

27 July 2019

Cultural Heritage Act Review Team
Department of Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
CITY EAST QLD 4001
Via email: CHA_Review@datsip.qld.gov.au

Dear Cultural Heritage Act Review Team,

Re: Review of the Aboriginal Cultural Heritage Acts 2003

Thank you for the opportunity to contribute to the review of the above Acts. Niche Environment and Heritage Pty Ltd is a leading multidisciplinary consultancy who employs specialists in cultural heritage management. Established in Queensland in 2012, Niche has since that time successfully delivered numerous Aboriginal cultural heritage projects to clients across the State.

Overall, we feel there is considerable scope to improve clarity and the functioning of the Acts to better achieve the main purpose of the Acts, being the effective recognition, protection and conservation of Aboriginal and Torres Strait Islander cultural heritage (s.4). Our submission refers to the *Aboriginal Cultural Heritage Act 2003* (hereafter referred to as the 'ACHA') throughout as this it is the Act with which we have the most relevant experience.

In the following submission we identify 3 key areas of concern and make suggestions for significant improvement. The key areas are identified below.

- Alignment with the *Planning Act 2016*.
- Significance.
- Offences.

Alignment with the Planning Act 2016.

Problem: Currently the ACHA is a stand-alone piece of legislation, which results in Aboriginal cultural heritage not being integrated with all other forms of land use planning in Queensland. There are no checks or balances under the ACHA. The self-assessment system is not auditable, clear or transparent. Nor is there any clarity on how to achieve compliance under the ACHA. Proponents are directed to s.23 and the associated Duty of Care categories which are vague and ambiguous at best.

Solution: The purpose of the *Planning Act 2016* is to establish an *efficient, effective, transparent, integrated, coordinated and accountable system of land use planning* (s.3(1)). The ACHA would benefit from being integrated with the Development Application (DA) system operating under the *Planning Act 2016*. This would mainstream the Aboriginal cultural heritage process with other well established processes to provide greater transparency for developers and land owners/manager in meeting their ACHA obligations.

Integration with such an established system would enable checks and balances, providing a framework for standardisation of Aboriginal cultural heritage assessment processes, and increased transparency and accountability into such processes. It is our contention that these essentials to an equitable, transparent and quality process are currently absent from the ACHA. The requirement for assessments to be prepared, lodged and potentially reviewed by local government or State, before development approvals are granted, would better help achieve the key principles of the ACHA.

Niche contends that a clear and transparent Aboriginal cultural heritage assessment process be mandated for integration with the DA processes under the *Planning Act 2016*. We suggest replacement of the Duty of Care process by a 3-step approach.

Step 1: A desktop land use history assessment should be undertaken to identify the risks (if any) to Aboriginal cultural heritage based on the amount and type of disturbance that has taken place to the land in the past. This assessment needs to be undertaken by a recognised heritage specialist. The assessment would be a review of past land disturbance compared to proposed activity impact. If there is a risk to Aboriginal cultural heritage, you proceed to step 2. If not, the assessment is finalised. The assessment report is lodged with DATSIP as part of the DA process.

Step 2: For those projects where a risk to Aboriginal cultural heritage was identified in Step 1, a Cultural Heritage Field Assessment is required to be undertaken by a recognised heritage specialist and representatives of the Aboriginal Party. The involvement of both groups is essential because together they provide the full cultural heritage picture. The Aboriginal Party must provide a statement of significance as part of the assessment including why the area is/or is not significant to them on cultural grounds meeting the requirements of s.8a and s.8b. The technical assessment must provide a statement of scientific significance to meet the requirement of s.8c of the ACHA. The assessment report is lodged with DATSIP as part of the DA process.

Step 3: For those projects where Aboriginal cultural heritage values have been identified through the Cultural Heritage Field Assessment process, a Cultural Heritage Management Plan must be entered into by the proponent and Aboriginal Party. A standard Cultural Heritage Management Plan must be developed by DATSIP that addresses the management of the Aboriginal cultural heritage values identified by Step 2. This is not a work agreement prepared by lawyers that details how many people will be employed or how much they will be paid – as in our experience is the most common plan prepared today. The Cultural Heritage Management Plan is to be lodged with DATSIP as part of the DA process.

Summary of main points:

- The ACHA should be integrated into the Planning Act 2016.
- A 3-step Development Application process should be mandated.
- All documentation regarding the assessment and management of Aboriginal cultural heritage must be registered with DATSIP.
- DATSIP should be funded to undertake a ground-truthing project of existing registered sites on the database and register.

Significance

Problem: The multi-part definition of Aboriginal cultural heritage (s.8a-c) is rarely used in its entirety. This results in assessments and agreements focusing on the management of objects (or the potential for them), rather than the management of what is of Aboriginal cultural heritage significance. The concept of significance is noted in the ACHA but its application is largely absent from Aboriginal cultural heritage management in practice in Queensland.

Solution: The ACHA currently ignores holistic concepts of significance championed by internationally recognised standards and principles such as that espoused in the ICOMOS *Burra Charter*. Primacy is given to the opinion of the Aboriginal Party, denying the existence of other understandings of cultural heritage significance, including by other Aboriginal people who are knowledge holders and custodians of their cultural heritage, but are currently excluded from the process due to the Native Title process, and the values that scientific and historical perspectives can bring to Aboriginal cultural heritage management. The latter as evidenced by archaeological and anthropological study in Australia since the Second World War which has contributed to substantial improvements to our understanding of human occupation of the continent.

Summary of main points:

- A definition for s.8c is required. This should include minimum pre-qualified standards for technical assessors using accepted minimum qualifications and experience levels (e.g. AACAI minimum BA(Hons)).
- A clarification of where other concepts of significance sit in terms of the Aboriginal Party is required. Currently primacy sits with the Aboriginal Party.
- Guidelines outlining a standardised process for assessing significance, utilising international best practice documents such as the Burra Charter are required.

Understanding Aboriginal cultural heritage

Problem: The current model of identifying an Aboriginal Party via the Native Title process results in the probable exclusion of certain Aboriginal people who may be knowledge holders and custodians of their cultural heritage. The current model fails to enable the fundamental principles of the ACHA to ensure Aboriginal people with knowledge or considered as custodians of their heritage to be involved.

Solution: The process for identification of Aboriginal people to be involved in the ACH process must be decoupled from the Native Title process. Other models for more inclusive consultation with Aboriginal people are in operation in other jurisdictions of Australia and should be reviewed to determine a modern best practice and inclusive approach.

Offences

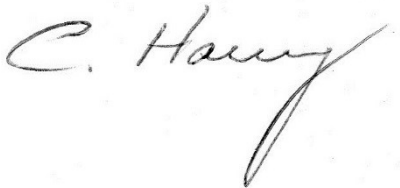
Problem: Currently ACHA assessments are not standardised, nor are they auditable.

Solution: Integration of the ACHA within the broader QLD planning framework will enable greater consideration of ACHA within a development context. PIN-able notices and fines for breaches of the ACHA need to be enforced by DATSIP or other authorised designated Government officers.

Other input

Current mechanisms fail to ensure adequate recognition of Aboriginal cultural heritage through reducing the need to undertake formal assessments and sometimes skipping assessments and requiring agreement setting only (how can Aboriginal cultural heritage be adequately managed when it hasn't even been adequately identified at the time of agreement setting?). This leads to agreements under the ACHA being more legalised work agreement / labour hire agreement rather than a plan that intends to achieve the primary purposes of ACHA. This has also led to technical service providers becoming labour hire licence holders and development of potential conflicts of interest for them in the assessment process.

Yours sincerely,



Cameron Harvey
Niche Environment and Heritage