



26 July 2019

CHA Review
Department of Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
CITY EAST QLD 4002

Email: CHA_Review@datsip.qld.gov.au

Dear Sir/Madam

DATSIP Consultation Paper - Review of the Cultural Heritage Acts

The LGAQ welcomes the State Government's announcement to review the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* to ensure these remain contemporary and continue to 'provide effective recognition, protection and conservation of Aboriginal and Torres Strait Islander cultural heritage' in Queensland.

Local governments across Queensland recognise the importance of the culture and heritage of Aboriginal and Torres Strait Islander people of Australia and are actively involved in the recognition, protection and conservation of Aboriginal and Torres Strait Islander cultural heritage through various means including but not limited to the preparation of Reconciliation Action Plans, Indigenous Land Use Agreement (ILUAs), and the development of land use planning responses in consultation with their local communities.

In relation to Aboriginal and Torres Strait Islander cultural heritage broadly, the LGAQ Policy Statement outlines the following agreed positions of local government in Queensland:

- 6.1.7.1 Local government acknowledges and supports the recognition, protection and conservation of Aboriginal and Torres Strait Islander cultural heritage.
- 6.1.7.2 Local government supports streamlined operational processes and procedures associated with the recognition, protection and conservation of Aboriginal and Torres Strait Islander cultural heritage to ensure they are practical, effective and cost efficient.
- 6.1.7.3 Local government supports the development of Aboriginal and Torres Strait Islander protocols or other measures that assist in integrating cultural heritage values into local planning instruments and development assessment processes.
- 6.1.7.4 Local government acknowledges the role the built environment plays in community cultural identity and supports the preservation or adaptation of heritage places that is responsive to the aspirations of local communities.

The LGAQ convenes the Indigenous Leaders Forum, which is a gathering of the leaders (mayors, councillors and CEOs) from the 16 Queensland Aboriginal or Torres Strait Islander local governments and also Torres Shire Council. The ILF provides a dedicated means of engaging with and understanding the needs of Aboriginal and Torres Strait Islander councils and their communities.

Since late 2018, the LGAQ has also been participating in the SEQ Traditional Owners Planning Forum initiated by the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) as an implementation action under the *ShapingSEQ Regional Plan 2017*, and is also aware of the work underway by DSDMIP to produce guidance material for local governments to advance Aboriginal and Torres Strait Islander interests in land use planning.



The LGAQ did not receive detailed feedback from local governments specifically responding to each of the questions outlined in the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) *Consultation Paper – Review of the Cultural Heritage Acts*.

However, based on the broader feedback the LGAQ has received, it is important that the review and amendment of the Cultural Heritage Acts and associated supporting materials:

- consider the interrelationship between cultural heritage, native title and land use planning matters holistically
- reinforce and improve the connection between the *Planning Act 2016* and the Cultural Heritage Acts, noting the Planning Act is the first planning legislation in Australia to explicitly acknowledge the importance of valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition
- provide practical advice to councils on how to identify and protect Aboriginal and Torres Strait Islander cultural heritage including in local planning instruments
- ensure there is clarity regarding roles and responsibilities in administering the requirements under the Cultural Heritage Acts – for example, in relation to recording cultural heritage in the cultural heritage database and register
- consider the outcomes and implications of recent court decisions on the interpretation and application of the Cultural Heritage Acts – for example:
 - the Timber Creek decision of the High Court of Australia - *Northern Territory v Mr A Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwuru and Nungali Peoples [2019] HCA 7*.
 - the Nuga Nuga decision of the Supreme Court of Queensland and the implications on the 'last claim standing' provisions under the Cultural Heritage Acts (*Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships [2017] QSC 321*). A specific question that has been asked by local government is whether the Nuga Nuga decision leave open the possibility that the regulator will be asked to remove approved Cultural Heritage Management Plans (CHMPs) from the cultural heritage register, thereby threatening protection that has been provided to land users by such CHMPs?
- clarify how the Cultural Heritage Acts will interact with the provisions relating to individual sovereignty in section 28 of the *Human Rights Act 2019* and in the preamble, (noting that human (including sovereign) rights belong to individuals, as opposed to corporations like a registered Aboriginal cultural heritage body within the meaning of the Cultural Heritage Acts), and consider any implications of these provisions on the eligibility requirements for State/local government funding programs designed to support the protection and preservation of Aboriginal and Torres Strait Islander cultural heritage, both tangible and intangible
- investigate opportunities to improve the information about Aboriginal and Torres Strait Islander cultural heritage that is available through the cultural heritage database and register, acknowledging there are often sensitivities associated with such information.

The LGAQ would welcome the opportunity to continue to be engaged and consulted on the detail and specifics of any amendments that are proposed to the Cultural Heritage Acts and looks forward to continuing to work with DATSIP and other relevant state agencies, to ensure Aboriginal and Torres Strait Islander cultural heritage is recognised, protected and conserved.

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For further information or if you have any questions, please do not hesitate to contact [REDACTED]

Yours sincerely

A handwritten signature in cursive script, which appears to read 'Sarah Buckler', is written in dark ink.

Sarah Buckler PSM
GENERAL MANAGER - ADVOCACY