

I am preparing this submission as a current student of archaeology at the University of Queensland who is close to graduating and planning to move into the cultural heritage sector. Comments and recommendations are drawn from my own experiences working with the legislation as part of my education and are further informed by comments made at a forum hosted by the University of Queensland for discussion of the legislation between Traditional Owners, cultural heritage specialists, and academics. I will refer only to the *Aboriginal Cultural Heritage Act 2003 (Qld)* ('ACHA') as this is the focus of my current education and engagement.

## Defining cultural heritage

- While Section 12 of the *ACHA* stipulates significant Aboriginal areas do not need to be associated with physical evidence, the examples provided rely exclusively on physical evidence. Intangible heritage is, therefore, inadequately addressed and defined.
- The *ACHA* also fails to acknowledge the nature of wider, interconnecting cultural landscapes and the corridors that link these landscapes to one another.

## Recommendations

- Explicit definitions of cultural heritage that adequately encompasses both tangible and intangible heritage can be included in the form of Practice Notes.
  - Linking these notes to the current Australian ICOMOS Charter for Places of Cultural Significance 2013 (The Burra Charter) will ensure ongoing relevance of the legislation to the current cultural heritage best practice guidelines.

## Land user obligations

- The current Duty of Care guidelines allow Proponents to self-assess their compliance with their obligations under the Section 23 of the *ACHA*. There is no obligation to come to an agreement with Aboriginal Parties provided the Proponent agrees to take "reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage," and further, there is no requirement for the Proponent to demonstrate to an overseeing body what those measures entail. Traditional Owners report that this lack of accountability can be exploited by Proponents to coerce Aboriginal Parties into agreements that do not adequately address cultural heritage concerns.
- The current Duty of Care guidelines protect ignorance, which is not a sufficient legal defence in other situations.

- The current ground disturbance guidelines allow developers to fulfil their Duty of Care if there is evidence of past ground clearance or disturbance and no culturally significant objects or sites were previously recorded on the DATSIP database. This does not reflect the reality that many thousands of years of occupation results in deeply buried cultural heritage that likely remains in situ below even extensively developed land.
- Part 6 Cultural Heritage Studies are currently only conducted off the financing and labour of Aboriginal Parties.
  - These studies are also difficult to register on the current DATSIP database.
- There are insufficient triggers in the *ACHA* for Part 7 Cultural Heritage Management Plans.

### Recommendations

- The Duty of Care guidelines must be revised.
  - Proponents must bear financial responsibility for compliance.
  - Proponents must be accountable for demonstrating their compliance with the Duty of Care guidelines.
  - The guidelines must reflect both the intangible and tangible aspects of cultural heritage.
  - A clearly defined code of practice to ensure standard process of assessing and managing cultural heritage obligations.
  - Previous development, land use, and land clearing must be removed as evidence that no cultural heritage present. Any further disturbance to a site should trigger a review of the site's potential for cultural heritage.
- Traditional Owners should be included in development planning stages from the beginning, rather than consulted further along in the planning process.
- A mechanism of financing Part 6 studies to remove the burden from Aboriginal Parties and ensure a more comprehensive reflection of significant Aboriginal cultural heritage sites are present on the DATSIP database.
  - It is critical that submitted Part 6 study points and polygons are added to the database in a timely fashion.
- Compliance with the *ACHA* should be triggered within the *Planning Act 2016* (Qld).

### Compliance mechanisms

- Compliance is currently almost exclusively left to the Proponent to determine and there is little oversight or regulatory mechanisms in place.

- It should be the responsibility of the state to enforce compliance with the *ACHA*.

### Recommendations

- The appointment and funding of Compliance Officers by the state government.
  - Opportunities for training and appointment of Aboriginal persons as Rangers who could fulfil, not only a role in reviewing compliance of Proponents to their Duty of Care obligations and Part 7 Cultural Heritage Management Plans, but also conduct ground truthing of current entries on the DATSIP database and conduct Part 6 Cultural Heritage Studies.
  - Funding could be sourced in the form of a levy applied to planning applications.

### Recording cultural heritage

- The current DATSIP database is out of date and has not been updated to align appropriately with the current Australian datum system.
- Many sites on the database are recorded as points which does not reflect the integrated and complex nature of cultural landscapes.
- Aboriginal Parties are often reluctant to submit site locations to the database out of concern that secret and sacred site information will be available publicly.

### Recommendations

- A program of ground truthing current registered sites on the DATSIP database.
- Use of polygons to record more complex cultural heritage sites where a single point is insufficient to reflect the extent of both the tangible and intangible associations.
- A separate layer, accessible only to Traditional Owners for secret and sacred sites, whereby these sites are reflected in the publicly accessible layer as a broad polygon. This will flag the need for further cultural heritage assessment by Proponents without divulging sensitive cultural information.

### Other recommendations

The principles of the *ACHA* seek to centre Aboriginal knowledge and culture and establish processes that act efficiently to protect Aboriginal cultural heritage. However, how the *ACHA* is being deployed in the current Aboriginal cultural heritage space is failing to meet the stated principles. Urgent revision to address the current limitations is critical to avoid the ongoing and irreparable damage to Aboriginal cultural heritage.