

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

Fact Sheet

Effect of the Nuga Nuga decision

On 20 December 2017, in the matter of *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321 (Nuga Nuga decision), Judge Jackson rejected the Minister's submission that 'native title holder' in section 34(1)(b)(i)(C) referred only to a native title holder as identified in a positive determination of native title under the Commonwealth *Native Title Act 1993*, and found that native title holder also refers to a person who held native title at common law.

This meant that the 'last claim standing' provision did not apply in the way decision-makers under the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* (Cultural Heritage Acts) understood it to apply. As a result, the Nuga Nuga decision has caused uncertainty for land users and Aboriginal and Torres Strait Islander parties in complying with the Cultural Heritage Acts.

Some decisions which the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) or the Minister of Aboriginal and Torres Strait Islander Partnerships have made were rendered invalid (for example, approved cultural heritage management plans developed with previously registered native title claimants) as a result of the Nuga Nuga decision.

What has DATSIP done since the Nuga Nuga decision?

DATSIP has identified stakeholders that have been affected by the Nuga Nuga decision.

In May 2018, DATSIP:

- issued a fact sheet to advise affected stakeholders that DATSIP was considering whether previously registered native title claimants can continue to be recognised as a 'native title party';
- wrote to 66 previously registered claimants seeking their views of DATSIP's intention to remove them as 'native title parties' from the Cultural Heritage Register maintained by DATSIP; and
- removed previously registered native title claimants from the Aboriginal and Torres Strait Islander Cultural Heritage Online Portal.

What is DATSIP doing to restore certainty?

On 22 August 2018, the Revenue and Other Legislation Amendment Bill 2018 (the Bill) was introduced into Parliament. The Bill amends a number of Acts which the Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships has responsibility.

In particular, the amendments to the Cultural Heritage Acts propose to reinstate the 'last claim standing' provision as previously understood by decision-makers under the Cultural Heritage Acts when the provision was inserted in 2010. The Bill seeks to provide certainty to land users and Aboriginal and Torres Strait Islander parties by clarifying that the 'last claim standing' provision applies where there is not, and never has been, a registered native title holder – which means a person who has been determined to hold native title under the Commonwealth *Native Title Act 1993* only.

Stakeholders who have commenced or undergone a process under the Cultural Heritages Acts will not be disadvantaged in the interim period. The proposed amendments will validate decisions made or actions taken prior to the commencement of these amendments.

Further information is available at: www.parliament.qld.gov.au/work-of-committees/committees/EGC/inquiries/current-inquiries/RevenueOLA2018