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Indigenous Cultural Heritage Acts Review
Department of Environment and Resource Management
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Attention: Strategy Policy

Dear Review Manager

The Australian Archaeological Association Inc. (AAA) has made numerous submissions over the past ten years regarding revisions to legislation for the management of Indigenous cultural heritage in Queensland, first as part of the review of the previous legislation - the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* - and the various associated drafts of the *Aboriginal Cultural Heritage Bill* and the *Torres Strait Islander Cultural Heritage Bill*, and more recently as part of the review of the Indigenous Cultural Heritage Acts. An AAA representative has also been an active member of the Community Consultation Panel established to collate recommendations as part of the Acts' reviews. We are therefore disappointed that many of the comments and recommendations made in previous AAA submissions, by Indigenous and non-Indigenous archaeologists and practicing cultural heritage managers who have substantive experience in Indigenous heritage management, have generally been ignored.

We note that none of the key concerns we raised in our previous submission to the Acts Review Committee were incorporated into the Exposure Draft Bill. Our concerns remain as follows:

1. Part 1 – Definitions of heritage: Although the definitions of heritage provided for in the Acts are sound, the provisions to **protect** all forms of Indigenous heritage thus defined are poor, with protection generally only afforded to tangible heritage at the expense of intangible heritage.
2. Part 3 – Protection of Indigenous heritage: AAA has three areas of recommendations regarding protection of heritage:
 - a. The coupling of native title parties and Indigenous heritage parties disenfranchises many traditional owner and traditional custodian groups who, for many reasons, are not able to or who do not wish to participate in the native title process;
 - b. Proponents, rather than traditional custodians, still have the primary role in establishing Duty of Care. This is contrary to best-practice cultural heritage management planning;

- c. Alternatives to cultural heritage agreements cannot be endorsed by professional heritage managers unless Indigenous Parties have also endorsed the agreement. To do otherwise would be in breach of professional codes of ethics.
3. Part 4 - Identifying Indigenous Parties: The use of Native Title as the principal basis for identifying Indigenous Parties is flawed and requires modification to ensure that all traditional owners with a connection to country are able to participate in heritage management.
4. Part 5 – Collections management: Considerable resourcing of the Cultural Heritage Conservation Unit (CHCU) or the Department of Environment and Resource Management is needed if the Database and Register are to be corrected, updated, and made reliable. The current procedures for placing heritage onto the Database or Register will not ensure adequate planning information is available, nor will they allow for the recognition of Indigenous living heritage.
5. Part 6 - Cultural Heritage Studies (CHSs): Cultural Heritage Studies will only be meaningful if the CHS process is linked to cultural heritage agreements and CHMPs.
6. Part 7 – Cultural Heritage Management Plans (CHMPs): The separation of significance assessment from the CHMP process is not acceptable as best practice cultural heritage management.
7. Part 9 – Miscellaneous: Review of the Acts in five years will be needed to address issues ignored in the current review.

As well as these seven concerns, the AAA has made three other observations:

8. Part 2 – Ownership of heritage: Awareness training is important and the AAA would be pleased to provide advice on the development of a training programme.
9. Part 8 – Investigation and enforcement: Formal workshops would be a more effective way to encourage compliance with the Acts than a website alone.
10. Generally: The establishment of an Independent Indigenous Cultural Heritage Board to oversee the implementation of Indigenous cultural heritage management planning in Queensland is essential to ensure that best practice cultural heritage management planning occurs in Queensland.

RESPONSE TO POSED QUESTIONS

Question 1: Do you think the proposed amendments to the cultural heritage agreement making processes are appropriate? If not, what other changes or processes would you recommend?

NO. The AAA has already made recommendations regarding the requirements for best practice agreement making processes. These are as follows:

1. Significance assessment MUST be linked to the planning process.
2. Agreement making must be part of a formal cultural heritage assessment, which must incorporate an assessment of the likelihood of cultural heritage being adversely affected by development and an assessment of the significance of any potential cultural heritage.
3. All agreements, whether formal CHMPs or alternative agreements, must be reviewed and endorsed by Cultural Heritage Conservation Unit (CHCU) or the Department of Environment and Resource Management, and registered in the Cultural Heritage Database. Appropriate funding for CHCU will be required to ensure this can occur.

Question 2: Do you think transferring the Minister's decision-making powers to the Land Court is appropriate?

NO. Decision-making powers should rest with an Independent Indigenous Cultural Heritage Board, preferably with majority Indigenous membership rather than with the Minister or the Land Court.

Transferring the Minister's powers to a court means that Indigenous peoples are denied authority over their own heritage.

Question 3: Do you think the proposed amendments to create consistency with the broader Queensland Government reforms to streamline and modernise Queensland's justice system are appropriate for the Acts?

It would be more appropriate if the amendments created consistency with other forms of heritage protection legislation, both in Queensland and elsewhere in Australia. The *Queensland Heritage Act 1992* (as amended 2010) has provision for an Independent Heritage Council, unlike the Indigenous Heritage Acts, and Indigenous heritage legislation in other states (especially in Victoria) is far more inclusive of Indigenous concerns for heritage management and far more open to the involvement of Indigenous traditional owners in all aspects of cultural heritage management.

Question 4: The new transitional provisions will ensure changes to the Acts will not affect parties retrospectively. Do you think this policy intent is appropriate?

YES.

Question 5: Do you think the proposed timing and scope of the next legislative review of the Acts is appropriate?

NO. Given that so few changes have been made to Acts, which are in desperate need of modernisation and revision, a ten year gap between amendment and review is far too long. The Acts need to be reviewed again in five years.

Question 6: Are there any other comments you would like to provide?

YES. The AAA understands that there are to be several non-legislative revisions to guidelines and other policy components of the legislation. AAA members are pleased that this is to occur and looks forward to a more robust revision to these documents than has occurred in the case of the Acts. AAA looks forward to being able to contribute to reviews of Indigenous cultural heritage guidelines and policies.

Please address all correspondence regarding this submission to the AAA's representative for the ICHA Review, Dr Annie Ross, who may be contacted as follows:

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Yours sincerely



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