginal party a veto right in developed areas or areas subject to previous significant ground disturbance.	Proponent
Developers appear poorly informed about the need for consultation or protocols for consultation	Traditional Owner and/or Representative
Too many proponents do not view the need to undertake cultural heritage inspections in a manner consistent with the objectives and principles set out in the ACHA; consultation needs to occur early in the interests of all parties	Traditional Owner and/or Representative
Most effective way of creating synergy between cultural heritage values and proposed activity is for developers to consult with the Aboriginal party	Traditional Owner and/or Representative
Land users purporting strict compliance with the Guidelines or the NTPCs – it does not provide any real protection to Aboriginal Cultural Heritage and is predominantly used by land users who wish to minimise any involvement with Traditional Owners in their land use.	Traditional Owner and/or Representative
An essential component missing in all but the fifth category, is that there is no provision for consultation with the Aboriginal Party of the area. Therefore, if a developer self-assesses that the project that they are undertaking is a category 1-4, then Aboriginal People are not notified and therefore cannot provide advice nor make an informed decision on whether there will be an impact to Aboriginal cultural heritage.	Traditional Owner and/or Representative
Land users must at all stages of activities engage and consult with the Aboriginal and Torres Strait Islander party for that area [1.2].	Traditional Owner and/or Representative
Any amendments to the Guidelines must encourage activities to be undertaken in a spirit of partnership and mutual respect. Any engagement and consultation with the Aboriginal and Torres Strait Islander Party must be done as early as possible [1.6-1.9].	Traditional Owner and/or Representative
The Guidelines must encourage early engagement and consultation with the Aboriginal and Torres Strait Islander parties [1.12-1.13].	Traditional Owner and/or Representative
The Guidelines must provide examples of how a land user can engage and consult with the Aboriginal or Torres Strait Islander party [1.12-1.13].	Traditional Owner and/or Representative
Many land users prefer to rely on the Guidelines rather than engage with the Aboriginal or Torres Strait Islander parties. More information should be included in Part 1 about other legal options available to land users to satisfy the duty care obligation, such as simple cultural heritage management agreements, or terms of references. This information should also be included earlier on in Part 1. This must also include information on the expectation of resourcing assistance the land user will provide to the Aboriginal or Torres Strait Islander party [1.16]	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 1]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 2 and 3]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
The [Traditional Owner representative's] comments in relation to how categories of activities could be amended to better reflect the need to manage residual cultural heritage values are in addition to the recommendations set out above as follows:- A common problem faced by Aboriginal and Torres Strait Islander Parties is that land users fail to appreciate that prior to the legislation enactment in 2003 the duty of care obligation did not exist. Therefore, works were undertaken without consultation with the Aboriginal and Torres Strait Islander Party. Any amendments to the Guidelines must require early engagement and consultation with the Aboriginal and Torres Strait Islander Party. As iterated above, consultation and engagement could take the form of a notice detailing who, what, where, when, why and how.	Traditional Owner and/or Representative
Any suggestions by an Aboriginal or Torres Strait Islander Party that there is residual cultural heritage – particularly if it is intangible – is something land users would prefer to ignore and rely on the impact of any previous disturbance. This further agitates already often strained relationships between the land user and the Aboriginal and Torres Strait Islander Party. The CHU must collaborate with various industry peak bodies to provide training on the legislation and the operation of the amended Guidelines. Any training needs to incorporate discussions around the principles and main purposes of the legislation. Any training must be undertaken with assistance from Aboriginal and Torres Strait Islander parties to educate land users about the various mediums cultural heritage takes. It is important for land users to understand that Aboriginal and Torres Strait Islander peoples' traditional knowledge is knowledge concerning the environment in which they live; and is passed from one generation to the next in written and oral form on the basis of their own cultural codes. The knowledge is intangible, inalienable, imprescriptible and non-seizable.	Traditional Owner and/or Representative
Explaining the role of the Aboriginal and Torres Strait Islander parties in assessing and determining the cultural heritage value of an area and the impact any activities will have. Any amendments must emphasises the role of the Aboriginal or Torres Strait Islander Party in determining the cultural values of an area. Additional information about steps a land user should take when cultural heritage is registered on the database. This should include an emphasis on early engagement and consultation with the Aboriginal or Torres Strait Islander Party.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Aboriginal and Torres Strait Islander Party in the event of a cultural heritage find: The failure of the Guidelines to recommend earlier consultation and engagement with the Aboriginal and Torres Strait Islander Parties doesn't achieve or recognise the principles and the purposes that underpin both the Legislation. Any amendments to the Guidelines must encourage activities to be undertaken in a spirit of partnership and mutual respect. Any engagement and consultation with the Aboriginal and Torres Strait Islander Party must be done as early as possible.	Traditional Owner and/or Representative

Identification of cultural heritage

Proposals-Recommendations-Comments	Stakeholder description
Provide clear processes in the Duty of Care Guidelines that ensure that Aboriginal cultural heritage is adequately identified through a well-documented and consistent assessment framework.	Consultant
Include a requirement for consideration of others aspects of significance such as those defined in recognised and universally accepted best practice heritage management guides such as the Burra Charter.	Consultant
Any areas that are likely to contain Aboriginal or Torres Strait cultural heritage or are areas which are identified as anthropological or potential archaeological sites...must be surveyed with Traditional Owners and a qualified heritage professional prior to any development proceeding.	Consultant
Historical studies of past land use activities, alongside site inspections, need to be added to the Duty of Care Guidelines as a method of defining past ground disturbance activities. A historical study would determine the land use history of a project area which could then be compared to the proposed activities. This type of study needs to be completed by qualified researchers with a minimum Honours degree in history, anthropology or archaeology. The enforcement of qualifications for researchers would provide a critical and structured approach for such studies.	Government agency
Residual or intangible heritage should be considered and researched for every project. To allow this to occur a separate section needs to be created within the Duty of Care Guidelines, providing a research template for exploring residual heritage. This section should also indicate that these studies should be undertaken by qualified researchers with a degree in anthropology and history, and in collaboration with Aboriginal groups.	Government agency
The Guidelines could be amended to include: ways of identification of residual Cultural Heritage, including by consultation with Aboriginal parties;	Proponent
It does not matter, at all, to Aboriginal People that the Aboriginal object is not in-situ. It only matters that the object is a piece of our identity, and a connection to our past as well as being an opportunity for all [Traditional Owner] to experience their culture. It does not matter whether the Aboriginal Object has been disturbed, it is still a piece of our identity.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Guidelines need to provide appropriate ways for information about Aboriginal Cultural Heritage to be provided to the Land User from the Aboriginal Party. This needs to be done in a manner that: • acknowledges and protects the often sensitive nature of this information; and • is able to be done so in a culturally appropriate way. The Guidelines need deal with these issues (e.g. RTI requests, use for other purposes, restricted access) and provide ways to protect this information and allow it be transferred to the government or the land user in an appropriate manner. Mandated cultural heritage agreements would be able to deal with this and also be able to keep information confidential.	Traditional Owner and/or Representative
Level 1 – Common knowledge The fact that land has been subject to significant ground disturbance may be common knowledge. Very little or no additional information should be required from the responsible authority. Level 2 – Publicly available records If the existence of significant ground disturbance is not common knowledge, DATSIP may be able to provide assistance from its own records about prior development and use of land, or advise the land user about other publicly available records, including aerial photographs. These documents may allow a reasonable inference to be made that the land has been subject to significant ground disturbance. In such event, no further inquiries or information would be needed by DATSIP. The particular records and facts relied upon should be noted by DATSIP as a matter of record. Level 3 – Further information If 'common knowledge' or 'publicly available records' do not provide sufficient information about the occurrence of significant ground disturbance, the land user may need to present further evidence either voluntarily or following a formal request from DATSIP. Further evidence could consist of land use history documents, old maps or photographs of the land or statements by former landowners or occupiers. Statements should be provided by statutory declaration or similar means. Level 4 – Expert advice or opinion If these levels of inquiry do not provide sufficient evidence of significant ground disturbance (or as an alternative to level 3), the land user may submit or be asked to submit a professional report with expert advice or opinion from a person with appropriate skills and experience. Depending on the circumstances, this may involve a site inspection and/or a review of primary documents. If there is sufficient uncertainty some preliminary sub-surface excavation or geotechnical investigation may be warranted. An expert report should comply with DATSIP's policy on expert evidence. DATSIP must be reasonably satisfied that the standard of proof presented by the land user shows that all of the land in question has been subject to significant ground disturbance. There will be cases when DATSIP is simply not persuaded or where there remains genuine doubt about significance ground disturbance regardless of the level of inquiry. In these circumstances the default position is that consultation with the Aboriginal Party is required in order to develop an agreement or CHMP under the Act.	Traditional Owner and/or Representative
Land users are only obligated to contact the Aboriginal or Torres Strait Islander party in the event of a Cultural Heritage Find. The problem with this is most land users are not going to know that they have found a Cultural Heritage Find. Land users need to be reminded of their duty of care obligation under the legislation. The consequences of failure to comply with the Guidelines must be reiterated at the end of each section. The CHU needs to provide regular training sessions for all types of land users to educate them about the different mediums cultural heritage takes.	Traditional Owner and/or Representative

Planning

Proposals-Recommendations-Comments	Stakeholder description
While this comment may be dealt with under a review of the Planning Act, there appears to be a major deficiency in planning applications being approved without the requirement of a cultural heritage assessment. Even the requirement to seek advice from the relevant Aboriginal Body regarding a material change of land use would result in greater protection and capturing developments that otherwise might go unnoticed or are ignored by compliance-resource poor Aboriginal bodies.	Consultant
Better and more frequent assessment by linking cultural heritage to planning processes	Traditional Owner and/or Representative
There is often not a direct connection between the duty of care provisions and the planning system.	Government agency
Guidelines should be amended to advance the purpose of the Planning Act in 'valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition…'	Traditional Owner and/or Representative
Both the ACHA and Guidelines need to be amended to require land users to notify Aboriginal Parties of proposed activities for which development approvals are required under statutes that manage the impact of development. We believe that linking cultural heritage compliance with planning and development approval processes will go a long way to ensuring that appropriate/timely assessments, consultation and engagement are undertaken by land users. It will also bring cultural heritage compliance into the planning & approval consideration of land users. This is appropriate to ensure cultural heritage compliance is addressed at the right stage of developments.	Lawyer
It would be greatly appreciated if you could advise the Minister for Aboriginal & Torres Strait Islander Partnerships that the only clear way to best achieve the purpose of the Aboriginal Cultural Heritage Act 2003 (Qld) is to ensure that it is triggered through the Development Approvals process under the Sustainable Planning Act 2009.	Traditional Owner and/or Representative
Certain activities (such as inconsistent ground disturbance) and projects (such as housing development) in category 4 and 5 areas could be linked to the IDAS system. This could involve submitting due diligence assessments for review by an independent third party as part of a development application.	Proponent
The Guidelines and ACHA should integrate more closely with the Sustainable Planning Act 2009/Planning Act 2016 and land use planning and approval mechanisms to identify land uses that are compatible with the cultural heritage values of the area, which could allow developments that have potential to impact on cultural heritage, to actually strengthen it by including indigenous design, interpretive signs etc through collaboration with the area's Traditional Owners.	Traditional Owner and/or Representative
Further, cultural heritage should be more expressly integrated into the environmental planning approval system such as the State's Integrated Development Assessment System, so proponents are acutely aware that the ACHA and the Guidelines exist and their responsibilities in this regard.	Traditional Owner and/or Representative
Education and awareness are key to making self-assessment a fair and transparent process. Therefore a direct link to the Guidelines and the ACHA needs to be instituted under the Sustainable Planning Act 2009 (QLD) at the pre development application phase, and a clear notation on all development consents adverting proponents to the need to contact the Aboriginal Party and to comply with the ACHA. This would increase awareness and compliance on the part of all development applicants in Queensland.	

Proposals-Recommendations-Comments	Stakeholder description
The review should take into account amendments to the recently enacted Planning Act 2016 (PA) re section 5(2)(d) and (e).To date the management of Indigenous cultural heritage has not been integrated into the due diligence required under the State planning regime. The provisions to advance the PA purpose to provide an opportunity to address this anomaly...[A] consistent approach that more closely aligns Indigenous cultural heritage conservation with existing planning processes could be usefully considered	Government agency

Procedures

Proposals-Recommendations-Comments	Stakeholder description
Guidelines be made mandatory. Fines should be issues in cases where a party fails to apply the guidelines correctly.	Academia
[1.15] - clearly state what the penalties are for offending Aboriginal heritage. And how you can and cannot comply with the Guidelines.	Academia
A formal process for the notification of Aboriginal parties for participation in a Duty of Care assessment must be included in the revised Guidelines. If the Aboriginal party refuses to participate in the assessment, the Guidelines must provide guidance on reasonable reasons for refusal. Refusal must be given in writing to ensure the Proponent can demonstrate a clear and transparent attempt at the consultation process if the matter ends in a Court process.	Consultant
Consideration be given to require, where an unreasonable refusal is given by the Aboriginal party to participate in the Duty of Care process, Proponents proceed immediately to a formal Cultural Heritage Study or Cultural Heritage Management Plan as per Part 6 or 7 of the ACHA. This provides greater certainty in process and is more likely to result in compliance with the ACHA.	Consultant
Consider implementation of a two-step process for Proponents assessing the likelihood of Aboriginal cultural heritage to be located in their project area through: i. Evaluation of the degree of disturbance that has occurred to an area to determine the extent of past disturbance and to inform the potential for significant Aboriginal cultural heritage areas and object to be located, and ii. Evaluation of the potential impacts of the proposed activity to any Aboriginal areas and objects (potential or known). b) Prepare degree of disturbance categories that are defined by different types of past disturbance. E.g. land clearing, ploughing, cut, fill etc. c) Prepare degree of impact categories that are defined by the nature of the proposed activity. E.g. no surface impacts, tree clearing, trenching, cut, fill, levelling. d) Develop a risk matrix to categorise a project area that is based on these categories.	Consultant
Precautionary Guidelines of ‘potential’ landforms of interest are applied as an indicator of ‘areas likely to contain Aboriginal or Torres Strait Heritage’. These should include as a minimum: areas of minimal prior documented subsurface disturbance; areas within 200m of water courses and /or springs, within 200m of the existence of known and /or recorded sites; the presence of rock shelters and caves and boulder overhangs, headlands, coastal sand dunes and prominent ridgelines.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
A short, workable document might be possible, using the following approach: Category 1: No Surface Disturbance As per current Duty of Care Guidelines Category 2: No Additional Disturbance - As per current Duty of Care Guidelines and definitions, but should not be limited to just the ground surface. - Check Register and Database. If something on Register or Database, then cannot be Category 2 (must be treated under Category 4). - Must develop an agreement or CHMP if cultural heritage is found. Category 3: Where Additional Disturbance is required, and Ground Disturbance has already occurred. - Ground Disturbance needs a new definition that includes: - Intended disturbance is no more than what has already occurred in the area, e.g., disturbance may be made differently to previous disturbance but the depth of both past and planned disturbance should be the same. An example would be a field that has previously been ploughed and cropped, and now a new road is planned. Works for the construction of the road should not enter into the soil layer lower than what has already been disturbed by ploughing and cropping. - Before any actions are taken, the person proposing the activity must search the Database and Register, and must write to the Aboriginal Party requesting them to inform them by a certain date of any known significance (tangible or intangible). - If something is on the Register or Database, or the Aboriginal Party responds with information that Aboriginal cultural heritage is present, then the project cannot be given compliance through Category 3 (must be treated as Category 4). Category 4: An agreement or Cultural Heritage Management Plan (CHMP) with the Aboriginal Party is required before the activity occurs.	Consultant
The link between the Duty of Care provisions generally and the requirements for a Cultural Heritage Study (CHS) and Cultural Heritage Management Plan (CHMP) is more clearly articulated. This would include provisions to ensure that appropriately skilled and experienced cultural heritage professionals are involved in a CHS and CHMP (anthropologists are more appropriate for assessing intangible cultural heritage sites, while archaeologists are more appropriate for tangible cultural heritage sites), and that such heritage professionals are professionally trained and accredited and have the required qualifications to undertake the necessary assessments. In other States, such provisions are regulated by a permit or registration process - A similar permitting regime should be considered for Queensland. The Guidelines reflect the management principles of the Ask First Guidelines (see especially pages 14-15) which encourage the integration of the assessment process and the management process.	Consultant
The issue of inconsistency should be addressed by the development of a pro forma that must be completed by the proponent in a staged manner. That the pro forma be available as a web-based tool. Completion of the pro forma should be mandatory. The State should reserve to itself the right to review any and all pro formas in line with its claimed ownership of Aboriginal cultural heritage and the risks that land use poses to that heritage. The data can be analysed by the regulatory agency as required for other purposes of the legislation. Such a system can be tailored such that is can be integrated as another element within the overall State Aboriginal cultural heritage management system (?)	Consultant
We suggest then that the whole question of site place management under the Guidelines requires significant revision. All Aboriginal cultural heritage sites, regardless of type, should be managed in a consistent fashion. In the first instance, this should be by parties achieving agreement. Where agreement cannot be reached then reasonable and practicable measures need to be implemented. The State should prepare some guidance notes as to what constitutes reasonable and practicable measures that give effect to the purposes of the ACHA to avoid or minimise harm. In other instances, advice may be provided by the State on a case by case basis.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
While covered by a 'material change of land use' there appears little or no protection from a farmer or land user bulldozing large areas of native bushland without the recourse of consultation and assessment. However, when native vegetation is being cleared on private land, there is no protection for Aboriginal heritage sites. The legislation should reflect the need that when remnant vegetation is cleared there should be a dialogue with the relevant Aboriginal cultural heritage body.	Consultant
The development of high quality predictive modelling using multi layer landscape approaches assists the recognition of the potential or otherwise in disturbed or developed areas.	Consultant
It would be recommended that sub surface investigation become a greater focus of developing certainty about the potential for residual cultural heritage.	Consultant
Timeframes - the Guidelines provide no guidance about either: - the number of times an Indigenous party should be notified for the purpose of consultation (suggested that if no response within 3 weeks, the Guidelines have been met, or no response within 2 weeks, a second notice sent; if no response within a week, the Guidelines have been met [i.e. compliance] - whether the duty of care would require [land user] to take any other action before commencing an activity when monitors do not arrive at a work site at the time agreed. It would be helpful for examples to indicate the Guidelines have been met if monitors do not arrive within say 2 hours of the agreed time.	Government agency
The [land manager] recommends that the first sentence in section 1.3 be amended to include a definition of Native Title, for example, "Aboriginal cultural heritage values should not be confused with native title, which is the recognition by the Australian legal system of rights and interests of Aboriginal and Torres Strait Islander peoples to land and waters according to their traditional laws and customs." A second paragraph could also be added to provide the following guidance to land users, "Through Native Title, any proposals to deal with land in a way that affects native title rights and interests (called Future Acts) may require negotiation with the Aboriginal party and consent through an Indigenous Land Use Agreement". Land Users could be referred to the National Native Title Tribunal website for further information and/or to search for Native Title interests in an area – www.nntt.gov.au.	Government agency
Recommend that the Guidelines are amended to include requirements at key points along the "impact continuum" (the categorisation of activities as better understood as occurring (at any given time and place) along a continuum, rather than within discrete categories) for land users to notify, consult with and engage the relevant Aboriginal Party as well as disclose to the relevant regulatory agency what they have done to meet its duty of care (In some cases disclosure may be required to be made to the relevant Aboriginal Party, DATSIP and in others development approval agencies as well). Recommend that the Guidelines are amended to establish clear "sign posts" along the continuum that direct land users towards notifying and consulting with Aboriginal Parties, and DATSIP, over what is reasonable and practicable in the circumstances. Different requirements and processes should apply as a land user moves from one end of the continuum to the other. If a land user's activities are properly characterised as having minimal or no impact, they may only be required to issue the compliance notice. However, if their activities involve surface and sub-surface disturbance then they are likely to harm any cultural heritage that is present. In such circumstances we believe that the Guidelines should require land users, subject to reasonable consideration being given to the impact of past disturbance, to notify, consult with and engage the relevant Aboriginal Party.	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines should require land users to assess the likelihood of harm being caused to cultural heritage by disturbance of the subsurface just as much as the surface. Predictive tools should be developed and made available to land users and Aboriginal Parties to assist them to make informed decisions as to the likelihood, nature and extent of sub-surface material in different areas. If these indicate that it is more likely than not that cultural heritage exists in the sub-surface, and the proposed activities involve excavation, then the Guidelines should direct them to notify, consult and engage the relevant Aboriginal Party over how the proposed activity is managed.	Lawyer
Processes need to be included in the Guidelines that deliver better regulatory oversight, accountability and stakeholder participation.	Lawyer
Recommend that the Guidelines be amended to require land users to issue" a notice (the "assessment notice") to the relevant Aboriginal Party for activities falling on the continuum, translating to the present categories 2 — 5. A notice of the sort we are recommending (a minimum of 28 days prior to undertaking the relevant activity) should identify the proposed activity and area, as well as advise of the outcome of any assessment regarding:- • the cultural heritage values of an area; • the impact of their proposed activities; and • what (if any) reasonable and practicable measures it proposes to meet its duty of care.	Lawyer
Exclusion distances could also assist if nominated. A description of the nature of development that would affect landscape features, or conversely, landscape features that might be harmed by any development might assist with interpretation of these changes.	Proponent
Formal timeframes around deliverables from the Aboriginal Party, including Cultural Heritage Survey Reports, as well as the execution of CHMA documentation to prevent unnecessary project delays	Proponent
Greater clarity for those works which are able to proceed under the Guidelines without further need for consultation (as discussed above) would remove the frequency of required consultation/engagement with the Aboriginal Parties	Proponent
The Guidelines could include a decision-making tool such as a flow chart outlining basic process for interpretation purposes. This would assist with the interpretation and proper application of the Guidelines.	Proponent
The Guidelines could include a model timeline (e.g. something similar to the IDAS flowcharts under Sustainable Planning Act 2009 (Qld)) which would preferably include formal timeframes for reaching agreement of a CHMA.	Proponent
Working relationships between land user, its Delivery Partners (e.g. design and construction contractors) acting on behalf of land user, and relevant Aboriginal Parties have been strained by the lack of a formal process and formal timeframes	Proponent
Guidelines provide more direction on protection of identified cultural heritage material.	Proponent
The Guidelines tend to lead a land user to read the categories in order to 4 and stop when one category is met. A land user should be required to consider what is reasonable and practicable in the totality of the steps taken to assess the risk of harm to Aboriginal cultural heritage -i.e. a 'weight of evidence' approach, or a 'cumulative effect' approach to assessing their activity.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Although the Guidelines are of assistance, there is the need for some fine tuning in certain areas, such as: It is only a guideline which in turn does not provide certainty of process and from a Project perspective is not fail safe e.g. The representative Traditional Owner Group has become aware that the Project Works and argue that the company has incorrectly categorised the works as a Category 2 and advising that a Stop Work Order will be requested to be placed on the Project due to their being cultural heritage significance in the area. ...detailing (maybe mandatory content items) what should be included in an internal assessment for it to be used as a compliance tool would be of great assistance. I believe that providing mandatory content items would allow for the internal risk assessment to have a high level of weight applied to it in situations of disagreement. I do not believe that those completing the internal assessment would need qualifications to do so if there is detailed provision of information and a good understanding of what is required for the internal assessment.	Proponent
User-friendly and simplification of the Guidelines - Although the Guidelines are of assistance, I believe that there is the ability for simplification to make the Guidelines easier to read and pull out the information to identify the process and the information that a Project proponent should be considering as part of its project. It would be of great assistance if there was a defined process of “How to comply with the Duty of Care Guidelines” and “What is required when proceeding under the Duty of Care Guidelines”. The provision of information for a Project proponent whom is proceeding under the Duty of Care to provide to its Contractors or onsite workers to help them with potential finding of remnant artefacts, etc.	Proponent
Requiring cultural heritage assessments and cultural heritage agreements must be prepared for category 5 disturbances; achieved by: - changing clause 5.14 to require assessment and agreement in response to the findings of the assessment - changing clause 5.17 to require that activity must cease if a cultural heritage find is to be removed, relocated or harmed - changing clause 5.18 to require that agreements are recorded and documented	Traditional Owner and/or Representative
Guidelines should describe the process for developers to gain the knowledge and develop an appropriate management regime to understand/assess the residual cultural heritage values in developed and previously disturbed areas.	Traditional Owner and/or Representative
Category 5 disturbances should attract mandatory cultural heritage agreements and cultural clearance procedures. These agreements and procedures need to: a. Provide Traditional Owners with access to country to undertake pre work clearances b. Provide fair payment to Traditional Owners to undertake clearance and monitoring work Provide standardised procedures in relation to I. cultural clearances; ii. monitoring during land use activity; and iii. processes when a Cultural Heritage Find occurs.	Traditional Owner and/or Representative
Standardised Cultural Heritage Agreements and Cultural Heritage Clearance Procedures should be mandated and resourced for land use activities that are likely to impact Aboriginal Cultural Heritage. If standard processes and procedures dealing with Cultural Heritage were mandated for high risk activities it would provide certainty to land users who would know exactly what they have to do to meet their duty of care, and it would provide Traditional Owners with a system they could become familiar with in ensuring their cultural heritage is protected.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The addition of Cultural Heritage Assessment and Consultation Matrix and associated new definitions for significant ground disturbance, combined with the new list of Sensitive Landscape Forms and Landscape Categories, will provide greater synergy between cultural heritage values and the nature of the proposed activity.	Traditional Owner and/or Representative
The following new clauses and definitions should be added to the Duty of Care Guidelines. Areas of Cultural Heritage Sensitivity Areas of Cultural Heritage Sensitivity are defined as: 1) registered Aboriginal sites or places; 2) identified sensitive landforms and landscape categories; or 3) sites and places associated with Intangible Aboriginal Cultural Heritage ('intangible values'). Relevant definitions for these three categories follow below: 1. Registered Aboriginal Sites or Places These are sites and places listed on the DATSIP database, Register of the National Estate (former), National or Commonwealth Heritage Lists, or local heritage databases, and any other statutory or non-statutory database which may contain evidence of a place identified as having cultural meaning to Aboriginal people. 2. Sensitive Landforms and Landscape Categories Within 200m of (or the feature itself): - a waterbody or watercourse (including existing watercourses, prior waterways, but does not include man-made bodies of water such as dams) - a river, creek, stream, channel or watercourse including prior, perennial, intermittent and ephemeral watercourses) - a natural lake, lagoon, swamp or marsh (including ancient lakes), - a natural depression through which water can be collected, or which forms part of an intermittent channel - Coastal fringe high water mark (dune systems, rocky points, areas of coastal vegetation) - Dunes (inland, riverine or coastal) - Ridges (including ridgetops and saddles, stony rises, promontories) - Declared Ramsar wetlands - Remnant vegetation - Caves and rock-shelters - Sand hills - Unique landscape features such as inter alia: the Great Barrier Reef, waterfalls, gorges, escarpments, stony rises, volcanic plugs, lava flows. N.B. It is intended that this list replaces the existing clause 6.2 but the contents of existing clause 6.1 should be kept. 3. Intangible Aboriginal Cultural Heritage Aboriginal intangible heritage means any knowledge of or expression of Aboriginal tradition, other than Aboriginal cultural heritage, and includes oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts, and environmental and ecological knowledge, but does not include anything that is widely known to the public (This definition is taken from the new amendments to the Victorian Aboriginal Heritage Act (S.79B in Part 5A)	Traditional Owner and/or Representative
Have more specific requirements for all participants in Cultural Heritage activities and actively police compliance and if failure to comply then have authority to prosecute.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Be more specific and require all parties to adhere to specific legitimate rules and regulations.	Traditional Owner and/or Representative
Government and NGOs must be made to do compulsory checks for any Cultural Heritage listings in their area also keep a register of identified sites/areas within their boundaries. Compulsory regular visits to Heritage listed sites to ensure no breaches or vandalism by DATSIP representatives. Have one registered online site so that all agencies comply with the one organization and input are immediately updated to ensure full knowledge of identified sites and areas.	Traditional Owner and/or Representative
Ideally any change of land use which has environmental assessment requirements should be automatically considered a matter requiring assessment by the correct Aboriginal cultural heritage body to ensure there are no known sites requiring protection. To limit the understanding of cultural heritage to static and sedentary objects or locations is inherently flawed. For instance, native wildlife considered culturally significant totem species by Aboriginal people may be threatened and endangered by processes which impact on and reduce animal numbers and available habitat to support those species. This is a very important concept under customary law.	Traditional Owner and/or Representative
Whilst this is set out in s23(2) of the legislation and item 1.12 of the Guidelines land users would benefit from specific examples on how they could do each step. For example: including information directing land users how to contact the Aboriginal or Torres Strait Islander party. - This could include the contact details of the native title representative bodies for each region and the National Native Title Tribunal. - This information could be included as a schedule to the Guidelines and include the contact details for each Cultural Heritage Body [1.10].	Traditional Owner and/or Representative
Categories 1-4 don't allow for the residual cultural heritage in the area to be protected, managed by the Aboriginal or Torres Strait Islander party. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). By providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity and provide a response to the land user whether or not there is any known cultural heritage within that area.	Traditional Owner and/or Representative
Land users are often unwilling to acknowledge past activities that may have harmed cultural heritage therefore creating a big hurdle to overcome for any future agreements. It is often these prior disturbance activities that form the basis of distrust by an Aboriginal or Torres Strait Islander Party of a particular land user. This in turn creates legacy issues between the particular land user and the Aboriginal or Torres Strait Islander Party. Develop a risk matrix as part of the Guidelines similar to those in the Aboriginal Heritage Due Diligence Guidelines (WA). The development of any risk matrix must clearly state the definition and description of activities and ground disturbance. It is important to keep the end user in mind when drafting such definitions.	Traditional Owner and/or Representative

Recording of cultural heritage

Proposals-Recommendations-Comments	Stakeholder description
Ability for proponent to unilaterally use the Duty of Care Guidelines and no mandatory reporting when cultural heritage sites found by land users problematic	Academia
More consideration is given to possible inconsistencies between the data/opinions of experts and Aboriginal parties, and the processes to be followed in such circumstances. We recommend allowance for the preliminary registration of cultural heritage sites/areas by Aboriginal parties, followed by an assessment of consistency with authoritative records. A clear set of procedures must be put in place to describe who and how it is decided which records might be regarded as authoritative, and to guide the process in cases where no such records are deemed to exist.	Academia
A requirement be made under the duty of care process for Aboriginal cultural heritage site information to be lodged with DATSIP for inclusion on the database. b) Duty of care and further cultural heritage assessments (surveys, testing, excavation results) must also be documented in a report and lodged with DATSIP to inform future duty of care and other assessments. c) Out of respect for the confidentially of certain information that may be collected, we urge that reasonable protocols be established that ensure restrictions to access to restricted information be implemented, but not in a way that would preclude ease of access for Proponents, Aboriginal Party's and other professionals to other information and thereby impact on their ability to follow or meet the duty of care requirements.	Consultant
The results of surveys should be lodged with the State and if necessary any identified sites should be added to the database	Consultant
Developers are not reporting Cultural Heritage finds, the Cultural Heritage Act and the current duty of care Guidelines is being used as a mechanism to allow the destruction of Cultural Heritage and it is not consistent with its objects. Indigenous sites in Queensland are frequently not registered and there is currently no impediment to developers destroying cultural heritage.	Consultant
Where places are on the Register or Database, agreement is required. Finally, places that are not on the Register or Database (but may be no less significant for all that) only require that a party seek agreement, although they do require parties take reasonable and practicable measures to avoid or minimise harm.	Consultant
In Section 1.9 it may be advantageous to include landowners having the ability to nominate sites for inclusion on the register.	Consultant
In many cases, cultural heritage protection occurs when a development is taking place. The upshot is that the only record of many of the finds, whether cultural places or visible sites, will remain in the memories of the participants or in a report if this is undertaken. However the quality of reporting is very varied with no clear legislative requirements by DATSIP. At the very least, the report should include background context, stakeholders, participants and dates of participation, relevant legislation under which the assessment was undertaken, current land use, outline of historical land use, methodology, scope of survey/assessment, results of assessment, potential impacts, mitigation strategies (a useful term to include in the Guidelines), recommendations and references. This is critical as a number of projects end up requiring dispute mediation. It also safeguards the developer/land user as it can be demonstrated who was consulted, and the level of the assessment.	Consultant
Aboriginal people may have knowledge of cultural sites which for a range of reasons – secret or sacred business, fear of government, lack of resources, competition, political disharmony, etc – are never registered with DATSIP.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
It should be mandatory that DATSIP receives a copy of any report generated by a cultural heritage assessment. These are often extremely costly exercises. DATSIP should be able to impose levels of security based on the wishes of the Aboriginal Party or group making the assessment. Likewise all cultural heritage sites should be registered, even if this involves a wider location and minimal information. If cultural heritage is the legacy of all Australians, then there is a duty to protect it and if the knowledge remains secret then this fails at the first hurdle.	Consultant
9.1-9.2 General comment on the database and register (though probably relates more to the Act than the Guidelines): suggest making it mandatory that cultural heritage managed under an agreement be added to the database and register – currently there is a lot of sites going unrecorded.	Government agency
The accuracy of reference points (coordinates) for the cultural heritage sites within the cultural heritage database should be improved to assist in the location, identification and protection of sites. This provision for more accurate coordinates should be mentioned in the Guidelines.	Government agency
Encourage Traditional Owners to register significant cultural heritage including that of 'residual' nature…It may be that is not being recorded at the rate anticipated - if this is the case, it should be addressed separately not by amendments to the Guidelines.	Government agency
The Guidelines include "exceptions", in paragraphs 5.6 and 5.15, to the right of a proponent to proceed with activities on the basis of prior disturbance. A proponent is required to take "extra care" when proceeding with an activity that may cause harm or damage to a feature of cultural heritage significance. This is generally referred to as the protection of "residual cultural heritage". 2.2 There is an issue regarding the practical application of those paragraphs. A proponent of works in an area that has been the subject of previous significant ground disturbance is unlikely to be aware of the presence of any features that may have residual cultural heritage significance, unless an Aboriginal party has specifically made them aware. As currently framed, the Guidelines presume that a proponent has knowledge of or is able to identify such features. In our view, the only reasonable and practical way to ensure that any "features" of asserted cultural heritage significance are protected is if they are significant Aboriginal cultural heritage, capable of being and entered on the Register of Aboriginal Cultural Heritage. The Guidelines should protect residual cultural heritage as an "exception" to (our) proposed Category 2, only if it has been entered on the Register of Aboriginal Cultural Heritage.	Lawyer
More readily accessible data could contribute to better assessment of cultural heritage values of an area and therefore a more informed decision regarding the proposed activity. Limitations do not allow determination of cultural heritage landscape features are present (and therefore a higher probability of residual risk may occur). It is also noted that there does not appear to be a distinction between artefacts known to be 'in situ' or those which have been collected and archived, therefore reducing or removing the risk of harm to such artefacts. The Department could consider making data that does not have privacy/theft/damage vulnerabilities openly available.	Proponent
It is recommended that the Guidelines include criteria for placing items/areas on the DATSIP cultural heritage Register so that only items with significant residual cultural heritage are placed on the Register.	Proponent
Under the Guidelines there is no onus on DATSIP or the Aboriginal Party to ground truth and confirm sites currently registered on the database. It is recommended that the Guidelines include provisions for DATSIP and/or the Aboriginal Party to ground truth and confirm sites currently registered on the database. Alternatively consideration be given to the Guidelines including a provision should the proponent of an activity be able to satisfactorily confirm a registered cultural heritage site is not in existence or the data is inaccurate then it be removed from the register.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
9.0 - Database and register search This clause should be moved closer to the start of the Guidelines. An amendment should be included noting that a search of the DATSIP database and register, alone, does not satisfy the cultural heritage duty of care i.e. it should not be relied upon as a sole measure of the presence or not of Aboriginal cultural heritage. Differentiate between other searches required for the progress of an activity e.g. environmental mapping /databases. For the most part registered sites are only “known” due to the conduct of cultural heritage assessment conducted as part of a prior activity. There is broad anecdotal evidence...that some land users consider that the DATSIP database contains an exhaustive list of Aboriginal cultural heritage sites across Queensland.	Traditional Owner and/or Representative

Role of Aboriginal and Torres Strait Islander party

Proposals-Recommendations-Comments	Stakeholder description
Despite there being no surface disturbance for the activities cited in section 4.3 of the Guidelines (page 6), Aboriginal parties are notified of the intended activities so as to enable greater transparency of the unfolding developments, enhance Aboriginal capacity-building and improve the agreement-making process.	Academia
As the principles underlying the Act assert that: “Aboriginal people should be recognised as the primary guardians, keepers and knowledge of Aboriginal cultural heritage” (page 10), section 1.7 and 1.8 of the Guidelines can be regarded as contradictory, or at least confusing.	Academia
[1.2, 1.6, 1.10] - a clearer definition of what due diligence and reasonable precaution are. A suggestion for the party to contact the Aboriginal party before undertaking such activities.	Academia
8.6 explains that Aboriginal Party must be given the opportunity to be involved in the undertaking of a study or survey. Recommendation: this section is moved to the preamble under the section that states this importance of the Aboriginal party in the assessing of cultural heritage sites.	Academia
The role of Aboriginal Party needs to be strengthened	Consultant
Duty of Care Guidelines do not make it compulsory for assessments to be carried out in conjunction with the Aboriginal Party or an archaeologist	Consultant
Aboriginal Party not privy to assessment and therefore unaware of the activity	Consultant
That the Guidelines provide that every heritage management action incorporates: - the investigation of the ground surface of a development footprint by professionally trained and accredited heritage professionals working with appropriate members of the Traditional Owner communities or Aboriginal Parties; - the provision for appropriate subsurface testing of a development area for potential archaeological deposits, to be undertaken by professionally trained and accredited heritage professionals with appropriate members of the Traditional Owner communities; and - the provision for a thorough assessment of the potential for a development to impact on intangible heritage and places of spiritual and other aspects of social significance of a place to Traditional Owners, with such assessment undertaken by professionally trained and accredited heritage professionals with appropriate members of the Traditional Owner communities or Aboriginal Parties.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
The link between the Native Title Act 1993 and identification of Aboriginal Parties is problematic; many Traditional Owners are either not able or not willing to enter into the native title claims process, yet have undisputed connections to place and heritage on their country. The current process disenfranchises considerable numbers of Aboriginal people and denies them the opportunity to meet their cultural obligations to law and country, as provided in the aims and principles of the ACHA. Unfortunately, there are few other mechanisms to identify Aboriginal Parties. That DATSIP investigate a range of mechanisms to identify Aboriginal Parties, including the use of the native title process, but such that also recognise Traditional Owner connections to cultural heritage that may fall outside the native title claims process.	Consultant
The Guidelines do not meet the aims of the ACHA: a. In particular, because the Guidelines allow development proponents to self-assess the impacts of their development, Aboriginal obligations to law and country may be ignored	Consultant
The Guidelines do not recognise Traditional Owner connections to both tangible and intangible heritage and do not take into account Aboriginal aspirations for the cultural heritage process to have meaningful outcomes for Traditional Owners.	Consultant
Consultation with Aboriginal Parties over the adequacy of its [development] application. Significant land users and developers should be notifying Aboriginal Parties of proposed developments, and the Aboriginal Parties should be given an opportunity to provide a meaningful response.	Consultant
Duty of Care Guidelines should include a requirement to have either the Aboriginal Party or a qualified archaeologist with a minimum honours degree and two years practical archaeological experience undertake Duty of Care Assessments for Category 4 assessments (if Category 4 is to be retained). A process of report auditing should be undertaken to ensure that professional standards are maintained.	Consultant
More regulated payment structure for Aboriginal party managing cultural heritage	Consultant
One of the main reasons developers explain to us that they are reluctant to consult with Aboriginal Parties is the lack of certainty over process and costs. At present, the legislation allows for what is effectively a statutory monopoly of trade by the Aboriginal Party. We support the rights of Aboriginal people to be compensated for their time in managing cultural heritage. If this was regulated in a more structured manner, it would save many initial arguments over money, and help to focus discussions on effective heritage management, and not financial remuneration.	Consultant
One of the key things the Guidelines do very well is acknowledge Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage.	Consultant
Provide clear guidance on need for Duty of Care assessments to include the opinions of Aboriginal people with cultural knowledge pertinent to the project area on the significance of Aboriginal areas and objects identified, and the inclusion of technical advice provided by suitably qualified persons to establish the archaeological and historical significance of Aboriginal occupation of the project area.	Consultant
Include a requirement for the Aboriginal parties to nominate suitably knowledgeable Aboriginal people to advise on whether any areas or objects located within a project area are considered to be significant Aboriginal areas or objects (clauses a and b of the ACHA definition of Aboriginal cultural heritage).	Consultant

Proposals-Recommendations-Comments	Stakeholder description
A minimum standard for Aboriginal party consultation be included in the revised Guidelines. The standard is to be based on the Ask First guideline process and should provide the accepted framework for consultation under the Duty of Care process in Queensland.	Consultant
A formal process for the notification of Aboriginal parties for participation in a Duty of Care assessment must be included in the revised Guidelines. If the Aboriginal party refuses to participate in the assessment, the Guidelines must provide guidance on reasonable reasons for refusal. Refusal must be given in writing to ensure the Proponent can demonstrate a clear and transparent attempt at the consultation process if the matter ends in a Court process.	Consultant
Additional cultural heritage assessment must consider the significance of Aboriginal areas and objects identified within the activity area (by the Aboriginal party), any evidence of archaeological or historical significance within the activity area (by a suitably qualified person), as well as measures for managing any impacts identified such as testing, salvage, avoidance or other mitigation actions.	Consultant
The role of the Aboriginal party in the Duty of Care process is ambiguous and needs to be clearly defined. We note that the role of the Aboriginal party in the process is also not defined in the ACHA. [This] creates a lack of certainty amongst proponents about expectations for inclusion of the Aboriginal party in the assessment process.	Consultant
Section 1.10 – 1.13 should be revised to more clearly articulate the role of the Proponent in the Duty of Care process. The revisions should ensure that expectations are clearly stated, including acceptable processes to ensure that the Duty of Care has been met. Acceptable processes must include: a) Evidence to show that the views of the Aboriginal party on the significance of Aboriginal areas and objects within the activity area have been sought in the Duty of Care process. b) Participation of a suitably qualified person in the Duty of Care process, engaged by the Proponent, to assess the likelihood of evidence of archaeological or historical significance of Aboriginal occupation of an area.	Consultant
The Guidelines include a requirement for only representatives of the Aboriginal party with directly applicable knowledge of the Project area participate in Duty of Care assessment to ensure adequate assessment of the significance of any Aboriginal object or areas (or potential for them).	Consultant
Aboriginal Parties may insist that only they can provide such services to proponents, yet they do not have technical proficiency or cultural knowledge of a project area to adequately determine what is significant (parts a-c of the ACHA definition).	Consultant
The Guidelines also imply that a Proponent may proceed with their project without the consent of an Aboriginal party, providing that the Proponent does not harm Aboriginal cultural heritage. However, as the very definition of Aboriginal cultural heritage requires knowledge of significant Aboriginal areas and objects, the refusal of the Aboriginal party to participate in the process does not provide certainty to the Proponent that they can effectively meet their duty of care obligations.	Consultant
Remove the existing clauses (1.6 – 1.9) in the Guidelines relating to the role of the Aboriginal party and replace with something similar to the following: To provide their views on what constitutes a significant Aboriginal area or object, and methods for managing any activity likely to excavate, relocate, remove or harm significant Aboriginal areas or objects.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Experienced numerous occasions when representatives of the Aboriginal party have no local knowledge of an area and are not able to speak for country. This is problematic when considering “there is a need to establish timely and efficient process for the management of activities that may harm Aboriginal cultural heritage”;...representatives of the Aboriginal party should also have direct applicable knowledge of the Project area in order to adequately assess the significance of any Aboriginal object or area.	Consultant
Any areas that are likely to contain Aboriginal or Torres Strait cultural heritage or are areas which are identified as anthropological or potential archaeological sites...must be surveyed with Traditional Owners and a qualified heritage professional prior to any development proceeding.	Consultant
The Duty of Care Guidelines have been consistently poorly applied and regularly used to avoid any form of consultation with the Aboriginal Party	Consultant
In addition, if “recognition, protection and conservation” are to be achieved, then “ensuring Aboriginal people are involved in processes” for management is critical, especially as the ACH Act recognises that they are the “primary guardians, keepers and knowledge holders” of Aboriginal cultural heritage. However, the Duty of Care Guidelines only ensures involvement of Aboriginal people in certain circumstances: - when a proposed activity may impact on an area or item on the State’s Database or Register; - where an activity is best described by category 5 of the Duty of Care Guidelines; - where an activity best described by category 4 is in association with landforms described in S. 6.2 of the Duty of Care Guidelines, requiring consultation with Aboriginal parties; and - when a Cultural Heritage Find is made.	Consultant
Section 7 of the Duty of Care Guidelines provides the advice that consultation with Aboriginal parties is “key in assessing and managing any activity likely to excavate, relocate, remove or harm Aboriginal cultural heritage”. This advice is in stark contrast to the advice provided by the Duty of Care Guidelines sections 4 and 5, where the categories are described, in which consultation is only required under certain circumstances	Consultant
The Guidelines’ include a primary role for oversight of the Duty of Care process (both determination of categories and review of adverse impact on cultural heritage) by an independent agency (such as an Aboriginal Heritage Council) or by the relevant Aboriginal Party, or by the regulatory authority (particularly through the employment of regionally based Aboriginal site officers), which should be resourced to undertake such a role.	Consultant
We note that it is increasingly the case that Aboriginal groups are securing positive native title determinations. As part of their successful native title claims they are also being granted rights to manage their cultural heritage. This might only apply to those areas where native title has been deemed to exist but it is a formal legal right...The Duty of Care Guidelines make no reference to native title and its implications for a proponent / land user, and it cannot be presumed that this party will necessarily be seeking legal advice prior to undertaking an activity.	Consultant
Significance and what constitutes ‘significance’ is poorly defined in the Guidelines. While it may be ideal for Aboriginal people to be the definers of significance, across the State there are varying degrees of competency in recognising, assessing and determining the values of significance. It is also misunderstood by archaeologists who still use the Burra Charter as a format for determining the values for Aboriginal people. Perhaps a secondary development for the Review would be seek to develop- a shared concept of significance. Obviously this would vary considerably from group to group, but there can be common denominators. For example, grindstones, stone axes, backed blades/blades appear to have greater cultural significance than reduction flakes, even if the identification of reduction processes can add significantly to the human story. However, not every scarred tree can be preserved and perhaps a staged process of determining significance would assist in making mitigation strategies easier.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
8.6 - Make this point 8.2 so it is upfront and clear that the Aboriginal Party must be invited to the study or survey (currently it is hidden on last page…)	Government agency
Some protocols in relation to dealing with Aboriginal Parties (or link to reference) within the Guidelines may be beneficial.	Government agency
Clear and reasonable fee structure for engagement of Cultural Heritage Assessments. Similar to fee structures applied to other development application fees. Aboriginal party status does not allow for competitive quoting and thus fees are considered excessive and create a disincentive to engage on a broader range of activities.	Government agency
Use the above categories in maps to determine level of engagement with Aboriginal parties as detailed in table below. Potentially also offer as an extra element in demonstrate duty of care that excavator drivers on any sites shaded yellow below are to have sat through at least one Aboriginal artefact identification workshop and have a ticket to oversee work on such sites. A process could also be included to require confirmation of absence of finds during excavation activities to allow Aboriginals to build their data base and understanding. This strategy would increase opportunities for Aboriginals to improve their story lines (for presence/absence of artefacts) and give confidence that the works staff on the ground are aware and have reason to report finds.	Government agency
It would be useful to know if each Aboriginal Party now has enough of a knowledge base to develop some broad scale maps that show “high likelihood of Australian Aboriginal occupation for sacred areas/ artefacts”, “moderate likelihood of Australian Aboriginal occupation that would leave artefacts” & “low likelihood of Australian Aboriginal occupation that would leave artefacts “etc.	Government agency
Retention of the Duty of Care categories (or a similar approach) as a way to assess the potential for the project to harm Aboriginal cultural heritage and guide users to undertake further assessment/consultation only where appropriate is supported. Officers would not support changes to the Duty of Care Guidelines that require consultation on all projects irrespective of the type of project or level of existing site disturbance.	Government agency
The [land manager] recommends that an additional paragraph be included in the Duty of Care Guidelines on page 1 at the end of section 1.2, to clearly articulate “It is important for land users to recognise Aboriginal ownership of cultural heritage, allow free access of Aboriginal traditional owners or their representative groups to Aboriginal cultural heritage and ensure Aboriginal people are involved in cultural heritage protection and management processes”. References to clause 6 (a) – (i) and clause 13 of the Aboriginal Cultural Heritage Act 2003 could be included for land users to refer to.	Government agency
The [land manager] recommends that the first sentence in section 1.3 be amended to include a definition of Native Title, for example, “Aboriginal cultural heritage values should not be confused with native title, which is the recognition by the Australian legal system of rights and interests of Aboriginal and Torres Strait Islander peoples to land and waters according to their traditional laws and customs." A second paragraph could also be added to provide the following guidance to land users, “Through Native Title, any proposals to deal with land in a way that affects native title rights and interests (called Future Acts) may require negotiation with the Aboriginal party and consent through an Indigenous Land Use Agreement”. Land Users could be referred to the National Native Title Tribunal website for further information and/or to search for Native Title interests in an area – www.nntt.gov.au.	Government agency
The Duty of Care Guidelines does not adequately recognise the importance of, or support for, Traditional Owner access to sites of significance on private property.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Staff noted a better definition for ‘intangible’ cultural heritage is required, as is a prompt for land managers to seek advice from Traditional Owners if their proposed activity takes place in areas with these landscape features.	Government agency
The greatest single improvement to the Guidelines would be amendments that provide for Aboriginal Parties to be more closely involved in assessing whether an area contains cultural heritage, the impact proposed activities may have on extant cultural heritage and determining what measures are 'reasonable and practicable' to meet the duty of care.	Lawyer
Recommend that the Guidelines are amended to include requirements at key points along the "impact continuum" (the categorisation of activities as better understood as occurring (at any given time and place) along a continuum, rather than within discrete categories) for land users to notify, consult with and engage the relevant Aboriginal Party as well as disclose to the relevant regulatory agency what they have done to meet its duty of care (In some cases disclosure may be required to be made to the relevant Aboriginal Party, DATSIP and in others development approval agencies as well). Recommend that the Guidelines are amended to establish clear "sign posts" along the continuum that direct land users towards notifying and consulting with Aboriginal Parties, and DATSIP, over what is reasonable and practicable in the circumstances. Different requirements and processes should apply as a land user moves from one end of the continuum to the other. If a land user's activities are properly characterised as having minimal or no impact, they may only be required to issue the compliance notice. However, if their activities involve surface and sub-surface disturbance then they are likely to harm any cultural heritage that is present. In such circumstances we believe that the Guidelines should require land users, subject to reasonable consideration being given to the impact of past disturbance, to notify, consult with and engage the relevant Aboriginal Party.	Lawyer
In response to an assessment notice, Aboriginal Parties may suggest that an appropriately qualified expert is retained to give advice over technical matters such as the archaeological/historical significance of an object or place. If the land user chooses not to engage an expert, then this must be disclosed in the compliance notice and reasons given for that decision. This will allow DATSIP to consider whether, in the circumstances of each matter, the provision of expert advice was a 'reasonable and practicable measure' that the land user should have taken to ensure their activities did not harm cultural heritage. If so, the regulator can include a condition to this effect in the compliance decision.	Lawyer
Both the ACHA and Guidelines need to be amended to require land users to notify Aboriginal Parties of proposed activities for which development approvals are required under statutes that manage the impact of development.	Lawyer
Equally important is the need for Aboriginal Parties' to observe best practice and provide assessment advice that is accurate, realistic and robust.	Lawyer
The activity categories within the Guidelines do not in our view provide for Aboriginal Parties' input to the assessment of residual values, particularly for categories 2 & 3.	Lawyer
The residual cultural heritage values of an area are best assessed and determined by the relevant Aboriginal Party. For this reason, we believe that the Guidelines should afford Aboriginal Parties a right to respond to the assessment notice (the "Aboriginal Party's response") indicating whether they agree or disagree with it and the basis for their views. A statutory right will provide an opportunity for Aboriginal Parties to advise of any residual cultural heritage values for an area of which the land user may not otherwise be aware. It would also avoid the issues caused by activities being undertaken that are low impact but may still harm the cultural heritage values of a place or area as well as cause offence (for example, taking photographs of art sites, ceremonial sites, burials and other areas subject to particular cultural sensitivities).	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
Assessing whether an area contains cultural heritage, irrespective of the nature and extent of previous disturbance, is a matter best determined by Aboriginal Parties and appropriately qualified experts...inadequate assessments are currently being conducted by many land users, their employees, contractors and consultants. Reliance upon unsound assessments has led to the Guidelines being used by land users to frustrate or circumvent the objectives of the ACHA.	Lawyer
The duty of care applies to persons undertaking activities that may harm cultural heritage. They are often an operator of plant and other heavy machinery contracted by development proponents and other land users. In a rural context, such activities are often undertaken by landholders themselves. It is generally not in their interests to cease the works they are undertaking or contracted to perform. It is also practically impossible for operators to observe artefacts and objects when undertaking such works. Despite being the persons to whom the duty of care strictly applies, they are the least likely to comply. In our view, this underlines the need for rural landholders and the principal in a contractual relationship (i.e. the proponent/land user) to carefully assess whether cultural heritage exists within surface and sub-surface areas before ground disturbance occurs. The best way to do this in our submission is to seek the assistance of the relevant Aboriginal Party.	Lawyer
The Guidelines should be amended to give a reasonable opportunity for Aboriginal Parties to be involved in the assessment of activities/areas as well as the compliance measures taken by land users.	Lawyer
[Land user] would not support changes to the Guidelines: - which limit the effective usefulness of the existing categories, such that agreement with an Aboriginal Party is required in all or the majority of cases where the Guidelines are utilised for compliance; or - which give the Aboriginal party a veto right in developed areas or areas subject to previous significant ground disturbance.	Proponent
The Guidelines could be amended to include: ways of identification of residual Cultural Heritage, including by consultation with Aboriginal parties;	Proponent
a) Effective recognition – If the intent in the Guidelines is to simply identify cultural heritage items/values then the identified Aboriginal Parties should be able to demonstrate a suitable knowledge of Indigenous cultural heritage (qualification or experience). i) As a result of the above, if the engagement of technical advisor services (for Aboriginal Parties) is given more weight to assist with recognition of cultural heritage then it is recommended that proponents be granted the same ability to undertake project assessments and only engage Aboriginal Parties when cultural heritage is identified. ii) It is recommended that the Guidelines make reference to suitably qualified/experienced person under section 1.6 - Role of the Aboriginal Party.	Proponent
Category 5 be amended to better encourage consultation and agreement making with the Aboriginal Party on the method of identifying and managing any Aboriginal cultural heritage values that could be impacted by an activity.	Proponent
Providing guidance documents on appropriate management measures – and importantly, inappropriate management measures – for dealing with residual and intangible cultural heritage in areas subject to previous significant ground disturbance. This could assist in promoting constructive partnerships if recommended measures did not significantly affect project timeframes and budgets (for instance, recognition of traditional custodianship or project inductions by Aboriginal Parties).	Proponent
Assessments can be done without consultation with Aboriginal people (major issue)	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Criticism that assessments can be done without consultation with Aboriginal people	Traditional Owner and/or Representative
Guidelines be redrafted to give full and accurate effect to the purpose and principles as described in the ACHA, that the cultural knowledge and authority of the Native Title Party be elevated to its rightful place of priority over the presumed capability of the non-native title party - delete 1.2 and move to 2.2	Traditional Owner and/or Representative
Insert new para 4.12 directing proponents to consult with the native title party to ascertain if they have existing records	Traditional Owner and/or Representative
In the ordinary context of negotiating in good faith with a view of reaching agreement and should there be a failure to reach an agreement, the activity cannot proceed as the view of the native title party are key - it is recommended in circumstances where the parties fail to reach agreement , the activity cannot proceed	Traditional Owner and/or Representative
Discovery in the course of an activity falls to the discoverer - generally the proponent who lacks the cultural knowledge to identify and authority to determine cultural value of the item. The presumption offends the stated principle of the ACHA that Aboriginal people should be recognised as the primary guardian, keepers and knowledge holders of cultural heritage (5(b)). It also places an unreasonable burden on the proponent to make such assessments. It sets up the temptation for self-assessing proponents to assess the item as of no value and therefore proceed with their project without the need (or expense) of further engagement with the indigenous knowledge holders.	Traditional Owner and/or Representative
1.6 of the Guidelines - views of the Aboriginal party for an area are key…; it is incongruent that the Guidelines appear then to provide at 4.9, 5.10 and 5.19 for the activity to proceed even in the face of a failure to reach an agreement between the proponent and the native title party.	Traditional Owner and/or Representative
The Guidelines should not assume that activity in developed or previously disturbed areas is unlikely to harm cultural heritage and that assessment is not necessary. The Guidelines should require that all development activities should be subject to a process of consultation with the Aboriginal party to determine the cultural heritage values of the area and agreement on how these values should be protected and managed.	Traditional Owner and/or Representative
Guidelines need to deal with protection of Significant Aboriginal Areas more effectively...Land Users to engage with Aboriginal Parties under standardised agreements, with standardised terms and conditions.	Traditional Owner and/or Representative
Contact with the Traditional Owners of an area is essential to understanding what the cultural values of an area may be.	Traditional Owner and/or Representative
The Guidelines might also be enhanced by communicating the role of the Cultural Heritage Monitor/s in meeting duty of care, particularly where an activity has a high risk of unearthing subsurface materials such as works within riparian and alluvial zones. We feel that this risk and the appropriate management strategy can be poorly understood by land users.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
DATSIP develop a range of educational tools that are actively distributed to land users and which are also available on the DATSIP website which also contain the types of information referred to above, but particularly focusing on using visual examples so that when land users are undertaking activities, they more easily be able to identify, or at least query whether, certain features may be considered a 'Cultural Heritage Find' by the Traditional Owners. Both of these developments be undertaken with the assistance of Traditional Owners, as Traditional Owners typically have the best knowledge of their traditional lands and the examples of various types of cultural heritage. Underpinning the educative material should be a theme that country is, in the sense of cultural heritage protection, shared.	Traditional Owner and/or Representative
Bring to light the relevance of protecting, preserving and maintaining Aboriginal cultural heritage by acknowledging the significant connections Traditional Owners have on a physical, mythical and spiritual basis to their country – waters, lands, seas and spirit sky by incorporating all these values within the ACHA and tightening the 'Duty of Care' Guidelines with the emphasis on connections that traditional owners have to their country should bring more favourable leverage for protection, respect, maintenance and preservation for country giving Traditional Owners there right to protect country by being in control of proposed development applications and through the local level of the 'application process'.	Traditional Owner and/or Representative
The Guidelines can be improved to best achieve this purpose by simplifying the guideline and ensuring that Aboriginal people have more chance of a say in the cultural heritage assessment process	Traditional Owner and/or Representative
The Cultural Heritage Assessment and Consultation Matrix outlines situations where a Cultural Heritage Assessment should be required. The Cultural Heritage Assessment process must include engagement with the recognised Aboriginal Party/Cultural Heritage Body for the area (as per sections 34-36 of the Act) where the project is proposed. The process must be transparent, such that the Aboriginal Party / Cultural Heritage Body have input into the management of their own cultural heritage. 'Due Diligence' reporting that effectively cuts out the Aboriginal Party is no longer acceptable (i.e. the current status quo). If a Due Diligence report is undertaken, the Aboriginal Party must be consulted and given a chance to review the report and provide comment on the assessment's methodology, execution, conclusions and recommendations. DATSIP should act as the facilitator of this process to ensure that the opinion of the Aboriginal Party / Cultural Heritage Body can be given a genuine voice.	Traditional Owner and/or Representative
The purpose of the legislation is to provide effective recognition, protection and conservation of Aboriginal cultural heritage. The principles underlying this purpose place Aboriginal people and their culture at the centre of this process (see sections 4 and 5 of the Act and clause 1.2 of Duty of Care Guidelines).	Traditional Owner and/or Representative
It is not "reasonable and practicable" from the Aboriginal perspective, for an activity to proceed without cultural heritage assessment, in areas that have already been disturbed (for example, Guidelines 5.1).	Traditional Owner and/or Representative
Guidelines should include a requirement to have monitoring when excavations or drilling is done.	Traditional Owner and/or Representative
Further, reference should be made to the principles of self-determined free prior and informed consent to ensure the correct people to speak for country are properly consulted in a cultural appropriate way.	Traditional Owner and/or Representative
It is unclear how an Aboriginal or Torres Strait Islander's traditional knowledge about an area or object is protected under the legislation. Incorporate protection of Aboriginal and Torres Strait Islander peoples' traditional knowledge in both the legislation and the Guidelines [1.4].	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Item 2.3 clarifies that the Guidelines do not permit activities which may cause no additional surface disturbance but still may harm scarred trees etc. without the agreement of the Aboriginal or Torres Strait Islander party. Item 2.3 must include reference to significant Aboriginal and Torres Strait Islander areas. Again emphasising on the important role Aboriginal and Torres Strait Island Parties have in managing their cultural heritage.	Traditional Owner and/or Representative
Categories 1-4 don't allow for the residual cultural heritage in the area to be protected, managed by the Aboriginal or Torres Strait Islander party. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). By providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity and provide a response to the land user whether or not there is any known cultural heritage within that area.	Traditional Owner and/or Representative
The footnotes for this section explaining that being present in a cultural significant area may cause offence. This needs to be removed from the footnotes and placed in Part 1. More information must be available to land users educating them about the relationship between Aboriginal and Torres Strait Islander peoples and their land.	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 1]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 4]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
The [Traditional Owner representative's] submission on how the Guidelines can enable greater synergy between the cultural heritage values of an area and the nature of the proposed activity are as follows: All land users must recognise and appreciate that the relationship between Aboriginal and Torres Strait Parties and their environment is one based on balance in harmony with nature and observance of their ancestral customs. This is regardless of the underlying tenure. This relationship is recognised in the principles and the main purpose of how the legislation is to be achieved. Therefore, it is imperative that all land users recognise Aboriginal and Torres Strait Islander Parties as the only persons who have the requisite skill to determine the cultural heritage values of an area.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Most land users prefer to rely on advice of archaeologists in determining the cultural heritage value of an area. Whilst an archaeologist is trained to assess artefacts and particular landscape features they do not have a connection with the land and therefore cannot determine the cultural value of the area. More importantly, an archaeologist cannot provide advice regarding the impact that work will have on particular ancestral customs that apply to that area. Any amendments to the Guidelines must require early engagement and consultation with the Aboriginal and Torres Strait Islander Party. As iterated above, for activities taking place in a previously disturbed area consultation and engagement could take the form of a notice detailing who, what, where, when, why and how. This is a widely accepted practice and is often included in the various forms of cultural heritage agreements negotiated between Aboriginal or Torres Strait Islander Parties and land users. This enables an Aboriginal or Torres Strait Islander Party to provide the land user with known information about the area in question. In turn this provides the land user with confirmation that there is little risk that the activities will harm cultural heritage.	Traditional Owner and/or Representative
Explaining the role of the Aboriginal and Torres Strait Islander parties in assessing and determining the cultural heritage value of an area and the impact any activities will have. Any amendments must emphasises the role of the Aboriginal or Torres Strait Islander Party in determining the cultural values of an area. Additional information about steps a land user should take when cultural heritage is registered on the database. This should include an emphasis on early engagement and consultation with the Aboriginal or Torres Strait Islander Party.	Traditional Owner and/or Representative
Aboriginal and Torres Strait Islander people are not recognised as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage	Traditional Owner and/or Representative
For Aboriginal and Torres Strait Islander people it is very difficult to distinguish native title from cultural heritage. Expecting Aboriginal and Torres Strait Islanders to do so contradicts the principles underlying the legislation especially for significant areas. This lack of understanding by land users creates unnecessary tension with the Aboriginal and Torres Strait Islanders Parties.	Traditional Owner and/or Representative
Land users rely on reports prepared by archaeologists about what is cultural heritage in an area. Land users are very [hesitant] to rely on a report prepared by the Aboriginal or Torres Strait Islander party about what is cultural heritage particularly what is or is not significant.	Traditional Owner and/or Representative
Land users need to appreciate the intricate relationship between the environment of the Aboriginal and Torres Strait Islander peoples. Land users are [hesitant] to believe an area identified by an Aboriginal or Torres Strait Islander party is a significant cultural heritage without confirmation by an archaeologist or anthropologist. Training to be provided on the role of the Aboriginal and Torres Strait Islander parties under the legislation and the Guidelines.	Traditional Owner and/or Representative
Aboriginal and Torres Strait Islander Parties are not acknowledged or respected as being key in assessing cultural heritage for an area. Land users rely on authoritative anthropological or other technical information rather than information provided by the Aboriginal or Torres Strait Islander Party for that area.	Traditional Owner and/or Representative
Both the legislation and the Guidelines must be amended to provide protection for Aboriginal and Torres Strait Islander people's traditional knowledge.	Traditional Owner and/or Representative

Scale of project

Proposals-Recommendations-Comments	Stakeholder description
Land users can't use Guidelines for large scale projects	Consultant
Large scale developments/Proponents should be unable to use the Guidelines	Consultant
That the Guidelines develop new categories for large-scale developments, with such large-scale developments required to be assessed holistically, and development impacts on tangible and intangible heritage (both surface places and buried heritage) being the subject of assessment by trained and accredited heritage professionals, in consultation with Traditional Owners and Aboriginal Parties, to assess the potential for development to impact on tangible and intangible heritage, cultural landscapes, and places of social and/or spiritual significance to Traditional Owners.	Consultant
The categories do not capture the effects of large-scale ground surface impacts on cultural heritage, especially the impacts of land clearing	Consultant
The adverse effects on cultural heritage of some very large-scale developments, such as land clearing, are not adequately captured by the definitions in the Guidelines. Such wide-area developments and land-surface impacts have the potential to affect a number of archaeological places, which together describe complex cultural landscapes, as well as highly significant intangible heritage such as story lines and song lines, landscapes created by ancestor/creator beings, or spiritual landscapes. This becomes especially problematic if large-scale development projects are divided into smaller parcels for assessment.	Consultant
The Guidelines develop new categories for large-scale developments, wherein these developments are required to be assessed holistically.	Consultant
Concerned that the adverse effects on cultural heritage of some very large-scale developments, such as land clearing, are not adequately captured by the definitions in 'The Guidelines'. Such wide-area developments and land-surface impacts have the potential to affect a number of archaeological places, which together describe complex cultural landscapes, as well as highly significant intangible heritage. This becomes especially problematic if large-scale development projects are divided into smaller parcels for assessment.	Consultant
A threshold should be developed and applied to limit the scale of a project to which the Guidelines can be applied. This test needs to be structured in such a way that it deals with both single large projects and projects that incrementally ultimately can affect large areas of land. The threshold test needs to be included on the pro forma to assist the proponent / land user to determine whether their proposal falls within the ambit of the Guidelines or instead crosses the threshold.	Consultant
While the Duty of Care Guidelines looks at the nature of the proposed activity, where it is taking placing and its potential risk to Aboriginal cultural heritage, it is not required to consider the scale of the proposed activity or whether the conduct of such activity may be incremental in nature. There are many types of development activities that do not trigger the need for a CHMP, and that therefore could be managed under the Duty of Care Guidelines...It is difficult to see that such projects can be undertaken with potentially no participation of the Aboriginal Parties, as is possible under the Duty of Care Guidelines, particularly at a time when an increasing number of Aboriginal groups are securing their native title and within that native title have successfully asserted that the management of cultural heritage is one of their native title rights. It is also difficult to see that such large projects could be undertaken with all decisions made by lay people. This is not to say that the Duty of Care Guidelines is a reasonable response commensurate with smaller projects and the risk these pose to Aboriginal cultural heritage.	Consultant

Technical advice

Proposals-Recommendations-Comments	Stakeholder description
Category 5 is arguably the most significant of all the categories, as it is the only category that actively encourages a cultural heritage assessment (Section 5.14 of the Guidelines), such as that provided in Part 7 of the Act. Yet this category is very poorly defined as “any activity … that does not fall within category 1, 2, 3 or 4”. This needs urgent rectification, particularly as it is vital that any development in this category clearly identifies the potential impact of a development on cultural heritage (both tangible and intangible; both on the ground surface and buried). This should be undertaken by a person skilled and experienced in cultural heritage site and place identification, and trained in cultural heritage management practices.	Consultant
Although the guiding principle of the legislation – that cultural heritage should be managed by Traditional Owners – requires that the primary source of information about heritage should be provided by Traditional Owners, there is also an important aspect of cultural heritage that includes the scientific (i.e. “anthropological, biogeographical, historical and archaeological” [Sections 12, 40 and 73]) value of cultural heritage. The assessment of such value should be undertaken by trained, accredited and experienced heritage professionals with appropriate university qualifications in the relevant disciplines.	Consultant
All Category definitions are revised to ensure that each category requires an assessment of the likely impact of development activity on cultural heritage, not impact on land surface. Such an assessment must be undertaken by a person trained, skilled and experienced in archaeological site identification, Aboriginal heritage place identification, and cultural heritage management generally, in consultation with Traditional Owners and Aboriginal Parties.	Consultant
That even for Category 2 developments, there be there be a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners or Aboriginal Parties, to assess the potential for even a minor change in land use to impact on tangible heritage.	Consultant
That for developments that are classed under current Categories 3 and 4, there is a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners or Aboriginal Parties, to assess the potential for development to impact on buried cultural heritage.	Consultant
That for developments that are classed under current Categories 3 and 4, there is a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners and Aboriginal Parties, to assess the potential for development to impact on all aspects of cultural heritage, including impacts on intangible heritage and places of social and/or spiritual significance to Traditional Owners.	Consultant
That for developments that are classed under the current Category 5, there is a requirement that an assessment be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners and Aboriginal Parties, to assess the potential for development to impact on all aspects of cultural heritage.	Consultant
That the Act and/or the Guidelines include provisions that ensure that skilled and experienced cultural heritage professionals are able to be included in a Cultural Heritage Study and CHMP, where deemed appropriate by Traditional Owners, and that such heritage professionals are professionally trained and accredited and have the required qualifications to undertake the necessary assessments. In other States, such provisions are regulated by a permit or registration process. A similar permitting regime should be considered for Queensland’s legislation and its associated regulations and Guidelines.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
That the Guidelines provide that every heritage management action incorporates: - the investigation of the ground surface of a development footprint by professionally trained and accredited heritage professionals working with appropriate members of the Traditional Owner communities or Aboriginal Parties; - the provision for appropriate subsurface testing of a development area for potential archaeological deposits, to be undertaken by professionally trained and accredited heritage professionals with appropriate members of the Traditional Owner communities; and - the provision for a thorough assessment of the potential for a development to impact on intangible heritage and places of spiritual and other aspects of social significance of a place to Traditional Owners, with such assessment undertaken by professionally trained and accredited heritage professionals with appropriate members of the Traditional Owner communities or Aboriginal Parties.	Consultant
The assessment of potential archaeological impacts is far too complicated to have inexperienced persons assessing risks. At present many large organisations use unqualified environmental personnel to undertake risk assessments.	Consultant
Develop and incorporate an Archaeological Code of Practice into the Duty of Care Guidelines (similar to that which exists in New South Wales) to ensure that minimum standards are being met.	Consultant
Develop and incorporate Dispute Resolution Guidelines, including the use of independent experts (Indigenous, archaeological and anthropological) or expert panels to determine disputes.	Consultant
Proponents regularly proceed with projects, assuming they have met their duty of care obligations, without seeking any technical input into the archaeological or historic significance of an area (part c of the ACHA definition).	Consultant
The Guidelines (1.9) notes that anthropologists, archaeologists and historians can also provide valuable assistance in this regard. The presence of this clause within the section devoted to defining the role of the Aboriginal party indicates that the intention of this statement is to ensure that technical assistance may be legitimately sought by the Aboriginal Party in determining significance of areas and objects as per the definitions in the ACHA.	Consultant
Provide clear guidance on need for Duty of Care assessments to include the opinions of Aboriginal people with cultural knowledge pertinent to the project area on the significance of Aboriginal areas and objects identified, and the inclusion of technical advice provided by suitably qualified persons to establish the archaeological and historical significance of Aboriginal occupation of the project area.	Consultant
Include a requirement for suitably qualified persons to undertake an assessment of significance for any evidence of Aboriginal occupation in an area (clause c - archaeological and historic significance as per the ACHA definition of Aboriginal cultural heritage).	Consultant
Include a requirement for consideration of others aspects of significance such as those defined in recognised and universally accepted best practice heritage management guides such as the Burra Charter.	Consultant
Additional cultural heritage assessment must consider the significance of Aboriginal areas and objects identified within the activity area (by the Aboriginal party), any evidence of archaeological or historical significance within the activity area (by a suitably qualified person), as well as measures for managing any impacts identified such as testing, salvage, avoidance or other mitigation actions.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Currently, there is an insufficient link between the Duty of Care Guidelines and Parts 6 and 7 of the Act. There is currently no mechanism to ensure that a Cultural Heritage Study (CHS) or CHMP involve professionally trained and accredited cultural heritage assessors and/or managers working alongside Traditional Owners, as is required by the Ask First Guidelines.	Consultant
All Category definitions are revised to ensure that each category requires an assessment of the likely impact of development activity on cultural heritage, not just land surface. Such an assessment must be undertaken by a person trained, skilled and experienced in archaeological site identification, Aboriginal heritage place identification, and cultural heritage management generally, in consultation with Traditional Owners and Aboriginal Parties. Definitions of impact be expanded to recognise indirect impacts, such as the desecration of ceremonial sites or gender exclusive areas by unauthorised access.	Consultant
There be a requirement for an assessment to be undertaken by trained and accredited heritage professionals, in consultation with Traditional Owners or Aboriginal Parties, to assess the potential impact of the proposed development, even for a minor change in land use.	Consultant
In our estimation, the purpose of the Duty of Care Guidelines was to assist proponents / land users who may not be professional cultural heritage practitioners to make decisions about land use that were reasonable in that they represented a proportionate response to the risk of Harm to Aboriginal cultural heritage.	Consultant
In many situations, the developer funds the cost of a technical adviser and cultural heritage monitors. However, in other situations a company will insist on its own technical adviser/archaeologist to undertake assessments – surely a conflict of interests? One of the stipulations that would greatly strengthen the Guidelines would be the right of Aboriginal parties to determine their own archaeologist/ anthropologist, often someone they have worked with for years and have a mutual trust and respect.	Consultant
Historical studies of past land use activities, alongside site inspections, need to be added to the Duty of Care Guidelines as a method of defining past ground disturbance activities. A historical study would determine the land use history of a project area which could then be compared to the proposed activities. This type of study needs to be completed by qualified researchers with a minimum Honours degree in history, anthropology or archaeology. The enforcement of qualifications for researchers would provide a critical and structured approach for such studies.	Government agency
Managing residual heritage is a complex process and needs to involve a two stage process of assessment and management agreement. Assessment should involve a range of different mechanisms for assessing and considering the values of residual heritage in project areas. The processes employed in the assessment of residual heritage should be stringent and be structured to critically evaluate all claims for the existence of residual heritage. The methods would need to involve a range of techniques including ethnography, interviews with key Aboriginal knowledge holders, and archival research. This process would allow all claims of residual heritage to be critically evaluated by accepted academic methods, rather than be accepted without any critical evaluation. The assessment process would also determine if the claims of residual heritage are grounded in the traditions and beliefs of the Aboriginal party and therefore determine the need for a management agreement.	Government agency
Limit need for professional expert involvement…Amendment to Guidelines of the ACHA that result in additional complexity or uncertainty should therefore be avoided. The protection of heritage should remain focused on only involving either legal, anthropological or archaeological experts in exceptional circumstances (at least in the context of [land user] type activities).	Government agency

Proposals-Recommendations-Comments	Stakeholder description
In response to an assessment notice, Aboriginal Parties may suggest that an appropriately qualified expert is retained to give advice over technical matters such as the archaeological/historical significance of an object or place. If the land user chooses not to engage an expert, then this must be disclosed in the compliance notice and reasons given for that decision. This will allow DATSIP to consider whether, in the circumstances of each matter, the provision of expert advice was a 'reasonable and practicable measure' that the land user should have taken to ensure their activities did not harm cultural heritage. If so, the regulator can include a condition to this effect in the compliance decision.	Lawyer
a) Effective recognition – If the intent in the Guidelines is to simply identify cultural heritage items/values then the identified Aboriginal Parties should be able to demonstrate a suitable knowledge of Indigenous cultural heritage (qualification or experience). i) As a result of the above, if the engagement of technical advisor services (for Aboriginal Parties) is given more weight to assist with recognition of cultural heritage then it is recommended that proponents be granted the same ability to undertake project assessments and only engage Aboriginal Parties when cultural heritage is identified. ii) It is recommended that the Guidelines make reference to suitably qualified/experienced person under section 1.6 - Role of the Aboriginal Party.	Proponent
Guidelines provide more support for Aboriginal Parties and Proponents to engage directly and discourage cultural heritage management reliance through third parties (i.e. consultants, technical advisors and legal representatives).	Proponent
[Land user] asserts that the current Guidelines provide some guidance regarding when further cultural heritage assessment is required but no guidance on how to undertake further assessments. [Land user] suggests that clarification on what constitutes further cultural heritage assessment be incorporated into the Guidelines. As part of this clarification, [Land user] recommends that land users be specifically granted the ability to engage and rely on suitably qualified experts (such as archaeologists) to undertake additional cultural heritage assessment in areas where proposed ground disturbance is inconsistent with previous significant ground disturbance.	Proponent
It is important that indigenous groups choose their archaeologist rather than having to use one nominated by a company, and the potential conflict of interest when this is done. This self-assessment (by unqualified people, developers and land users) can have dire results with developments being cleared without any indigenous assessments	Traditional Owner and/or Representative
Aboriginal Party should have the opportunity to choose/nominate their archaeologist rather than have one nominated by land user	Traditional Owner and/or Representative
Traditional Owners should be empowered to selected their own [archaeologist]firm to be instrumently involved with and regarding directly to the ‘applications process’ for development applications on all levels of Federal, State, local, private / international infrastructure, planning and development projects on country.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Most land users prefer to rely on advice of archaeologists in determining the cultural heritage value of an area. Whilst an archaeologist is trained to assess artefacts and particular landscape features they do not have a connection with the land and therefore cannot determine the cultural value of the area. More importantly, an archaeologist cannot provide advice regarding the impact that work will have on particular ancestral customs that apply to that area. Any amendments to the Guidelines must require early engagement and consultation with the Aboriginal and Torres Strait Islander Party. As iterated above, for activities taking place in a previously disturbed area consultation and engagement could take the form of a notice detailing who, what, where, when, why and how. This is a widely accepted practice and is often included in the various forms of cultural heritage agreements negotiated between Aboriginal or Torres Strait Islander Parties and land users. This enables an Aboriginal or Torres Strait Islander Party to provide the land user with known information about the area in question. In turn this provides the land user with confirmation that there is little risk that the activities will harm cultural heritage.	Traditional Owner and/or Representative

Trigger for cultural heritage assessment

Proposals-Recommendations-Comments	Stakeholder description
Perhaps the trigger for a cultural heritage assessment could be a situation where Aboriginal cultural heritage is identified despite the area having been previously developed or disturbed.	Consultant
If cultural heritage is identified during activity, assessment by Aboriginal Party should be mandatory	Consultant
Assessment process be put in place for activities in Developed Areas - i.e. some assessment should occur regardless of previous development	Consultant
There are no triggers for formal assessment of Aboriginal heritage outside the EIS process.	Consultant
This element [i.e. material change of use] needs to be factored into the threshold test. So, it should be that as the scale of a project increases so the requirement for a formal assessment of the area should similarly increase, irrespective of previous land use history. This should be particularly so where no previous assessment has been undertaken or the previous land use was unregulated.	Consultant
Ideally any change of land use which has environmental requirements should automatically be forwarded to the relevant Aboriginal cultural heritage body to ensure there are no known sites requiring protection.	Consultant
The Guidelines could provide clarification of the duration of cultural heritage advice/clearance for an area and activity. For example, if the same activity was to be repeated in 2, 5, 10 or 20 years' time, does the original advice/clearance still stand and is there a further requirement to notify?	Government agency
For any activity where surface disturbance or significant ground disturbance is proposed, a proponent must be required to consult with and negotiate reasonable and practicable measures to ensure effective recognition, protection and conservation of cultural heritage.	Lawyer
If proposed change in use such that it might impact upon the cultural significance of a nearby site, then consultation with the relevant Aboriginal Party and agreement in relation to management and mitigation of any impact CH should take place	Lawyer

Part 3 - Comments relating to compliance and regulation

Compliance

Proposals-Recommendations-Comments	Stakeholder description
Increased independent oversight for compliance to the Duty of Care Guidelines of the ACHA 2003. Acknowledgement that the self-assessing, self-reporting aspects of the legislation are largely ineffective.	Academia
Improve communications between DATSIP (CHU) and Aboriginal party in event of damage report	Academia
Self-assessing, self-reporting aspects of the legislation largely ineffective	Academia
All smaller scale impacts must comply with the Duty of Care Guidelines, but often the Duty of Care can be satisfied with limited steps...The development proponent can comply with the Duty of Care Guidelines in a range of ways, and it is largely a self-assessment process, with few governmental checks and reporting...The Duty of Care Guidelines, in practice, can be porous and satisfied with very limited harm minimisation actions.	Academia
Ability for proponent to unilaterally use the Duty of Care Guidelines and no mandatory reporting when cultural heritage sites found by land users problematic	Academia
No independent monitoring of small scale activities	Academia
Guidelines be made mandatory. Fines should be issues in cases where a party fails to apply the Guidelines correctly.	Academia
The ability of a Proponent to simply send the Aboriginal Party a notification and nothing more needs to be removed.	Consultant
The ability of Proponents to purportedly provide training to their own non indigenous employees in order that the Proponent can undertake a Category 5 Activity in purported compliance with the Guidelines should be tightened in circumstances where there are no training courses or objective training criteria or qualifications.	Consultant
Where the Guidelines have been used prior to undertaking a Category 5 activity, a full report should be provided to the Department and the Aboriginal party.	Consultant
Where the Guidelines are used consideration should be given to not allowing the Development to proceed until the Proponent provides details of the manner it purports to have met its duty of care and the Assessment Report is first provided to the Department and the Aboriginal party for comment.	Consultant
Development should not proceed until information on how land user has complied with the Duty of Care is provided to the CHU and Aboriginal Party	Consultant
The Guidelines do not make adequate provision for implementing compliance mechanisms, such as fines for the destruction of Aboriginal heritage, or fines for failure to apply the Guidelines correctly (e.g. understating the nature of impact of development on heritage).	Consultant
As with the Victorian model, land users should be required to demonstrate that they are not harming Aboriginal cultural heritage, not Aboriginal Parties required to demonstrate that land users are.	Consultant
Resource Aboriginal Parties, the State or Council to undertake reviews of the adequacy of assessments using the Duty of Care Guidelines.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Duty of Care Guidelines should include a requirement to have either the Aboriginal Party or a qualified archaeologist with a minimum honours degree and two years practical archaeological experience undertake Duty of Care Assessments for Category 4 assessments (if Category 4 is to be retained). A process of report auditing should be undertaken to ensure that professional standards are maintained.	Consultant
There is little compliance of the Guidelines and no resources for Aboriginal parties to ensure compliance.	Consultant
That the revised Guidelines include transparent processes for Aboriginal cultural heritage assessment, including consultation with Aboriginal parties that ensure additional regulatory oversight.	Consultant
That revised Guidelines processes help facilitate the regulator to undertake regular or random audits of Duty of Care assessments to ensure compliance with the Duty of Care Guidelines and hence the ACHA.	Consultant
Section 1.10 – 1.13 should be revised to more clearly articulate the role of the Proponent in the Duty of Care process. The revisions should ensure that expectations are clearly stated, including acceptable processes to ensure that the Duty of Care has been met. Acceptable processes must include: a) Evidence to show that the views of the Aboriginal party on the significance of Aboriginal areas and objects within the activity area have been sought in the Duty of Care process. b) Participation of a suitably qualified person in the Duty of Care process, engaged by the Proponent, to assess the likelihood of evidence of archaeological or historical significance of Aboriginal occupation of an area.	Consultant
That a requirement for a written agreement is required from both the proponent and the Aboriginal party regarding the management of unexpected finds of Aboriginal cultural heritage (where no CHMP is in place).	Consultant
The Guidelines is currently so heavily focused on a self-assessment and self-regulation model that the likelihood of compliance action is very low. There exists a limited ability for the regulator to effectively oversight any of the fundamental duty of Care Guidelines processes.	Consultant
For all green-fields developments that currently do not require a survey or non self-assessment of Cultural Heritage, Cultural Heritage must be assessed as part of a development application. The duty of care Guidelines are manifestly inadequate for development that does not require an EIS, a developer should not be able to meet the duty of care Guidelines without an assessment of the likely/probably impact on ATSI heritage.	Consultant
Provision be made for all projects, regardless of defined category, to prepare a Cultural Heritage Management Plan (CHMP) when places of social or spiritual significance to Traditional Owners are identified in the initial assessment.	Consultant
The Guidelines include a primary role for oversight of the Duty of Care process (both determination of categories and review of adverse impact on cultural heritage) by an independent agency (such as an Aboriginal Heritage Council) or by the relevant Aboriginal Party, or by the regulatory authority (particularly through the employment of regionally based Aboriginal site officers), which should be resourced to undertake such a role.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
In the current circumstances, it is conceivable that a proponent / land user can arrive at a decision as to the category and the consequent outcome without needing to formally document both the category under which they consider they are operating, how they arrived at this determination nor explain previous land use history or exactly how and in what circumstances the proposed activity might affect Aboriginal [or Torres Strait Islander] cultural heritage. This creates a level of uncertainty for Aboriginal parties in particular, who might wish to challenge how a proponent arrived at a decision that could exclude the Aboriginal parties from an exercise to evaluate a proposed action and the cultural heritage consequences. It also creates a problem for a regulatory agency that is seeking to establish whether a proposed or implemented course of action is appropriately proportionate to the likely risks to Aboriginal cultural heritage, something central to deciding whether further action on their part is necessary to give effect to the purpose of the Aboriginal Cultural Heritage Act (ACHA).	Consultant
One issue in relation to the use of Duty of Care Guidelines is that it used by a wide variety of people with differing capacities and understandings. As a result there are widely differing approaches to capturing relevant information and decisions. It is not too harsh to note that this results in significant inconsistency in the use of the Duty of Care Guidelines, how any decision is documented or justified, whether it has met the goals of the ACHA, whether it is a reasonable and proportionate response to the risk that any action might constitute to Aboriginal cultural heritage.	Consultant
The Duty of Care Guidelines process, as it currently stands, cannot be audited by the regulator. Consequently, it has a limited appreciation of how commonly the Duty of Care Guidelines are used, the manner in which they are applied, how they are interpreted, what parties consider to be reasonable and practicable measures and so on. This concern must be measured in the context where the State claims ownership of Aboriginal cultural heritage, can take action to prevent Harm and can prosecute parties in circumstances where Harm is deemed to have occurred.	Consultant
That the Guidelines include a primary role for oversight of the Duty of Care process (both determination of categories and review of adverse impact on cultural heritage) by an independent agency (such as an Aboriginal Heritage Council) or by the relevant Aboriginal Party, or by the regulatory authority (particularly through the employment of regionally-based Aboriginal site officers), which should be resourced to undertake such a role.	Consultant
Self assessment is not the answer to protection of cultural heritage especially in the lack of teeth to any penalties resulting from the destruction of heritage. In the first instance, assessments are being conducted by the developer with the result that only minimal efforts are made to either contact the relevant Aboriginal Party or protect any sites. Secondly, the persons conducting the assessments largely do not have the specialised knowledge required to make such assessments. Thirdly, how can an environmental officer or land user know about cultural sites without consultation with the relevant Aboriginal Party? Self assessment for cultural heritage by developers or even government bodies is catastrophic for heritage protection.	Consultant
Use the above categories in maps to determine level of engagement with Aboriginal parties as detailed in table below. Potentially also offer as an extra element in demonstrate duty of care that excavator drivers on any sites shaded yellow below are to have sat through at least one Aboriginal artefact identification workshop and have a ticket to oversee work on such sites. A process could also be included to require confirmation of absence of finds during excavation activities to allow Aboriginals to build their data base and understanding. This strategy would increase opportunities for Aboriginals to improve their story lines (for presence/absence of artefacts) and give confidence that the works staff on the ground are aware and have reason to report finds.	Government agency
Management and protection of cultural heritage largely self-regulated	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
Current Duty of Care Guidelines make it easy for land users to interpret compliance requirements weighed to their own interests over and above the need to protect cultural heritage	Lawyer
Recommend that the Guidelines require the land user to provide DATSIP with its assessment notice, the Aboriginal Party's response and a brief outline of the measures (if any) taken to meet its duty of care (the "compliance notice") i.e. land users be required to certify that no harm will be caused by their activities and set out the reasons why they believe they have met their statutory duties	Lawyer
Lastly, we suggest that the Guidelines include provisions that require DATSIP to issue a notice to both the land user and Aboriginal Party ("the compliance decision") advising whether or not it considers the activity can proceed, cannot proceed or can proceed subject to certain conditions with which the land user must comply.	Lawyer
In response to an assessment notice, Aboriginal Parties may suggest that an appropriately qualified expert is retained to give advice over technical matters such as the archaeological/historical significance of an object or place. If the land user chooses not to engage an expert, then this must be disclosed in the compliance notice and reasons given for that decision. This will allow DATSIP to consider whether, in the circumstances of each matter, the provision of expert advice was a 'reasonable and practicable measure' that the land user should have taken to ensure their activities did not harm cultural heritage. If so, the regulator can include a condition to this effect in the compliance decision.	Lawyer
Pro-forma templates for the assessment, response and compliance notices/advice should be developed to limit the administrative burden on parties. These need not be mandatory but could be accessed and used on an 'as needs' basis.	Lawyer
Both the ACHA and Guidelines need to be amended to require land users to notify Aboriginal Parties of proposed activities for which development approvals are required under statutes that manage the impact of development.	Lawyer
The Guidelines should be amended to address this by requiring land users to explain why, in the circumstances, it was not reasonable or practicable to notify, consult with and engage the relevant Aboriginal Party to assess the cultural heritage values of an area. This would be a matter included in the compliance notice we have recommended.	Lawyer
Suggest that DATSIP develop a code of practice (such a code exists in NSW) to improve standards, guide stakeholders' expectations and encourage best practice	Lawyer
Too often, the Guidelines are used to exclude Aboriginal Parties from assessing the cultural heritage values of an area and the impact of proposed activities...activities of land users being the subject of insufficient regulatory scrutiny and an unwholesome degree of self-assessment.	Lawyer
The Guidelines should be amended to give enhanced accountability by land users for the compliance measures taken (or omitted) by them	Lawyer
It would not be appropriate to remove or contract categories 2, 3 or 4 or require agreement with an Aboriginal party to be reached in relation to activities falling within those categories. To do so would effectively negate the purpose of the Guidelines and be inconsistent with the compliance model established under the ACHA.	Proponent
Need to educate other sectors about the requirements for compliance with the ACHA and the means to do so, efforts should be directed to that education, rather than any substantive change to the existing structure of the Guidelines.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines could include recognition of reasonable efforts and attempts to engage with an Aboriginal Party and execute Cultural Heritage Management Agreement where required. Failure to a reach a CHMA within the current Duty of Care process does not seem to account for reasonable efforts on the part of the proponent to get the CHMA in place. An opportunity may exist to include something to this effect in Part 7 of the Guidelines. An example of a strategy to effectively bring about the execution of CHMAs might be to include a 'turnaround timeframe' from the date of submission of a draft CHMA within which either party must respond.	Proponent
Legislative enforcement and application of the Guidelines should be consistent across all industries. It is recommended that the Guidelines be further developed to provide a consistent interpretation for like industries	Proponent
Education and enforcement for industries that are currently avoiding compliance as well as education of the rights and obligations of all parties to ensure the Guidelines are interpreted as the original drafting intended.	Proponent
Removing the defence that complying with the Guidelines affords strict compliance with the cultural heritage duty of care	Traditional Owner and/or Representative
Requiring cultural heritage assessments and cultural heritage agreements must be prepared for category 5 disturbances; achieved by: - changing clause 5.14 to require assessment and agreement in response to the findings of the assessment - changing clause 5.17 to require that activity must cease if a cultural heritage find is to be removed, relocated or harmed - changing clause 5.18 to require that agreements are recorded and documented	Traditional Owner and/or Representative
The Guidelines should not assume that activity in developed or previously disturbed areas is unlikely to harm cultural heritage and that assessment is not necessary. The Guidelines should require that all development activities should be subject to a process of consultation with the Aboriginal party to determine the cultural heritage values of the area and agreement on how these values should be protected and managed.	Traditional Owner and/or Representative
A person who purports strict compliance with the Duty of Care Guidelines or the Native Title Protection Conditions should not automatically comply with the Cultural Heritage Duty of Care...If cultural heritage is harmed despite compliance with the Guidelines or the NTPCs, then the developer should still be able to be prosecuted.	Traditional Owner and/or Representative
An overarching issue is one of enforcement of compliance by land users with the Guidelines and the ACHA. This continues to be a concern for our Traditional Owner constituents across the board when they are dealing with various land users, particularly resource proponents. Whilst we understand the role of stop orders under section 32 of the ACHA when there is an imminent threat of harm to cultural heritage, when activities are classified as falling within Categories 1-3 under the Guidelines, Traditional Owners continue to hold concerns that there may be harm caused when these more 'procedural' activities are being undertaken. Particularly where Traditional Owners are working to build a relationship with a new land user, until this is established, there are often ongoing concerns about the intentions of the land user or ability of the Traditional Owners to positively influence that land user to comply with the Guidelines.	Traditional Owner and/or Representative
Have more specific requirements for all participants in Cultural Heritage activities and actively police compliance and if failure to comply then have authority to prosecute.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
There is no offence in not complying with the Guidelines. Who polices this, what steps are taken to ensure compliance and by whom? What are the repercussions for failure or non-compliance? Is Cultural Heritage [compliance] achieved by assumption?	Traditional Owner and/or Representative
Land users need examples as to what constitutes due diligence and reasonable precaution. A common response from land users is that they didn't know how to identify or contact the relevant Aboriginal or Torres Strait Islander Party.	Traditional Owner and/or Representative

Dispute resolution

Proposals-Recommendations-Comments	Stakeholder description
Section 35 of the Act is more specifically referenced and explained in the Guidelines, and that specific Guidelines for dispute resolution are developed.	Academia
Categories of heritage: - [4.7, 4.8, 4.9, 4.10, 5.8, 5.9, 5.10, 5.11, 5.17, 5.18, 5.19 and 5.20] - should be moved to the introduction of Part 2 of the Guidelines and should be the same for each of the categories. There should be a solution for not reaching an agreement. If an agreement is not reached, the party should not be able to continue activity without consulting either Aboriginal Party of authoritative person (anthropologist/archaeologist).	Academia
That a well-formulated Dispute Resolution process be developed for inclusion in the Guidelines and that such a process establishes a pathway for action on dispute resolution which can be regulated by DATSIP.	Consultant
The Guidelines do not provide sufficient mechanisms for meaningful dispute resolution	Consultant
At present, the Guidelines contain only a brief and poorly articulated Dispute Resolution process (Section 7.5). The Guidelines indicate that a duty of care requirement will continues despite an absence of agreement between a proponent and the Aboriginal Party. But the Guidelines also imply that a proponent may proceed with development, even without the consent of an Aboriginal Party, providing that the proponent (who is usually unskilled in matters pertaining to the identification of Aboriginal cultural heritage) does not harm Aboriginal cultural heritage, without any requirement for the activity to be monitored by a person with skills and training in heritage identification. This is entirely contrary to the principles of the Act, and to the principles of the Ask First Guidelines to which the Duty of Care Guidelines makes specific reference.	Consultant
Develop and incorporate Dispute Resolution Guidelines, including the use of independent experts (Indigenous, archaeological and anthropological) or expert panels to determine disputes.	Consultant
Consideration be given to require, where an unreasonable refusal is given by the Aboriginal party to participate in the Duty of Care process, Proponents proceed immediately to a formal Cultural Heritage Study or Cultural Heritage Management Plan as per Part 6 or 7 of the ACHA. This provides greater certainty in process and is more likely to result in compliance with the ACHA.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
When Proponents chose to follow the duty of care process, it is not uncommon for the relevant Aboriginal party to refuse to participate in the process. Reasons for refusal vary, with disputes over payment to participate, which Technical advice they will or will not work with, and lack of sufficient time given by Proponents to be involved, being very common. Such refusals are rarely documented, being given as verbal advice to avoid a document trail in the event that the matter reaches a Court process.	Consultant
The Guidelines also imply that a Proponent may proceed with their project without the consent of an Aboriginal party, providing that the Proponent does not harm Aboriginal cultural heritage. However, as the very definition of Aboriginal cultural heritage requires knowledge of significant Aboriginal areas and objects, the refusal of the Aboriginal party to participate in the process does not provide certainty to the Proponent that they can effectively meet their duty of care obligations.	Consultant
In the first instance, parties should be required to seek agreement no matter the nature of the Aboriginal cultural heritage. This affords an opportunity to the relevant Aboriginal party to be the primary advisor on the significance of Aboriginal cultural heritage, consistent with provisions of the ACHA, and hence how it should be managed. Where agreement cannot be secured there needs to be some clear guidance as to what actions should be taken as reasonable and practicable measures binding on parties. This will necessarily require the State to determine what constitutes reasonable and practicable measures. Some of these measures can be done in guidance notes that give effect to the purposes of the ACHA to avoid or minimise harm to Aboriginal cultural heritage. In other cases it will require case by case assessment. Is this necessarily a bad thing? In our estimation it is not. The regulator should assist parties to meet the duty of care and should use their knowledge and experience to do so. Secondly, a lay party should not be expected to develop reasonable and practicable measures in relation to Aboriginal cultural heritage. Thirdly, there should be some independent assessment of whether any management measure actually is reasonable and practicable in any particular case. Fourthly, it is consistent with the State's assertion of ownership of Aboriginal cultural heritage. The State should develop its reasonable and practicable measures informed by the purposes of the ACHA.	Consultant
5.10, 5.19, 7.5 - Where agreement cannot be reached, it isn't always reasonable or practicable to then develop a Part 7 Cultural Heritage Management Plan (for example, there may be time, cost, or other logistical constraints – particularly for smaller projects) – I recommend including another alternative in addition to developing a CHMP. For example, if agreement cannot be reached, then an external mediator or expert or consultant be appointed by DATSIP to make recommendations. The current idea that it's either an agreement or 'proceed without' the Aboriginal Party does not meet the principle of the Act, while a CHMP is not always reasonable or practicable.	Government agency
Also need to be a conflict resolution measure provided within the Duty of Care Guidelines to maintain consistency across all residual heritage studies. The clause would need to provide details about how to handle disputes between stakeholders. mediation guided by DATSIP a detailed study by an independent cultural heritage specialist to confirm or deny the existence of residual heritage values would be a possible dispute resolution measure. This process could be governed by DATSIP as part of the mediation. If mediation fails, a ruling by the Land Court could act as the final appeal mechanism.	Government agency
There have been situations where it has not been possible to negotiate an agreement (or endorsement) from the Aboriginal party about how to best manage cultural heritage. For these scenarios, it is important that land managers have a pragmatic means of meeting their duty of care obligation, to protect and minimise harm to cultural heritage, and be in compliance with the Aboriginal Cultural Heritage Act 2003. The revised Guidelines need to continue to include the [Part] 7 clause, to provide land managers the option of meeting their duty of care obligations by developing a Cultural Heritage Management Plan.	Government agency
Dispute resolution - there is no dispute resolution mechanism provided for when consultation/negotiation is not focussed on developing a cultural heritage management plan under Part 7…there could be benefits to expanding when the mediation provisions (s106) can be triggered	Government agency

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines could assist to significantly reduce potential disputes by: - Clarifying the circumstances in which Aboriginal parties, or their representatives, must be engaged to undertake site inspections and/or monitoring of works by reference to the likelihood of Aboriginal cultural heritage existing in the area. This comes back to the issue of placing cultural heritage on the Register. - What is "reasonable and practical", insofar as terms of engagement. For instance, clarifying what is a reasonable engagement "fee" (or a default rate if the parties are not be able to agree on a fee); and to what extent must a proponent be required to engage persons from "out of town" (with the resultant increase in costs) when there is a local Aboriginal representative available. - Make clear that, if the parties are unable to reach agreement on reasonable and practical compliance steps under Category 5 (our category 3) that the proponent may undertake their own compliance steps, including to engage their own expert to assess the likelihood of the activities harming or damaging Aboriginal cultural heritage.	Lawyer
The Guidelines could be amended to include: additional guidance on steps that a land user may take to ensure compliance with the duty of care in circumstances neither Aboriginal party agreement nor a CHMP can reasonably be obtained	Proponent
The Guidelines could include recognition of reasonable efforts and attempts to engage with an Aboriginal Party and execute Cultural Heritage Management Agreement where required. Failure to a reach a CHMA within the current Duty of Care process does not seem to account for reasonable efforts on the part of the proponent to get the CHMA in place. An opportunity may exist to include something to this effect in Part 7 of the Guidelines. An example of a strategy to effectively bring about the execution of CHMAs might be to include a ‘turnaround timeframe’ from the date of submission of a draft CHMA within which either party must respond.	Proponent
The Acts purpose is the recognition, protection and conservation of cultural heritage, however, this purpose may be put at risk where the Proponent and Aboriginal Party are not able to reach agreement (e.g. remuneration payments for engagement).	Proponent
There is little discussion, however, in the Guidelines about alternatives where an agreement cannot be reached. Whilst reference is made to a CHMP under Part 7 of the Act only, this is often not practicable in the context of minor works or low cost works. It is recommended that consideration be given to other 'reasonable and practicable measures', that could be employed in this circumstance and that examples be listed. This could include a further breakdown of category 5 activities taking into account the scope and scale of the activity to provide further guidance about what is reasonable and practicable (with or without reference to industry specific activities).	Proponent
Another avenue apart from the Part 7 could be made available (subject to resourcing maybe) such as mediation provided by the Cultural Heritage Unit (potentially a paid service) or a form of injunctive relief. These other options would allow for a better flow of communication between the parties and an end result which all parties would be happy with especially with regards to mediation.	Proponent
In the ordinary context of negotiating in good faith with a view of reaching agreement and should there be a failure to reach an agreement, the activity cannot proceed as the view of the native title party are key - it is recommended in circumstances where the parties fail to reach agreement , the activity cannot proceed	Traditional Owner and/or Representative

Industry specific guidelines

Proposals-Recommendations-Comments	Stakeholder description
A greater level of detail about the activities typically undertaken within industries would provide improved consistency of interpretations of the Guidelines by proponents as well as providing better context and information about their works to assist Aboriginal Parties. Accordingly, industry specific Guidelines should be developed to provide more explicit examples of activities typically carried out by land users within that industry e.g. electricity supply, mining, housing or commercial development, agriculture etc. Such a document could form an appendix to the general Guidelines. Further, there is opportunity for industry to collaborate with Aboriginal Parties in the development of such Guidelines which would assist in achieving mutually beneficial outcomes and would assist in achieving the objectives of the Act and Guidelines.	Proponent
Category 1 could be reinforced with industry specific examples of activities to provide greater clarity.	Proponent
Category 2: Whilst paragraph 4.6 of the Guidelines provides examples that emphasise consistency of use, these should be reinforced with industry specific examples to assist land users as well as provide guidance to Aboriginal Parties about where land users might rely on this category. Category 2 could also be improved through a stronger alignment between paragraphs 4.4, which refers to 'No Additional Surface Disturbance', and 4.6, which focuses on consistency of activity. This ambiguity should be addressed through the Guidelines leading the land user to consider the categories in conjunction with each other i.e. that minor additional ground disturbance (which would not meet category 2, yet could be included in the examples under 4.6) should be considered in the context of existing development and land use and consideration of whether the features of the area are likely to comprise or contain Aboriginal cultural heritage.	Proponent
Guidelines should be amended to make clear that the proposed activity should be consistent with the current level and nature of development and the level of ground disturbance i.e. categories 3 and 4 should be read in conjunction with each other. Further, industry specific examples could be provided to promote a consistent interpretation	Proponent

Role of Cultural Heritage Unit

Proposals-Recommendations-Comments	Stakeholder description
That a well-formulated Dispute Resolution process be developed for inclusion in the Guidelines and that such a process establishes a pathway for action on dispute resolution which can be regulated by DATSIP.	Consultant
That a well-formulated Dispute Resolution process be developed for inclusion in the Guidelines and that such a process establishes a pathway for action on dispute resolution which can be regulated by DATSIP.	Consultant
The results of surveys should be lodged with the State and if necessary any identified sites should be added to the database	Consultant

Proposals-Recommendations-Comments	Stakeholder description
The link between the Duty of Care provisions generally and the requirements for a Cultural Heritage Study (CHS) and Cultural Heritage Management Plan (CHMP) is more clearly articulated. This would include provisions to ensure that appropriately skilled and experienced cultural heritage professionals are involved in a CHS and CHMP (anthropologists are more appropriate for assessing intangible cultural heritage sites, while archaeologists are more appropriate for tangible cultural heritage sites), and that such heritage professionals are professionally trained and accredited and have the required qualifications to undertake the necessary assessments. In other States, such provisions are regulated by a permit or registration process - A similar permitting regime should be considered for Queensland. The Guidelines reflect the management principles of the Ask First Guidelines (see especially pages 14-15) which encourage the integration of the assessment process and the management process.	Consultant
The issue of inconsistency should be addressed by the development of a pro forma that must be completed by the proponent in a staged manner. That the pro forma be available as a web-based tool. Completion of the pro forma should be mandatory. The State should reserve to itself the right to review any and all pro formas in line with its claimed ownership of Aboriginal cultural heritage and the risks that land use poses to that heritage. The data can be analysed by the regulatory agency as required for other purposes of the legislation. Such a system can be tailored such that is can be integrated as another element within the overall State Aboriginal cultural heritage management system (?)	Consultant
We suggest then that the whole question of site place management under the Guidelines requires significant revision. All Aboriginal cultural heritage sites, regardless of type, should be managed in a consistent fashion. In the first instance, this should be by parties achieving agreement. Where agreement cannot be reached then reasonable and practicable measures need to be implemented. The State should prepare some guidance notes as to what constitutes reasonable and practicable measures that give effect to the purposes of the ACHA to avoid or minimise harm. In other instances, advice may be provided by the State on a case by case basis.	Consultant
In the first instance, parties should be required to seek agreement no matter the nature of the Aboriginal cultural heritage. This affords an opportunity to the relevant Aboriginal party to be the primary advisor on the significance of Aboriginal cultural heritage, consistent with provisions of the ACHA, and hence how it should be managed. Where agreement cannot be secured there needs to be some clear guidance as to what actions should be taken as reasonable and practicable measures binding on parties. This will necessarily require the State to determine what constitutes reasonable and practicable measures. Some of these measures can be done in guidance notes that give effect to the purposes of the ACHA to avoid or minimise harm to Aboriginal cultural heritage. In other cases it will require case by case assessment. Is this necessarily a bad thing? In our estimation it is not. The regulator should assist parties to meet the duty of care and should use their knowledge and experience to do so. Secondly, a lay party should not be expected to develop reasonable and practicable measures in relation to Aboriginal cultural heritage. Thirdly, there should be some independent assessment of whether any management measure actually is reasonable and practicable in any particular case. Fourthly, it is consistent with the State's assertion of ownership of Aboriginal cultural heritage. The State should develop its reasonable and practicable measures informed by the purposes of the ACHA.	Consultant
Instigating a position for a cultural heritage officer who could initiate dialogue with landowners so Aboriginal people could get access and ensure protection of sites, either by legislation or negotiation, would be a step in the right direction.	Consultant
5.10, 5.19, 7.5 - failure to reach agreement - need for another alternative to CHMP option - e.g. parties can access an external mediator or expert/consultant appointed by DATSIP to make recommendations	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Also need to be a conflict resolution measure provided within the Duty of Care Guidelines to maintain consistency across all residual heritage studies. The clause would need to provide details about how to handle disputes between stakeholders. Mediation guided by DATSIP a detailed study by an independent cultural heritage specialist to confirm or deny the existence of residual heritage values would be a possible dispute resolution measure. This process could be governed by DATSIP as part of the mediation. If mediation fails, a ruling by the Land Court could act as the final appeal mechanism.	Government agency
The Guidelines should be amended to give greater oversight by the relevant regulatory agency	Lawyer
Recommend that the Guidelines require the land user to provide DATSIP with its assessment notice, the Aboriginal Party's response and a brief outline of the measures (if any) taken to meet its duty of care (the "compliance notice") i.e. land users be required to certify that no harm will be caused by their activities and set out the reasons why they believe they have met their statutory duties	Lawyer
Lastly, we suggest that the Guidelines include provisions that require DATSIP to issue a notice to both the land user and Aboriginal Party ("the compliance decision") advising whether or not it considers the activity can proceed, cannot proceed or can proceed subject to certain conditions with which the land user must comply.	Lawyer
In response to an assessment notice, Aboriginal Parties may suggest that an appropriately qualified expert is retained to give advice over technical matters such as the archaeological/historical significance of an object or place. If the land user chooses not to engage an expert, then this must be disclosed in the compliance notice and reasons given for that decision. This will allow DATSIP to consider whether, in the circumstances of each matter, the provision of expert advice was a 'reasonable and practicable measure' that the land user should have taken to ensure their activities did not harm cultural heritage. If so, the regulator can include a condition to this effect in the compliance decision.	Lawyer
Suggest that DATSIP develop a code of practice (such a code exists in NSW) to improve standards, guide stakeholders' expectations and encourage best practice	Lawyer
To allay such concerns and improve dealings between stakeholders, we believe DATSIP has a role to play in developing a range of products that will help to standardise matters commonly the subject of controversy. For example, we recommend that an indicative schedule of fees and costs are developed, as well as Guidelines to assist parties to calculate the time/cost of undertaking key tasks such as: initial/desktop assessments; surface assessments/surveys and sub-surface assessments/test pitting. We also recommend DATSIP's role is extended to delivering educational/training products that raise the awareness, and develop the capacity, of both land users and Aboriginal Parties.	Lawyer
Currently little if any opportunity for DATSIP to become aware of activities being undertaken in sole reliance upon the Guidelines, much less to consider whether this is appropriate and compliant.	Lawyer
Observed very limited awareness of Queensland's cultural heritage 'system' amongst land users, development proponents and particularly regional local governments and rural land holders. Significant effort needs to be made to raise awareness of statutory requirements and of the regulator's commitment to enforcing them.	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
Under the Guidelines there is no onus on DATSIP or the Aboriginal Party to ground truth and confirm sites currently registered on the database. It is recommended that the Guidelines include provisions for DATSIP and/or the Aboriginal Party to ground truth and confirm sites currently registered on the database. Alternatively consideration be given to the Guidelines including a provision should the proponent of an activity be able to satisfactorily confirm a registered cultural heritage site is not in existence or the data is inaccurate then it be removed from the register.	Proponent
Some Proponents and Aboriginal Parties appear to have little understanding of the Guidelines and their application. It would be beneficial if DATSIP take more of an educational role in explaining the Guidelines to the community, Proponents and Aboriginal Parties so that all stakeholders have a greater understanding of the Guidelines' application.	Proponent
Another avenue apart from the Part 7 could be made available (subject to resourcing maybe) such as mediation provided by the Cultural Heritage Unit (potentially a paid service) or a form of injunctive relief. These other options would allow for a better flow of communication between the parties and an end result which all parties would be happy with especially with regards to mediation.	Proponent
DATSIP provide better direction on actions that can be taken where the land user must be informed about cultural heritage significance that may attach to landscape features (s5.7 and s5.15). Further, DATSIP should consider clarifying the definition of some landscape features set out in section 6.2 – specifically 'areas of biogeographical significance, such as natural wetlands', 'particular types of native vegetation' and 'some hill and mound formations'. These definitions are broad and in some circumstances can apply to almost any environment.	Proponent
It is recommended that DATSIP engage in more robust education with the community, land users and Aboriginal Parties, specifically targeting non-conforming industries and parties that are consistently unreasonable. [Land user] also recommends that more education is needed on what constitutes reasonable and practicable management measures and importantly, what is not considered reasonable. This could be in the form of a publication authored by DATSIP and referenced in the Guidelines.	Proponent
DATSIP develop a range of educational tools that are actively distributed to land users and which are also available on the DATSIP website which also contain the types of information referred to above, but particularly focusing on using visual examples so that when land users are undertaking activities, they more easily be able to identify, or at least query whether, certain features may be considered a 'Cultural Heritage Find' by the Traditional Owners. Both of these developments be undertaken with the assistance of Traditional Owners, as Traditional Owners typically have the best knowledge of their traditional lands and the examples of various types of cultural heritage. Underpinning the educative material should be a theme that country is, in the sense of cultural heritage protection, shared.	Traditional Owner and/or Representative
Where DATSIP is unable to enforce compliance with the Guidelines, then it must assist land users to comply with the Guidelines through education and training. As we have noted above, this is particularly significant for those land users who are not involved in deliberate harm to cultural heritage.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Proving Significant Ground Disturbance (Taken from Practice Note: Significant Ground Disturbance Vic AHA) The burden of proving that an area has been subject to significant ground disturbance rests with the land user proposing the activity. DATSIP should require evidence of support for claims that there has been significant ground disturbance of an area. The levels of inquiry outlined below provide some guidance about what information should be required to satisfy DATSIP that significant ground disturbance has occurred. The levels of inquiry are listed in order of the level of detail that may be required. An assessment of whether significant ground disturbance has occurred should be dealt with at the earliest possible phase of the project lifecycle in order to avoid unnecessary delay or cost to land users. Little weight should be given to mere assertions by land users that an activity area has been subject to significant ground disturbance.	Traditional Owner and/or Representative
The Cultural Heritage Assessment and Consultation Matrix outlines situations where a Cultural Heritage Assessment should be required. The Cultural Heritage Assessment process must include engagement with the recognised Aboriginal Party/Cultural Heritage Body for the area (as per sections 34-36 of the Act) where the project is proposed. The process must be transparent, such that the Aboriginal Party / Cultural Heritage Body have input into the management of their own cultural heritage. 'Due Diligence' reporting that effectively cuts out the Aboriginal Party is no longer acceptable (i.e. the current status quo). If a Due Diligence report is undertaken, the Aboriginal Party must be consulted and given a chance to review the report and provide comment on the assessment's methodology, execution, conclusions and recommendations. DATSIP should act as the facilitator of this process to ensure that the opinion of the Aboriginal Party / Cultural Heritage Body can be given a genuine voice.	Traditional Owner and/or Representative
Training to be provided on the role of the Aboriginal and Torres Strait Islander parties under the legislation and the Guidelines [1.4].	Traditional Owner and/or Representative
There are no examples or templates that land users can access to understand the process of negotiating a cultural heritage agreement or what is involved in a cultural heritage assessment. The CHU could provide templates on their website for land users to use as a starting point. This information could include a summary of steps (like a flowchart) for a cultural heritage assessment or to negotiate an agreement [1.16].	Traditional Owner and/or Representative
The footnotes for this section explaining that being present in a cultural significant area may cause offence. This needs to be removed from the footnotes and placed in Part 1. More information must be available to land users educating them about the relationship between Aboriginal and Torres Strait Islander peoples and their land.	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 1]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
Land users are only obligated to contact the Aboriginal or Torres Strait Islander party in the event of a Cultural Heritage Find. The problem with this is most land users are not going to know that they have found a Cultural Heritage Find. Land users need to be reminded of their duty of care obligation under the legislation. The consequences of failure to comply with the Guidelines must be reiterated at the end of each section. The CHU needs to provide regular training sessions for all types of land users to educate them about the different mediums cultural heritage takes.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 2 and 3]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
Land users are not encouraged to engage and consult early with the Aboriginal or Torres Strait Islander party at all before undertaking works under this category [Category 4]. Incorporate a notification process not dissimilar to the s24 notices issued under the Native Title Act 1993 (Cth). Providing a simple notification explaining what activities will be taking place, dates, location and description of machinery enables the Aboriginal and Torres Strait Islander Parties to be informed about the activity. It also provides a response to the land user whether or not there is any known cultural heritage within that area. The Cultural Heritage Unit could develop a template notice that land users could then populate.	Traditional Owner and/or Representative
Any suggestions by an Aboriginal or Torres Strait Islander Party that there is residual cultural heritage – particularly if it is intangible – is something land users would prefer to ignore and rely on the impact of any previous disturbance. This further agitates already often strained relationships between the land user and the Aboriginal and Torres Strait Islander Party. The CHU must collaborate with various industry peak bodies to provide training on the legislation and the operation of the amended Guidelines. Any training needs to incorporate discussions around the principles and main purposes of the legislation. Any training must be undertaken with assistance from Aboriginal and Torres Strait Islander parties to educate land users about the various mediums cultural heritage takes. It is important for land users to understand that Aboriginal and Torres Strait Islander peoples' traditional knowledge is knowledge concerning the environment in which they live; and is passed from one generation to the next in written and oral form on the basis of their own cultural codes. The knowledge is intangible, inalienable, imprescriptible and non-seizable.	Traditional Owner and/or Representative
The development of any Guidelines specific to the Torres Strait must acknowledge that an important element of Torres Strait culture is totems. A "totem" is an animal or natural object with which a group of persons acknowledge a definite relationship. For most Torres Strait Islander communities their totems include marine animals. For this reason it is vital that the development of any Guidelines specific to the Torres Strait recognise and protect their totems as cultural heritage. As part of the development of Guidelines for the Torres Strait consultation must be undertaken on each Island community. The CHU must ensure that it has sufficient resources available to undertake this consultation properly. The TSRA NTO is willing to coordinate with the CHU to share resources where possible. The development of Guidelines for the Torres Strait must involve representatives from the Torres Strait in all stages. This will ensure that Ailan Kastom is incorporated in any finalised Guidelines. On these grounds we invite the CHU to engage directly with the PBC Chairs to commence discussion around the development of Guidelines independent and specific to the Torres Strait.	Traditional Owner and/or Representative

Part 4 – Comments relating to resourcing

Costs

Proposals-Recommendations-Comments	Stakeholder description
One of the main reasons developers explain to us that they are reluctant to consult with Aboriginal Parties is the lack of certainty over process and costs. At present, the legislation allows for what is effectively a statutory monopoly of trade by the Aboriginal Party. We support the rights of Aboriginal people to be compensated for their time in managing cultural heritage. If this was regulated in a more structured manner, it would save many initial arguments over money, and help to focus discussions on effective heritage management, and not financial remuneration.	Consultant
More regulated payment structure for Aboriginal party managing cultural heritage	Consultant
In order to make a rational business decision regarding whether to proceed or not with a proposed activity an indicative cost and timeframe of the anticipated cultural heritage assessment is required. The lack of such information being readily available makes it difficult to make an informed decision.	Government agency
The [land user] would not support any amendment to the Guidelines which would require [land user] to consult with an Aboriginal and Torres Strait Islander party to a greater extent than is already required about a proposed activity in an area which falls within the existing categories 1,2,3 or 4 of the Guidelines and when a register/database search indicates no heritage exists...the time and cost associated with such additional consultation would be so onerous that it could significantly impact on both [land user] financial sustainability and human resources.	Government agency
The fee rates quoted by some Traditional Owners has been excessive and a repeated 'point of tension'. It was also reported that the scale of service some Traditional Owners expected [land manager] to fund was at times unreasonable (e.g. rate relative to the scale of the project). The majority of [land manager] projects are small in scale and budget and therefore cannot fund broad landscape cultural heritage surveys. Staff suggested that the development of a whole of government schedule of payments could assist with providing Queensland Government departments a clear benchmark for future dealings.	Government agency
In our experience the majority of disputes between our clients, as proponents of works and Aboriginal parties, is over the terms of engagement of Aboriginal representatives for inspections prior to an activity commencing and monitoring works during activities proceeding.	Lawyer
In response to the review question relating to improving protection of residual cultural heritage, there needs to a practical approach applied and recommend consideration of the following questions: a) What is the value in protecting residual cultural heritage in areas that have been developed/previously disturbed? b) If an artefact scatter is located through cultivation how does this impact the current land user? c) What is the benefit in protecting a disturbed site for the Aboriginal Party? d) Is it an expectation the Aboriginal Party would be involved in the management of all residual sites? Managing residual cultural heritage values has the potential to impact Proponents' costs and project timeframes.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Mandated and standardised procedures could also reduce the resources needed (from land users, government, NTRBs, Traditional Owner Groups) in negotiating terms and conditions	Traditional Owner and/or Representative

Fee structure

Proposals-Recommendations-Comments	Stakeholder description
Clear and reasonable fee structure for engagement of Cultural Heritage Assessments. Similar to fee structures applied to other development application fees. Aboriginal party status does not allow for competitive quoting and thus fees are considered excessive and create a disincentive to engage on a broader range of activities.	Government agency
Fees - [land user] advocated for the inclusion of a reasonable scale of fees for Aboriginal cultural heritage monitoring when the Guidelines were initially developed…A scale of fees would significantly reduce the costs and time often involved in negotiating management of cultural heritage	Government agency
To allay such concerns and improve dealings between stakeholders, we believe DATSIP has a role to play in developing a range of products that will help to standardise matters commonly the subject of controversy. For example, we recommend that an indicative schedule of fees and costs are developed, as well as Guidelines to assist parties to calculate the time/cost of undertaking key tasks such as: initial/desktop assessments; surface assessments/surveys and sub-surface assessments/test pitting. We also recommend DATSIP's role is extended to delivering educational/training products that raise the awareness, and develop the capacity, of both land users and Aboriginal Parties.	Lawyer
The Guidelines could assist to significantly reduce potential disputes by: - Clarifying the circumstances in which Aboriginal parties, or their representatives, must be engaged to undertake site inspections and/or monitoring of works by reference to the likelihood of Aboriginal cultural heritage existing in the area. This comes back to the issue of placing cultural heritage on the Register. - What is "reasonable and practical", insofar as terms of engagement. For instance, clarifying what is a reasonable engagement "fee" (or a default rate if the parties are not be able to agree on a fee); and to what extent must a proponent be required to engage persons from "out of town" (with the resultant increase in costs) when there is a local Aboriginal representative available. - Make clear that, if the parties are unable to reach agreement on reasonable and practical compliance steps under Category 5 (our category 3) that the proponent may undertake their own compliance steps, including to engage their own expert to assess the likelihood of the activities harming or damaging Aboriginal cultural heritage.	Lawyer

Resources

Proposals-Recommendations-Comments	Stakeholder description
That the Guidelines include a primary role for oversight of the Duty of Care process (both determination of categories and review of adverse impact on cultural heritage) by an independent agency (such as an Aboriginal Heritage Council) or by the relevant Aboriginal Party, or by the regulatory authority (particularly through the employment of regionally-based Aboriginal site officers), which should be resourced to undertake such a role.	Consultant
That Aboriginal Parties, Aboriginal Cultural Heritage Bodies, and Prescribed Body Corporations be resourced to undertake training to strengthen capacity to oversee the cultural heritage on their lands.	Consultant
Resource Aboriginal Parties, the State or Council to undertake reviews of the adequacy of assessments using the Duty of Care Guidelines.	Consultant
With no resourcing given to Aboriginal Parties, it is entirely unreasonable that they should be expected to fund legal actions challenging wealthy land users.	Consultant
There is little compliance of the Guidelines and no resources for Aboriginal parties to ensure compliance.	Consultant
How can Aboriginal people protect their cultural heritage without resources to do so? How does an under-resourced cultural heritage body, sometimes of elderly people on the lower socio-economic level, fund protection of significant sites?…In many situations, the developer funds the cost of a technical adviser and cultural heritage monitors. However, in other situations a company will insist on its own technical adviser/archaeologist to undertake assessments – surely a conflict of interests? One of the stipulations that would greatly strengthen the Guidelines would be the right of Aboriginal parties to determine their own archaeologist/ anthropologist, often someone they have worked with for years and have a mutual trust and respect.	Consultant
Guidelines provide more support for Aboriginal Parties and Proponents to engage directly and discourage cultural heritage management reliance through third parties (i.e. consultants, technical advisors and legal representatives).	Proponent
As part of the development of Guidelines for the Torres Strait consultation must be undertaken on each Island community. The CHU must ensure that it has sufficient resources available to undertake this consultation properly. The TSRA NTO is willing to coordinate with the CHU to share resources where possible. The development of Guidelines for the Torres Strait must involve representatives from the Torres Strait in all stages. This will ensure that Ailan Kastom is incorporated in any finalised Guidelines. On these grounds we invite the CHU to engage directly with the PBC Chairs to commence discussion around the development of Guidelines independent and specific to the Torres Strait.	Traditional Owner and/or Representative
Most Aboriginal or Torres Strait Islander parties perform these roles in a volunteer capacity. This is a key issue in areas like the Torres Strait where each cultural heritage body is the RNTBC for the determination area. In particular making land users aware of the limited resources that Aboriginal and Torres Strait Islander parties have.	Traditional Owner and/or Representative

Part 5 – General comments

Proposals-Recommendations-Comments	Stakeholder description
The question 'How can the Guidelines enable greater synergy between the Cultural Heritage values of an area and the nature of the proposed activity?' be omitted from the review process	Academia
In many sectors, there remains a consistently deliberate policy of avoidance of the Aboriginal Party.	Consultant
The Duty of Care Guidelines as they are currently drafted as a [flawed] concept in the State's heritage management legislation. There exists too much ambiguity and inconsistency in their application. Many practitioners and administrators interpret the Guidelines as a logical sequence of options. We believe such an interpretation is flawed and runs counter to the intention of the Guidelines. The Guidelines are having the practical effect of facilitating the uncontrolled and unregulated destruction of Aboriginal cultural heritage on a massive scale. It is imperative that the flaws in the DOC Guidelines (and the legislation more generally) are addressed as soon as possible.	Consultant
The system of self-assessment and direct negotiations between land users and Aboriginal Parties leads to inconsistent and unpredictable outcomes	Consultant
Often an undue focus on monetary gain over heritage protection. In essence, a system of paying Aboriginal people for the destruction of their heritage has been the outcome in many instances.	Consultant
The likelihood of mutually agreeable heritage outcomes are greater when all people who participate in the duty of care process are aware of their cultural heritage obligations, clearly understand expectations set of them, and when consultation between Proponents, Aboriginal stakeholders, and technical advisors is undertaken early and in a meaningful and transparent manner...guided by an ethical desire to ensure improvements to the practice of Aboriginal cultural heritage management in Queensland for the betterment of all relevant stakeholders.	Consultant
Importantly, another principle of the ACH Act is that "there is a need to establish timely and efficient processes for the management of activities that may harm Aboriginal cultural heritage" (S. 5.e). Given the stated purposes and the principles of the ACH Act, this last principle can only be interpreted to mean that it is the activities that may (our emphasis) harm Aboriginal cultural heritage that need management through timely and efficient processes, such that the management will also meet the purpose and principles of the Act. However, in the case of the Duty of Care Guidelines, how this intent of the purpose and principles is to be achieved is provided in S. 6(i) of the ACH Act, which states that processes should be established "for the timely and efficient management of activities to avoid or minimise harm (our emphasis) to Aboriginal cultural heritage. Effectively, between the stated purpose and principle of the ACH Act and the notions on which the Duty of Care Guidelines are based is a critical breakdown of intention. Against the interests of "recognition, protection and conservation", the notion of acceptable "harm", albeit "minimised" (whatever that means) has now transmuted into being the process that underpins the Duty of Care Guidelines.	Consultant
Sections 6 and 7 of the Duty of Care Guidelines are largely disregarded	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Effectively, the current Duty of Care Guidelines have been shown, in their design, format and intentions, to be severely deficient in assisting people with a cultural heritage duty of care to meet the purpose and principles of the ACH Act.	Consultant
As the Duty of Care Guidelines are not a requirement under the ACHA (the Minister has a discretion to notify Guidelines under s.28 of the ACH Act), it would be far preferable for there to be no Guidelines at all than to retain the existing framework given the widespread and serious harm that has been done to cultural heritage across the State since the Guidelines were introduced.	Consultant
'The Act' in general, and 'The Guidelines' in particular, fail to offer protection to living heritage.	Consultant
'The Guidelines' specifically relate to principles 5 (a), 5 (b), 5 (d) and 5 (e), but only the latter (5e) is actually addressed by 'The Guidelines'. The other principles are largely ignored by the provisions of 'The Guidelines', which allow development proponents to make decisions about the impact of development land surfaces (rather than on Cultural Heritage) without consulting Traditional Owners and/or Aboriginal Parties. This process in 'The Guidelines' is contrary to the principles of the legislation, and is also contrary to the Principles of Aboriginal consultation as outlined in the Ask First Guidelines (p. 6) developed by the Australian Heritage Commission and specifically referenced as best practice in Section 7 of the Guidelines. By allowing proponents to make the initial assessment of potential impact, Aboriginal people are denied the opportunity to meet their obligations to assess effects on their land, resources and heritage (Principle 5 (d)) and Aboriginal knowledge is not made the primary source of information about heritage (Principles 5 (a) and 5 (c)).	Consultant
It is premised on a view that the Duty of Care Guidelines can provide a suitable mechanism for addressing cultural heritage issues in a timely and proportionate manner. There are, however, various areas in which the Guidelines require attention and some tightening.	Consultant
The discussion paper prepared around the review of the Duty of Care Guidelines raised questions regarding the management of (residual) cultural heritage issues. Here there is high level of inconsistency and as a result uncertainty and lack of clarity. The Duty of Care Guidelines in some places requires, and in others suggests, that these be dealt with in various ways. One suggested approach is the use of a CHMP. This can be expensive, might not deliver timely outcomes and of itself does not guarantee an uncontested outcome. All of these points seem to be at odds with the purpose of the Duty of Care Guidelines. We also note that there is a certain circularity in suggesting a CHMP: if it had been required then one could not be seeking to use the Duty of Care Guidelines in the first place.	Consultant
There is a second set of requirements for certain types of cultural heritage places that demand not only that agreement be sought but that agreement must be achieved. In some circumstances, such agreement may not be achievable due to unreasonable expectations by one party or other (or both).	Consultant
The Guidelines make it very difficult to get the traction [cultural heritage] deserves in projects where budget, timeframes and justification for application of the Guideline is ambiguous.	Government agency
The Duty of Care Guidelines are seen to work in tandem with the Act. The Guidelines are a self-assessment tool that allows the land user to meet their Duty of Care obligations for protecting Aboriginal cultural heritage.	Government agency
Improving the Guidelines needs to reflect the purpose of the legislation which is to protect Aboriginal cultural heritage, whilst also providing a workable mechanism allowing for self-assessment by different land users.	Government agency
Generally, the duty of care Guidelines are directed towards managing tangible/archaeological heritage.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Review of the Duty of Care Guidelines aims to balance the spirit of the Aboriginal Cultural Heritage Act 2003 in aiming to protect Aboriginal cultural heritage whilst also providing a workable mechanism allowing for self-assessment by different land users.	Government agency
Any modifications to the Duty of Care Guidelines must balance achieving protection of Aboriginal cultural heritage values with [land user's] responsibility to deliver appropriate infrastructure and services to the community. Should the Guidelines change to include more onerous requirements and restrictions on [land user's] activities, the coordinated, efficient and financially sustainable delivery of infrastructure and services are likely to be compromised.	Government agency
Some of the principles of the [Commonwealth] Department of the Environment's document Engage Early: Guidance for proponents on best practice Indigenous Engagement for the environmental assessment under the Environment Protection and Biodiversity Conservation Act 1999 may assist you in defining the concept of consultation prior to works.	Government agency
Given the Guidelines are designed to cover any activity affecting any land and water within Queensland, they can only be general and flexible in nature.	Government agency
The existing Guidelines have been a useful tool referred to when negotiating…specific management procedures, which appear to work well on the ground.	Government agency
Section 1.3 of the Duty of Care Guidelines refers to the distinction between Aboriginal cultural heritage and Native Title although it does not adequately clarify what Native Title is or provide any guidance for the land user on where to go for further Native Title information.	Government agency
The [land user] recommends that an additional paragraph be included in the Duty of Care Guidelines on page 1 at the end of section 1.2, to clearly articulate “It is important for land users to recognise Aboriginal ownership of cultural heritage, allow free access of Aboriginal traditional owners or their representative groups to Aboriginal cultural heritage and ensure Aboriginal people are involved in cultural heritage protection and management processes”. References to clause 6 (a) – (i) and clause 13 of the Aboriginal Cultural Heritage Act 2003 could be included for land users to refer to.	Government agency
In general, the current Duty of Care Guidelines are well received by staff as they provide a simple and practical guide for managing the [Land manager's] duty of care obligations and compliance with the Cultural Heritage Acts.	Government agency
The Guidelines should be amended to ensure that the principles underlying the Act’s main purpose as set out in section 5 are properly incorporated as part of the negotiation process.	Lawyer
The Guidelines have and continue to be used by land users to undertake activities which cause harm to cultural heritage. Inadequate assessment of both the impact of activities and the cultural heritage values of areas has in our view led to the Guidelines being misapplied. This allows activities to proceed unscrutinised by the regulator, and without the notification, consultation and engagement of Aboriginal Parties.	Lawyer
The Guidelines are widely used to frustrate or obviate achievement of the main purposes of the Act. Put simply, they are being relied upon by land users to obscure or shield activities that are causing harm to cultural heritage.	Lawyer
Land users should not be able to continue to use the Guidelines to shroud their activities from scrutiny by the regulator and key stakeholders. In our submission, the status quo cannot be allowed to remain and amendments be made so that the purposes of the Act are achieved.	Lawyer

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines' focus on disturbance has led to over-reliance upon assumptions about the extent of previous disturbance and an area's values. Without statutory obligations to do so, many land users will continue to use the Guidelines to undertake activities without proper scrutiny and without the knowledge or input of key stakeholders	Lawyer
The Guidelines were and continue to be crucial in striking a compromise between the interests and priorities of land users and traditional owners to achieve the objects of the ACHA...Concepts that underlie the activity categories as they are presently drafted allow land users to act on unsound and untested assumptions, but enjoy the strict compliance assurances afforded by the Guidelines. The current review provides an opportunity that we submit DATSIP should take to correct an imbalance which has emerged from land users' misapplication of the Guidelines and the achievement of the main purpose of the Act. We believe that the solution lies in requiring greater involvement of Aboriginal Parties, land users being required to account for their decisions/actions and a more proactive role taken by the regulator.	Lawyer
In our view, reviewing the Guidelines independently to the Act, is a piecemeal approach to improving the workability of the legislation and better protecting Aboriginal cultural heritage. Many of the issues stern from the wording of the Act itself and, in our submission, the Act should be reviewed at the same time as the Guidelines.	Lawyer
The legislative purpose of protecting Aboriginal cultural heritage is to be balanced against affording land users certainty and flexibility with their developments. The Guidelines in their current form substantially achieve this balance. in the absence of any overall legislative review, any changes to the Guidelines must be undertaken with an understanding of their role as part of the compliance model and as a means of deemed compliance with the cultural heritage duty of care. Any changes to the Guidelines to limit their application or increase uncertainty for land users will necessarily upset this balance.	Proponent
The Guidelines, as they currently stand, broadly strike the right balance between protecting Cultural Heritage, and providing industry with a certain, achievable and practical way of compliance with the duty of care, without the need for government involvement.	Proponent
View that the current Guidelines have achieved their purpose and have worked well	Proponent
Since the original Guidelines were finalised in 2004 I understand that there have only been two prosecutions for breaches of the cultural heritage duty of care. This is an amazing record which reinforces the view of [land user] that the current Guidelines have achieved their purpose and have worked well...the view of [land user] that the current Guidelines have achieved their purpose and have worked well...The concerns outlined in the review paper about residual Cultural Heritage in Developed Areas and activities inconsistent with current or previous land use do not warrant any changes to the Guidelines in so far as they relate to our members' land. Should there be a number of changes regarding compliance then that will result in an increased cost for landholders and we ask for what purpose?	Proponent
Supports the Guidelines (gazetted 16 April 2014) and recommends that only minor changes be made to enhance their performance and operation...The Guidelines effectively achieve the purpose of the Acts in providing effective recognition, protection and conservation of Aboriginal cultural heritage.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines in their current form, provide Proponents with appropriate direction in the management, including recognition, protection and conservation, of Aboriginal cultural heritage when they are undertaking an activity. This is achieved by providing proponents with a) flexibility in managing cultural heritage matters despite there being some ambiguity as to what constitutes 'reasonable and practicable measures' to avoid harming cultural heritage; b) the ability to adopt a case by case approach for complying with their cultural heritage duty of care. This allows Proponents to decide what measures they will take, which supports their business needs, to achieve compliance with their duty of care rather than applying an inflexible approach of setting prescriptive measures, c) the ability to set equitable remuneration rates.	Proponent
In response to the review question relating to improving protection of residual cultural heritage, there needs to a practical approach applied and recommend consideration of the following questions: a) What is the value in protecting residual cultural heritage in areas that have been developed/previously disturbed? b) If an artefact scatter is located through cultivation how does this impact the current land user? c) What is the benefit in protecting a disturbed site for the Aboriginal Party? d) Is it an expectation the Aboriginal Party would be involved in the management of all residual sites? Managing residual cultural heritage values has the potential to impact Proponents' costs and project timeframes.	Proponent
In particular, it would be helpful if the Department could provide information about the views of the Traditional Owners and their respective technical advisors on how the Guidelines and the current categorisation of activities fail to provide synergy [between cultural heritage values of an area and the nature of the proposed activities.	Proponent
We were closely involved with the drafting of the original Guidelines in 2004 and since that time have found them to work very well in enabling us to manage impacts on Cultural Heritage and our interaction with external stakeholders. Given this positive experience we have no suggestions for making further changes to the legislation or to the categories of activities set out in the current Guidelines.	Proponent
The current Duty of Care Guidelines are a sound guide to compliance and protecting Aboriginal Cultural Heritage. In having this compliance mechanism, it assists in project delivery and ensuring any potential risk to Aboriginal Cultural Heritage is minimised. It is a tool that provides assistance to Project Managers as well as those assisting the Project Team to ensure compliance with the Aboriginal Cultural Heritage Act 2003 and the overall protection of Aboriginal Cultural Heritage. Therefore, the existence of the Guidelines and the continued existence of the Guidelines is quite important from a protection of heritage perspective for all those involved in project activities.	Proponent
[Land user] supports the current Guidelines and submits that relatively few changes be made to enhance their performance and operation. In [land user's] view, the Guidelines are generally effective in achieving the purpose of the Act and should continue to reflect the self-assessment model. The following feedback and recommendations are made in support of retaining the Guidelines with only minor amendments to improve their application and make them a more effective compliance tool.	Proponent
There are a number of aspects of the Guidelines that work well and require no amendments...Sections 2.2 and 2.3 contain statements that are logical and provide balance between the land user and the Aboriginal Party. Similarly, the definition of Developed Area and the current drafting of Category 3 provide a practicable balance between the need for land users to proceed with operations in a timely and efficient manner, and the opportunity for Aboriginal Parties to be involved in the management of cultural heritage in the generally unlikely, but sometimes possible, instance of residual cultural heritage being present in Developed Areas.	Proponent

Proposals-Recommendations-Comments	Stakeholder description
Guidelines have provided an accessible tool to enable parties, most particularly the proponents, to navigate the requirements of the ACHA	Traditional Owner and/or Representative
Simply leaving it up the land user is not an effective way to meet the objectives of the Act to provide effective recognition, protection and conservation of Aboriginal cultural heritage. Problems with leaving it up to the land user includes: • Many land users are not aware of their duty of care • Relying on the Native Title future act notifications process where NTRBs and RNTBCs are sent a notice and given 20 days to respond identifying native title or cultural heritage issues is fraught with problems: • There is no guarantee that Traditional Owners will be notified at all. There is no guarantee this process is resourced, a high chance of human error and too short of a time for NTRBs, RNTBCs and Traditional Owners to coordinate a response. • Aboriginal Cultural Heritage is not reliant on the existence of native title, so it is problematic if this is seen as Government's discharge of duty in contacting Aboriginal Parties about activities that may potentially impact Aboriginal Cultural Heritage. • Perpetuated by general problems with access to justice experienced by Aboriginal People. Government Departments and Agencies are in a much better position than land users to include processes and procedures to protect Aboriginal Cultural Heritage and this review process should be extended to embed requirements in relevant legislation for this to occur before permissions around land use are given.	Traditional Owner and/or Representative
Generally [Traditional Owner] experiences working in accordance with the Act has resulted in positive cultural heritage management outcomes which can be attributed, in part, to the Guidelines being a useful reference and guidance tool facilitating a shared understanding and process for agreement making.	Traditional Owner and/or Representative
The current Guidelines for ‘Duty of Care’ and the basis of ‘Self Assessments’ by the developer, State Governments and other organisations should be ‘removed’ from the Guidelines and replaced by Traditional Owners and their cultural heritage corporation and chosen archaeological firm to govern the applications process and assessments pertaining to each application for development on country. Self-assessments by developers, local council, land owners and other government and non-government agencies does not support the Aboriginal Cultural Heritage 2003, by allowing self-assessments takes away our right as Traditional Owners, the Guidelines ‘Duty of Care’ self-assessments again take away our right to protect our cultural heritage and country.	Traditional Owner and/or Representative
Cultural Landscapes include all environmental areas: “Waters – Lands – Sea Country”	Traditional Owner and/or Representative
Self-assessments by the developer, regional councils, TMR, State Government and other organisations applying for works on country should be given stricter laws and penalties because their carefree attitude and disrespect for country is appalling.	Traditional Owner and/or Representative
Stricter laws governing Traditional Owners and their Traditional Homelands – Stricter Guidelines for all other Government Departments and Organisations and groups applying for permits on country, with the process to go through the Traditional Owners. Traditional Owners need to create a ‘Bill’ for our own Legislation.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
On a number of occasions, the existing Duty of Care Guidelines outline and reinforce the option of achieving legislative compliance through consultation and agreement making with Aboriginal Parties (see clauses 1.6, 1.16, 1.17, 7.0 and 8.0). However, the case studies included with this submission and anecdotal evidence over twelve years indicates that land users (and their advisors) prefer the option of self-assessing a project as Category 1, 2, 3 or 4 and moving to the conclusion that: - “it is generally unlikely that the activity will harm Aboriginal cultural heritage” and / or - “it is reasonable and practicable that the activity proceeds without further cultural heritage assessment”. Category 4 activities are particularly contentious because land users and their advisors take the (seemingly legal) option that the activity can proceed under the Guidelines clause 5.4 without considering residual cultural heritage related to significant landscape features. That is, they don’t consider clauses 5.5, 5.6 and 6.0 or they don’t understand the concepts outlined in clause 6.0.	Traditional Owner and/or Representative
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. To me this actually states – ‘The weak and watered down Guidelines were instrumental in ensuring the legislation to go through Parliament only to appease the ministers, their constituents and private enterprise partners’. Allaying land users concerns isn’t about protecting Aboriginal Cultural Heritage. Where is the priority?	Traditional Owner and/or Representative
Disturbance may have occurred pre-Native Title processes and determination. This implies that initial disturbance may not have been discussed with Aboriginal people and that they, at that time, had no authority over decisions made to disturb an area.	Traditional Owner and/or Representative
Many land users do not respect Aboriginal and Torres Strait Islander cultural and traditional practices.	Traditional Owner and/or Representative
Land users do not recognise that it is important to encourage activities that allow Aboriginal and Torres Strait Islander people to reaffirm their obligations to law and country	Traditional Owner and/or Representative
The current drafting of the Guidelines provides too much focus on the need to establish timely and efficient processes for the management of activities that may harm Aboriginal and Torres Strait Islander cultural heritage.	Traditional Owner and/or Representative
The Guidelines provide strict compliance for land users with the Cultural Heritage Duty of Care. As such land users conducting activities prefer to use the Guidelines in order to satisfy the duty of care requirements under the legislation rather than engaging with the Aboriginal or Torres Strait Islander Party.	Traditional Owner and/or Representative
There is limited knowledge about the existence the legislation and the Guidelines in the community and governmental departments. There is no trigger contained within other legislation that links those requirements with those under the cultural heritage legislation. Therefore unless a land user is aware of the legislation they are not aware the legislation exists.	Traditional Owner and/or Representative
The recognition in item 2.2, about the likelihood of Aboriginal cultural heritage being harmed where an activity is undertaken in an area previously subjected to significant ground disturbance is confusing and unclear. Most land users relying on the Guidelines are not lawyers. However, they often seek legal advice to assist in the interpretation and application of the Guidelines to their respective projects. This item is a prime example of the ambiguity contained in the Guidelines.	Traditional Owner and/or Representative

Comments referring to matters considered outside the scope of the Terms of Reference

Cultural heritage bodies

Proposals-Recommendations-Comments	Stakeholder description
The Cultural Heritage Body (CHB) did not have the resources (or expertise) to provide cultural heritage services as the people with knowledge had moved on. The CHB representatives did not have the respect of the wider community creating tensions within that community. That the historical relationships that [land manager] had established with Traditional Owners were at odds with the contacts listed on the Cultural Heritage Database. Staff suggested CHBs need to be given more support to provide cultural heritage training to their community members (especially the younger generation), and that CHB representatives are authorised by the community to speak on behalf of the community.	Government agency

Cultural heritage database and register

Proposals-Recommendations-Comments	Stakeholder description
The Cultural Heritage Database and Register is a fundamental part of the current cultural heritage protection regime, from the Government's perspective, but Aboriginal communities in Queensland do not universally share that position.	Academia
The Aboriginal cultural heritage database and register are a collection of information gathered over years of work across Queensland. In its current form, there is no legislated requirement to lodge data of newly identified Aboriginal cultural heritage or cultural heritage assessments. Nor is there any requirement to alter information (for example if a site has been destroyed) in the database, which means that when a search is conducted, an incomplete picture of cultural heritage is presented in the search results.	Consultant
The Guidelines must be read in the context of the ACH Act. In particular, we consider Part 5, under which the Aboriginal cultural heritage database and the Aboriginal cultural heritage register are created, of particular relevance to the 'perceived loopholes' referred to in the workshop PowerPoint presentation.	Government agency
Database/register - recent improvements could be better promoted and explained so as to increase use and understanding	Government agency
The Cultural Heritage Database is a very useful tool for capturing information about Aboriginal cultural heritage. Staff noted that some Traditional Owners are reluctant to register their cultural heritage sites on the database for fear these sites may be accessed by people not authorised to visit or that they may become the target of vandals. Respondents suggested that to ensure the database continues to be a useful tool, and that it captures new sites and information discovered during commissioned heritage surveys, DATSIP work with Traditional Owners to address these concerns.	Government agency

Proposals-Recommendations-Comments	Stakeholder description
If a PBC requests that information be placed on the Register, there ought to be a rebuttable presumption that the material provided by the PBC in support of its request is correct. The principle that underlies this is that, as judicially determined native title holders, the Traditional Owners are experts in their own culture. The weight given to the submissions made by the native title holder should be at least equal to that afforded to other experts, such as an archaeologist. In this regard, due consideration also needs to be taken of the significance that the native title party places upon a particular site or thing. As the identification of cultural heritage affects the activities of land users, we see this as a threshold issue that must be dealt with before concerns about land users meeting the duty of care can be resolved and we submit that DATSIP must address these issues as a matter of significance.	Traditional Owner and/or Representative
The ACHA does not mandate that inclusion of information on the Register must reflect the outcome of a cultural heritage study that complies with the processes described in Part 6 of the Act. The current departmental policy to oblige a Part 6 Cultural Heritage Survey requirement appears to unfairly and unreasonably prejudice us, and many other native title holding groups in protecting our Aboriginal cultural heritage... Information contained on the Database should be able to be included in the Register at the request of an Aboriginal party. This is inconsistent with the central tenets of the ACHA that Aboriginal Cultural Heritage is the property of Aboriginal people, and where there has been a finding of a competent court to determine who the Aboriginal Party is, such a native title determination the directions of such a party should be accepted and acted upon, subject to a later challenge to the inclusion in the Register of that site by a relevantly interested third party. That is, there ought to be a rebuttable presumption in favour of the native title holders as to the veracity of the information requested to be included on the Register.	Traditional Owner and/or Representative
Concerns have been expressed by Traditional Owners regarding the protection and use of information on the State register. For example, where the State Government is itself the proponent or applicant for a purposed development or activity that requires application of the Act, this could be perceived as a conflict of interest. The unfortunate outcome is that information existing on the [Traditional Owner database] may not be known nor considered as relevant unless a consultation with 'Aboriginal parties' is undertaken and the [Traditional Owner database] is accessed for that purpose. Even then, if the State has not accepted the information into the Queensland register previously, then the responsibility of proof lies with the Aboriginal parties, as described in the Duty of Care Guidelines.	Traditional Owner and/or Representative

Cultural Heritage Management

Proposals-Recommendations-Comments	Stakeholder description
Cultural heritage management in Queensland is largely dependent on the needs and timetable of development, and Aboriginal groups who seek to work outside this framework, who proactively wish to survey, document, protect, and monitor their cultural sites face hurdles and challenges.	Academia
Urgent need to promote Aboriginal heritage as the heritage of all Australians	Consultant
Need to better educate and engage non-Indigenous community in understanding, valuing and protecting cultural heritage	Consultant
There needs to be consideration within the legislation that recognises the difference between male and female cultural heritage and provides for separate decision making by each group, for matters that affect them.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
While there are suggestions on how to consult, there is no requirement to consult with the Traditional Custodians of the area, or to engage using culturally appropriate mechanisms for integrative engagement and consultation. Investment in an appropriately consulted, enhanced cultural heritage register and the development of country-based Cultural Heritage Management Plans, developed under Part 7 of the Act, would assist both Traditional Custodians and 'developers' in identifying where heritage values exist and on any proposed action that would impact on those values.	Traditional Owner and/or Representative
The Act ought to be amended to require that any CHMPs extant at the date of determination are, unless express provision is made for novation in favour of the PBC on determination of native title, deemed to terminate and the ‘proponent’ be required to negotiate in good faith with the PBC to develop and conclude a replacement CHMP.	Traditional Owner and/or Representative
...the review is restricted to the review of the Duty of Care guidelines, a non-compulsory document that simply gives advice on management, and relates only to those examples of cultural heritage captured by the Aboriginal Cultural Heritage Act. With respect, the issue here is not so much the guideline, which at the very least must be required to be complied with, but with the Act itself and its limited definition of Aboriginal cultural heritage as object, site or 'significant' occurrence based. This definition does not recognise the cultural landscape and bio-cultural heritage values of an area, so intrinsically linked to Aboriginal cultural heritage, and so easily impacted by inappropriate activity.	Traditional Owner and/or Representative
The definition of Aboriginal cultural heritage in the Act must be broadened to recognise and respect Aboriginal cultural heritage as appreciated by Aboriginal people, not solely on artefacts and place-based sites or events, like massacres. The Act needs to recognise and respect the legacy of both tangible and intangible cultural heritage attributes...Indigenous knowledge of cultural heritage, cultural landscapes and bio-cultural values must be considered as an integral element of support for inclusion of sites and landscapes on the cultural heritage register.	Traditional Owner and/or Representative
To better capture Aboriginal cultural and traditional practices, cultural heritage and bio-cultural values, the Aboriginal Cultural Heritage Act should more adequately reflect Aboriginal cultural heritage by legislatively acknowledging cultural landscapes and the bio-cultural values on land, in waterways and in forests and recognise the primary substantive rights of Aboriginal people to set and pursue their own priorities for development, including development of natural resources, as articulated in the United Nations Declaration on the Rights of Indigenous Peoples.	Traditional Owner and/or Representative

Education and awareness

Proposals-Recommendations-Comments	Stakeholder description
[A] number of experienced developers and planners who are unaware of their obligations under the ACHA. It is submitted that an increased effort by DATSIP to raise awareness of the requirements of the ACHA is made, including appropriate application of the Duty of Care Guidelines. This should be supported by increased resources being given to DATSIP to adequately fulfil the role.	Consultant
Information - unclear how information is circulated to interested parties about reviews, registration of cultural heritage, registration of cultural heritage bodies and the like - subscription service suggested to provide updates automatically	Government agency

Proposals-Recommendations-Comments	Stakeholder description
Some Proponents and Aboriginal Parties appear to have little understanding of the Guidelines and their application. It would be beneficial if DATSIP take more of an educational role in explaining the Guidelines to the community, Proponents and Aboriginal Parties so that all stakeholders have a greater understanding of the Guidelines' application.	Proponent
DATSIP undertook substantial educational programs across the State, particularly in areas heavily affected by resource activities that cover the practicalities of complying with the Guidelines.	Traditional Owner and/or Representative
Where DATSIP is unable to enforce compliance with the Guidelines, then it must assist land users to comply with the Guidelines through education and training. As we have noted above, this is particularly significant for those land users who are not involved in deliberate harm to cultural heritage.	Traditional Owner and/or Representative
DATSIP develop a range of educational tools that are actively distributed to land users and which are also available on the DATSIP website which also contain the types of information referred to above, but particularly focusing on using visual examples so that when land users are undertaking activities, they more easily be able to identify, or at least query whether, certain features may be considered a 'Cultural Heritage Find' by the Traditional Owners. Both of these developments be undertaken with the assistance of Traditional Owners, as Traditional Owners typically have the best knowledge of their traditional lands and the examples of various types of cultural heritage. Underpinning the educative material should be a theme that country is, in the sense of cultural heritage protection, shared.	Traditional Owner and/or Representative
The CHU needs to provide regular training sessions for all types of land users.	Traditional Owner and/or Representative
All forms of training must be done with Aboriginal and Torres Strait Islander parties.	Traditional Owner and/or Representative
The development of factsheets educating land users about Aboriginal and Torres Strait Islander culture.	Traditional Owner and/or Representative
The CHU to work across all levels of government to provide training on the function and operation of the legislation. As a stand-alone piece of legislation the CHU must be proactive in ensuring all relevant government agencies are aware of the legislation.	Traditional Owner and/or Representative
Training to be provided on the role of the Aboriginal and Torres Strait Islander parties under the legislation and the Guidelines.	Traditional Owner and/or Representative
The CHU must consider ways in which all of government at all levels is aware and understands the requirements of the legislation. The CHU must hold regular training sessions to educate all land users and Aboriginal and Torres Strait Islander parties about the operation of the legislation. Any training must at all times be provided in conjunction with Aboriginal and Torres Strait Islander parties.	Traditional Owner and/or Representative

Land bank

Proposals-Recommendations-Comments	Stakeholder description
Develop 'Land for Heritage' - a national body of private land owners committed to caretake and protect cultural heritage sites on their properties, committed to learning more about sites on their land, and to advocating/lobbying on behalf of those sites.	Consultant

Legislation – Access

Proposals-Recommendations-Comments	Stakeholder description
The effective monitoring, surveying, maintenance and protection of cultural heritage sites is wholly dependent on land access rights. If Aboriginal groups or other heritage managers seek to actively engage in cultural heritage research and protection, they must have the ability to access sites on an on-going basis, to visit sites regularly to assess the impacts of environmental and social pressure.	Academia
One of the biggest issues we face is the lack of protection for significant Aboriginal cultural heritage sites on private land. Aboriginal people are denied access to cultural places that are significant and located on private land in order to assess whether their cultural values are being eroded by stock, roads, farming practices and development.	Consultant
Address key barriers to the implementation of the Act, such as the current lack of access to and protection of significant Aboriginal cultural heritage sites on private land. If Aboriginal people are denied access to cultural places that are significant and located on private land they cannot assess whether their cultural values are being eroded by stock, roads, farming practices and development.	Traditional Owner and/or Representative

Legislation – Blanket Protection

Proposals-Recommendations-Comments	Stakeholder description
Another key strength of the Queensland legislation is that it provides blanket protection for Aboriginal cultural heritage sites, both the tangible and intangible	Academia

Legislation – Compliance

Proposals-Recommendations-Comments	Stakeholder description
The Aboriginal Cultural Heritage Act (ACHA) 2003 Queensland has some strengths, especially in terms of acknowledging the central role of Aboriginal people in the protection and management of their cultural heritage and in the establishment of broad protection for sites, but the ACHA 2003 also has inherent weaknesses, such as in the areas of compliance and enforcement and in the lack of mechanisms supporting groups who wish to protect their cultural heritage.	Academia
While the statute is in place, with stiff penalties for breaches, the punitive power is rarely invoked, leaving the legislation without adequate policing and enforcement powers.	Academia

Proposals-Recommendations-Comments	Stakeholder description
There are no reporting requirements when cultural sites are found by the public and land users and little independent monitoring on small scale development activities. Since many cultural heritage sites remain undocumented, destruction may happen without anyone's knowledge.	Academia
The principle flaw with the current legislative regime is the lack of governance structures. There is little if any regulatory oversite of the adequacy of the application of the Duty of Care Guidelines. Aboriginal Parties are not resourced and in many instances do not have the capacity to oversee development activities within their Country. There is no obligation to consult with Aboriginal Parties over Duty of Care Assessments unless a land user wants to take a cautious approach to the interpretation of a 'landscape feature' under the meaning of paragraph 6.12	Consultant
DATSIP should provide a greater regulatory presence, including auditing of developers, and be adequately resourced to do so.	Consultant
The solution lies in more active regulation and oversight. The current system that relies on land users and Aboriginal Parties taking action in the Land Court is demonstrably not working. The disincentives of taking such action to both sides (costs, time, and poor publicity) make such action unrealistic in most instances. This is demonstrated by the lack of legal precedents. Many aspects of the legislation remain untested, leading to confusion and conflict. Ultimately heritage protection is a basic human right and an expression of the ethics of our community. But we cannot hope to achieve ethical outcomes if the system itself is considered by so many to be unethical.	Consultant
One of the most significant problems with the ACHA regime generally has been lack of enforcement, not only for less significant breaches of the duty of care, but also more serious examples. We consider that the penalty regime under the ACH Act for breaches of the duty of care should be sufficient to encourage proponents to do the right thing. Unfortunately, because enforcement is for all intents and purposes non-existent, it would not matter if the maximum penalty was ten times the current amount. Until the State commits the resources and political will to ensure the objectives of the ACHA can be achieved through proper enforcement, and the heritage of all Australians (of which traditional owners are the custodians) is protected, we consider that the best approach is to provide the fewest avenues as possible for proponents to use to justify the approaches that are least-cost and most convenient for them. If this requires the Duty of Care Guidelines to be abolished, we are wholly supportive of this approach.	Consultant
An overarching issue is one of enforcement of compliance by land users with the Guidelines and the ACHA. This continues to be a concern for our Traditional Owner constituents across the board when they are dealing with various land users, particularly resource proponents. Whilst we understand the role of stop orders under section 32 of the ACHA when there is an imminent threat of harm to cultural heritage, when activities are classified as falling within Categories 1-3 under the Guidelines, Traditional Owners continue to hold concerns that there may be harm caused when these more 'procedural' activities are being undertaken. Particularly where Traditional Owners are working to build a relationship with a new land user, until this is established, there are often ongoing concerns about the intentions of the land user or ability of the Traditional Owners to positively influence that land user to comply with the Guidelines.	Traditional Owner and/or Representative
There would be increased certainty for Aboriginal Parties that their cultural heritage was not at risk if DATSIP was able to publicly release information related to its enforcement activities for those who do not comply with the Guidelines (where an activity is not covered by other provisions of the ACHA, and therefore a land user is not complying with the Duty of Care).	Traditional Owner and/or Representative
The Victorian Aboriginal Heritage Act 2006 employs a mechanism whereby land users are required to demonstrate that their development will not harm Aboriginal cultural heritage, not the other way around, where is Queensland, the onus is on the Aboriginal party to prove that cultural heritage will be harmed. The decision tree model of a web interface is success in Victoria, and consideration should be given to implementing such a model in Queensland.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
The Act is full of non-compliant words which have major grey areas which can and will be contested successfully in Court. There needs to be minimum standard requirements for Aboriginal people who walk on country. Everyone needs to adhere to an agreed standard to ensure Cultural Heritage protection is maintained.	Traditional Owner and/or Representative
Be more proactive with the communities, be visible with the communities, show teeth, show that you have some authority for people who abuse or neglect Cultural Heritage rules. Better representation from Government for protection of Cultural Heritage sites with legal prosecutions for failure to comply.	Traditional Owner and/or Representative
I find the current legislation of very little value, to either the protection of cultural heritage sites, artefacts and intellectual property, because it is not clear as to the legal status of the above, who is the legal owner and who has legal responsibility for the ongoing protection and preservation of the said cultural heritage...It seems to me, that the Qld government has come up with a system that passes the onus on to the Traditional Owners and the developers to "work it out yourselves" and "Good Luck with that!"	Traditional Owner and/or Representative

Legislation – Definition of Aboriginal party

Proposals-Recommendations-Comments	Stakeholder description
[Section] 35 [of the ACHA] process of identifying Aboriginal Parties is in many cases unfair, and means the majority of Aboriginal persons are in fact excluded from the management of their heritage	Consultant
The application of Guidelines may require some re-structuring of both the Act and the Native Title Act. Specifically, that in some cases there is no mechanism to replace deceased applicants, or that the current applicants do not speak for the majority of the group.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
In practice a proponent is encouraged to contact DATSIP to obtain contact details. However, there is nothing in the Act that provides the proponent with any certainty and legislative protection that the person, nominated by the Department, is the "correct" Aboriginal person for the purpose of section 35(7) of the Act. We are aware of instances where proponents have been given the name of an Aboriginal person by the Department and have, in good faith, engaged with that person only to have been told by other Aboriginal persons that they are engaging the wrong person. In our view, there should be a mechanism in the Act for the Aboriginal Cultural Heritage Coordination Unit to notify who is the correct Aboriginal party for the area and for the proponent to be able to rely upon that to satisfy their duty of care. That may be in the form of a register of Aboriginal persons who have particular knowledge for the area. If, then, another Aboriginal person is aggrieved by that notification, they have a mechanism for disputing that with the Department, rather than with the proponent of works who is acting in good faith to meet their duty of care. Where the Aboriginal party is the last registered native title claimant, it should be made clear that a proponent of works can consult with and obtain the consent of one of the named registered native title claimants to meet their duty of care under the Act.	Lawyer
Where there are no native title parties, Queensland Government should proactively attempt to identify. Default option to refer the enquiry to the NTRB (as the default Aboriginal party)	Traditional Owner and/or Representative

Legislation – Investigations

Proposals-Recommendations-Comments	Stakeholder description
Another flaw in the enforcement system is that any penalties paid for breaches of the ACHA are paid to the Queensland Government, with no compensation going to the communities whose cultural heritage has been destroyed	Academia
Land Court relief considered lengthy and expensive process	Academia
Few prosecutions for alleged offences under the ACHA despite complaints	Lawyer

Legislation – Penalties

Proposals-Recommendations-Comments	Stakeholder description
The Guidelines do not discuss compensation as part of the negotiations for the destruction of cultural heritage.	Consultant
Penalties - reference to native title compensation decision of Griffiths v Northern Territory - it would be prudent of the State to review the current penalties that apply to non-compliance with the ACHA	Traditional Owner and/or Representative
Previously made submissions regarding these which involve Traditional Owners in the process of redress for damage to their cultural heritage.	Traditional Owner and/or Representative
Fines for non-compliance with the Act should be increased to emphasize the importance of cultural values in the eyes of the law. Implementation of regulatory processes must be strengthened.	Traditional Owner and/or Representative

Legislation – Resourcing

Proposals-Recommendations-Comments	Stakeholder description
Aboriginal communities are expected to monitor their sites, maintain a presence on country, often over large geographic areas, in order to keep an eye out for an illegal activity. When threats and harm are detected, then they must furnish documentation, preferably in report form, to DATSIP. Throughout this process, they are given no support or resources. While the burden of policing the Aboriginal Cultural Heritage Act largely falls on the Aboriginal community, they receive no compensation. Furthermore, monitoring and maintaining cultural heritage sites is beyond the capacity of many Aboriginal communities.	Academia
DATSIP should provide a greater regulatory presence, including auditing of developers, and be adequately resourced to do so.	Consultant
General erosion of funding support options for Traditional Owner groups to preserve cultural heritage	Academia
There are inadequate resources provided to Indigenous people to engage in the process that is outlined in the Cultural Heritage Acts: if Indigenous people are given the responsibility to manage cultural heritage they must be provided with appropriate resources to facilitate compliance with the purposes of the legislation (s.4)	Consultant
That adequate resourcing is provided to Aboriginal Parties for professional development/training of Aboriginal people in cultural heritage assessment and planning.	Consultant

Proposals-Recommendations-Comments	Stakeholder description
Lack of resources for Aboriginal Party to undertake assessments	Traditional Owner and/or Representative
[Traditional owner] believes that the Cultural Heritage Unit within DATSIP needs to be sufficiently resourced, so that auditing and compliance can be undertaken in a timely and effective manner.	Traditional Owner and/or Representative
Address gaps to support appropriate engagement as described in the Guidelines. Aboriginal cultural heritage bodies often to do possess the human or financial resources to carry out essential processes or respond as is expected and as described in the Guidelines.	Traditional Owner and/or Representative
If traditional owners are identified as the "legal owners" of the cultural heritage, then they need to be provided with the necessary resources to ensure that their people are adequately trained.	Traditional Owner and/or Representative
Support for the establishment of additional cultural heritage bodies initiated by the correct Traditional Custodians for country through organisations chosen by them would greatly enhance the purposes of the Act and indeed better meet the requirements of protection and management of cultural heritage as defined by the Aboriginal people of a particular region. It should be noted that protection and respect for the rights and interests of the correct Traditional Custodians for a particular area are not necessarily met by regional organisations or native title representative bodies, nor should they be considered under the framework of the Native Title Act.	Traditional Owner and/or Representative

Planning

Proposals-Recommendations-Comments	Stakeholder description
Increased acknowledgement in government policy and planning that current push to develop northern Australia elevates pressure on cultural heritage sites across the region and heritage protection measures need to be strengthened accordingly	Academia
The Aboriginal and Torres Strait Islander Cultural Heritage legislation and planning legislation needs to be amended as soon as possible so as to remove self-assessment from any development application that may impact on Aboriginal or Torres Strait Islander cultural heritage.	Consultant
The Planning Act could potentially be used to require that local government planning schemes include more comprehensive descriptions of Aboriginal cultural heritage and that development applications are assessed for their impacts on cultural heritage; development approval be dependent on acceptable levels of impact on and appropriate management of cultural heritage	Traditional Owner and/or Representative
The Guidelines and the ACHA should integrate more closely with the Planning Act 2016 and land use planning and approval mechanisms to identify land uses that are compatible with the cultural heritage values of the area.	Traditional Owner and/or Representative
There needs to be a link between land development legislation and the cultural heritage legislation.	Traditional Owner and/or Representative

Previously-registered native title claims

Proposals-Recommendations-Comments	Stakeholder description
While the [Last claim standing] amendments [in 2010] sought to streamline the consultation process, making it easier for land holders or other parties to determine whom to contact and consult in terms of decision making concerning cultural heritage or negotiating rights with mining companies, for example, the amendments also disempower people who may have legitimate concerns about their cultural heritage.	Academia
The current ACHA, however, does not reflect the complexity of these failed Native Title claims. By placing emphasis on only the named applicants of the last registered claim, the ACHA favours the position of those individuals who are named applicants, regardless of the reason that the claim was unsuccessful. In cases where claims were struck out due to the objection of other Traditional Owners, who may have not been registered applicants for a variety of reasons, the legislation does not recognise the legitimacy of the objectors, only the legitimacy of the failed applicants.	Academia
Statutory parties [last claim standing] - anomalies arising from the application of section 35(5) to certain areas where native title has now been determined	Government agency
This issue lies in part 4 of the Act and gives rise to what is colloquially known as the ‘last man standing provision’. The primary concern from both Indigenous and resource interests was that the amended section advantages one Aboriginal party over another, which, by accident of timing was the last registered claim and despite other previously registered claimants having an equally legitimate interest in the protection of cultural heritage over the area in question. This concern remains and the unfairness has been compounded by more recent events involving claims that are the last on the register despite being found by the courts: - to have no merit; - to be fundamentally flawed in that they have been filed and litigated without the authority required under the Native Title Act;	Traditional Owner and/or Representative

- not to have been made on behalf of all of the people who had a right to be part of the claim. The provision allows persons who have been found to not have a sustainable native title claim or (worse) who are not part of the traditional owners for the area to maintain a position where they are the persons with whom persons wishing consult about or deal with cultural heritage issues for the relevant land and waters must negotiate. Two serious implications arise from the mischief identified above: 1. It is our view that any proponent negotiating with a s 34(1)(b)(i) native title party cannot properly satisfy their statutory duty of care if the native title party (or a person comprising part of it) has been found not to be the traditional owners of the country they claim. 2. People who have found not to be the Traditional Owner(s) of the country may continue to claim and assert rights as the Aboriginal Party under the Act. That is, the wrong people are in charge of the very thing the Act is intended to address, the protection of cultural heritage by Traditional Owners. Where further testing of these claims either through the process of negotiation for a consent determination or litigation establishes that registered claimants are found not to be the traditional owners for the land claimed a mechanism is needed to protect the rights of traditional owners wronged by the last man standing rule. One way to cure this mischief would be to amend the legislation by inserting parts that had the effect of excluding persons whose sole basis for membership of the native title claim group is descent from a person who is found not to have been a member of the land holding group, or are not the right people for that area. 34(3) If a person would be a native title party or one of a group of persons who are jointly the native title party by operation of subsections (1)(b) or (2) but the basis for the person being a member of relevant native title claim group is descent from a person who the Court has determined was not part of the relevant land holding group from which the native title group is derived that person is not part of the native title party for the purpose of subsections (1)(b) or (2). The disqualification of a person or persons as a member of the native title party by operation this subsection does not otherwise affect the operation of section 34. 34(4) Subsection 34(3) has effect from the date that the Court makes a determination or other order that a person was not part of the relevant land holding group from which the native title group is derived. Insert a new section 35(7) (and renumber the corresponding subsections of section 37) as follows:35(7) However, a native title party to whom subsection (1) applies is not an Aboriginal party for a part of the area if native title was not found to exist in relation to the whole area.	
It is alleged prejudice has occurred by DATSIP CHU's operation of Queensland's Aboriginal Cultural Heritage Act 2003 ("the Act") by mainly or only operating the Act under section 34 rather than operating the Act as a whole and giving overarching weight to the object and intent and proper interpretation of the Act in particular sections 13 (a) and (c) and section 14. The Cultural Heritage Duty of Care Guidelines of 16 April 2004 also reflect this in 1.8 and at 1.9. However, these guidelines, which are consistent with sections 13 and 14 of the Act, seem to have been ignored.	Traditional Owner and/or Representative

Recording of cultural heritage

Proposals-Recommendations-Comments	Stakeholder description
The results of surveys should be lodged with the State and if necessary any identified sites should be added to the database	Consultant
Mandatory that cultural heritage managed under an agreement be added to the database and register - many sites being unrecorded	Government agency

Regulation of activities

Proposals-Recommendations-Comments	Stakeholder description
While covered by a 'material change of land use' there appears little or no protection from a farmer or land user bulldozing large areas of native bushland without the recourse of consultation and assessment. However, when native vegetation is being cleared on private land, there is no protection for Aboriginal heritage sites. The legislation should reflect the need that when remnant vegetation is cleared there should be a dialogue with the relevant Aboriginal cultural heritage body.	Consultant
There are very few government agencies that are aware of the existence of the cultural heritage duty of care obligation in the legislation.	Traditional Owner and/or Representative
Concern over clearing of native vegetation without consultation	Traditional Owner and/or Representative
Government Departments and Agencies that issue permits or authorities for land use activities that are likely to impact Aboriginal Cultural Heritage should require a Cultural Heritage Agreement and initial cultural heritage clearance before they issue that permit or authority, or make it a condition of approval.	Traditional Owner and/or Representative
The planning activities and processes of the Aboriginal and Torres Strait Islander Land Services (ATSILS) and other departments of government do not recognise the entitlements and rights of the correct Traditional Custodians with respect to proposals and development applications which may affect cultural heritage.	Traditional Owner and/or Representative

Relationship with Native Title Act

Proposals-Recommendations-Comments	Stakeholder description
The uncoupling of the Aboriginal Cultural Heritage Act 2003 and the Native Title Act, especially in areas of Queensland where there has been a failed Native Title claim, so that Native Title disputes do not colour cultural heritage management decisions.	Academia
The Duty of Care Guidelines should expressly note that Native Title rights remain regardless of the application of the Guidelines. Native Title rights include the right to manage Cultural Heritage, and in the event of any inconsistency between Native Title rights and the Guidelines, the Native Title rights shall prevail. The effective application of the Duty of Care Guidelines must therefore include land users satisfying themselves that they have complied with their Native Title obligations.	Consultant
The link between the Native Title Act 1993 and identification of Aboriginal Parties is problematic; many Traditional Owners are either not able or not willing to enter into the native title claims process, yet have undisputed connections to place and heritage on their country. The current process disenfranchises considerable numbers of Aboriginal people and denies them the opportunity to meet their cultural obligations to law and country, as provided in the aims and principles of the Act. Unfortunately, there are few other mechanisms to identify Aboriginal Parties. DATSIP [should] investigate a range of mechanisms to identify Aboriginal Parties, including the use of the native title process, but such that also recognise Traditional Owner connections to cultural heritage that may fall outside the native title claims process. We suggest the RAP process as set out in the Victorian Aboriginal Heritage Act 2006 is one potentially useful approach.	Traditional Owner and/or Representative

Proposals-Recommendations-Comments	Stakeholder description
DATSIP needs to recognise that parties, or developers, should be advised, through legislation and the Guidelines, that recognised native title rights extend to cultural heritage, and that parties must satisfy themselves that the native title processes have been complied with as well as the procedures under the ACHA. This could be executed by way of an amendment a note to section 23 of the ACHA to be drafted by the parliamentary Counsel that clarifies that proponents may also need to satisfy the requirements of the Native Title Act 1993. Procedures and guidelines on how to address this assessment of native title rights with respect to cultural heritage can be prepared to provide further advice.	Traditional Owner and/or Representative
Another culturally related problem that I am experiencing relates to how the Native Title legislation provides cultural conflict when Traditional Owners are not able to interact with sites because all cultural heritage activity is referred to the Applicants or the Prescribed Body Corporate.	Traditional Owner and/or Representative

Role of the Cultural Heritage Unit

Proposals-Recommendations-Comments	Stakeholder description
While the protection of Aboriginal cultural heritage is provided for under the Aboriginal Cultural Heritage Act 2003, the actual agreements between developers, miners and land users and the relevant Aboriginal parties are largely determined by the proponents themselves with limited government interference and oversight.	Academia
Improved communication between DATSIP and Aboriginal communities in the event of damage reporting	Academia

Role of Traditional Owners

Proposals-Recommendations-Comments	Stakeholder description
One of the key strengths of the ACHA 2003, which also differentiates the Queensland ACHA 2003 from similar pieces of legislation from the Northern Territory and Western Australia, is that the ACHA 2003 recognises Aboriginal people as being the primary protectors and knowledge keepers of their heritage.	Academia
One of the key things the guidelines do very well is acknowledge Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage.	Consultant
The Guidelines (and the Act as a whole) do not adequately identify Traditional Owners with connection to land, heritage sites and cultural places.	Consultant
Legislation must recognise the importance of the First Nations Cultural Heritage and give priority to protection and recognition. Be more specific and require all parties to adhere to specific legitimate rules and regulations. The words ‘reasonable’ ‘practicable’ ‘or minimise harm’ are not acknowledging the importance of Cultural Heritage and gives no authority to compliance.	Traditional Owner and/or Representative
There needs to be some sort of archaeological-standard training required, before people are allowed out to "walk the line" to ensure that items uncovered can be properly identified or discounted.	Traditional Owner and/or Representative

Welcome to Country

Proposals-Recommendations-Comments	Stakeholder description
There needs to be a section regarding protocols to do with Aboriginal cultural engagement and Welcome to Country which include current claimant native title parties whether registered or not especially if section 84D of the NTA is allowed in the FCA proceedings.	Traditional Owner and/or Representative