



Property Council of Australia  
ABN 13 00847 4422

Level 6, 300 Queen Street  
Brisbane QLD 4000

T. + 61 7 3225 3000  
E. [qld@propertycouncil.com.au](mailto:qld@propertycouncil.com.au)

[propertycouncil.com.au](http://propertycouncil.com.au)  
[@propertycouncil](https://twitter.com/propertycouncil)

Australia's property industry

**Creating for Generations**

25 July 2019

CHA Review – Department of Aboriginal and  
Torres Strait Islander Partnerships  
PO Box 15397  
City East QLD 4002

Via: [CHA\\_Review@datsip.qld.gov.au](mailto:CHA_Review@datsip.qld.gov.au)

### **Consultation Paper – Review of the Cultural Heritage Acts**

Thank you for the opportunity to provide feedback on the *Consultation Paper - Review of the Cultural Heritage Acts*.

The Property Council of Australia is the leading advocate for Australia's biggest industry – property. We are a national not-for-profit organisation established to promote the work of the property industry in delivering prosperity, jobs and strong communities to all Australians.

Here in Queensland, the Property Council represents over 360 member companies across residential, commercial, retail, retirement living, industrial, tourism and education sectors.

In the context of this review we acknowledge that many of our members are implementing or committed to developing Reconciliation Action Plans to imbed reconciliation practices into their businesses, and to build stronger relationships with Aboriginal and Torres Strait islander peoples, communities and organisations.

The Property Council previously provided a submission on the *Cultural Heritage Duty of Care – Issues Paper in 2017*. In reviewing the latest consultation paper, we remain concerned that the options and discussion points canvassed in the paper will place a significant new regulatory burden on the property industry.

Whilst we acknowledge that parts of the Acts require review along with further guidance material and resources needing to be provided, the current self-assessment provisions should be retained as they provide a level of certainty to the property industry.

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As detailed in our previous submission there are four key areas that should be implemented to improve the identification and assessment of cultural heritage:

- better access to and sharing of information that will assist in identifying Aboriginal cultural heritage,
- a streamlined systematic identification and further assessment process,
- education and awareness to assist all parties involved in cultural heritage, and
- a stronger regulatory role in resolving disagreements, along with facilitating outcomes.

Since our previous submission some of our members have raised the issue of encountering ambit claims from unrelated third parties, who are claiming cultural heritage exists in an attempt to slow or stop development proposals. Not only are these claims economically damaging they are an insult to our First Nations People, and this type of behaviour should be strongly discouraged.

The following comments are intended to provide insight into aspects of the review that can add most value to the property industry and assist with the critical role the industry plays in creating prosperity, jobs and strong communities for current and future generations of Queensland.

### **Ownership and defining cultural heritage**

The Property Council is concerned that the inclusion of cultural heritage landscapes and 'intangible heritage' will add to the complexity of the legislation and ultimately the assessment of development against any guidelines. Therefore, we do not see a need to revisit the definitions.

### **Identifying Aboriginal and Torres Strait Islander parties**

The current 'last claim standing' provision is tried and tested and provides a clear understanding of who the property industry needs to consult with, as well as a level of certainty.

However, we would welcome any changes that clarify and increase certainty as to the 'Aboriginal party' under the Act, particularly in circumstances where there has been a negative determination of native title.

We are concerned that any proposal that would see multiple parties having to be consulted would likely increase the level of complexity and ultimately lead to more disputes. Therefore, if these provisions are amended a clear set of rules and timeframes

should accompany the changes along with additional resources allocated through the department to assist the property industry in this process.

### **Land user obligations**

As previously stated, the self assessment provisions provide a level of certainty to the property industry and therefore do not require any bolstering or increased oversight. This is particularly the case for residential development that is occurring on land that has previously been used for farming operations.

As opposed to placing further obligations on land owners a stronger emphasis should be placed on identifying cultural heritage sites, along with better access and sharing of information. This would assist the property industry, councils and the State in determining appropriate areas to zone for development, and for areas that are already zoned the relevant authority should undertake further cultural heritage studies and consultation with Aboriginal and Torres Strait Islander parties.

Furthermore, the Department should provide education and awareness programs to assist all parties involved in cultural heritage.

With regards to dispute resolution the Property Council believes the Department should be providing this service along with greater guidance and rules to assist the negotiating process for voluntary agreements.

Feedback from our members is that there has been a dramatic increase in the costs associated with forming and negotiating voluntary agreements which is money they would be better spent on providing improved cultural outcomes.

### **Compliance mechanisms**

The information outlined in the paper does not provide evidence to suggest that there is a need to bolster the compliance mechanisms to protect cultural heritage.

As previously discussed, more emphasis should be placed on identifying cultural heritage along with providing education and awareness programs to assist all parties involved in cultural heritage.

Whilst we understand the intention to have funds raised from fines directed to the communities impacted by a breach, we are concerned that this will lead to misuse by way of further ambit claims from unrelated third parties seeking to delay or stop projects.

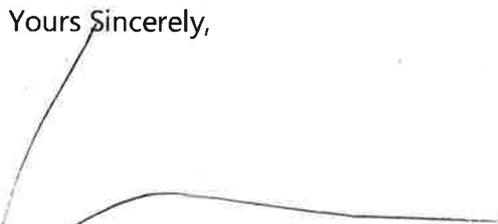
### **Recording cultural heritage**

Our members have reported that in some instances artefacts are found, preserved and passed on to local communities however, they are only then being stored with multiple other items. Consideration should be given to the reuse of these artefacts along with better records and data keeping.

Our members observations are that often Aboriginal groups do not have the resourcing to properly store, curate and display items. Therefore, the Department could provide additional resourcing to assist groups along with providing further guidance as to what preferences should be considered for material that is relocated.

The Property Council appreciates the opportunity to provide industry feedback on this important review. Should you wish to discuss our comments, please don't hesitate to contact me on 07 3225 3000 or by email to [cmountford@propertycouncil.com.au](mailto:cmountford@propertycouncil.com.au).

Yours Sincerely,



**Chris Mountford**

Queensland Executive Director