



Factsheet updated February 2021¹

Cultural Heritage Protection in Queensland

These Fact Sheets are a guide only and are no substitute for legal advice. To request free initial legal advice on an environmental or planning law issue, please visit edo.org.au.

The Environmental Defenders Office acknowledges First Nations and recognised their continuous connection to country, community, and culture.

Overview

This factsheet is a summary of the protection mechanisms for cultural heritage in Queensland.

In Queensland, First Nations cultural heritage is protected under the *Aboriginal Cultural Heritage Act 2003 (Qld)* & *Torres Strait Islander Cultural Heritage Act 2003 (Qld)* ('the Acts'). The Acts are currently under review.

The Acts create the statutory duty of care requiring all people or legal entities in Queensland to recognise, protect and conserve First Nations cultural heritage ("cultural heritage"). The duty is underpinned by the obligation to do no harm² and to take all reasonable and practicable measures to ensure activities do not damage, injure, desecrate, or destroy cultural heritage.³

Cultural heritage and Native Title

Cultural heritage values are separate from native title and survive even if native title has been extinguished. Cultural heritage continues to exist regardless of the nature of land tenure.⁴

What is cultural heritage in Queensland?

The Acts defines 'cultural heritage' as objects and places that are significant to Indigenous people under First Nations tradition.⁵

Significant objects

An object is of particular significance because of tradition and or the history including contemporary history, for an area.⁶ Examples of significant objects include:

- spears;
- stone tools such as points, scrapers and adzes;
- woomeras, throwing sticks/clubs, and boomerangs;
- wooden, bark or shell dishes;
- digging sticks; and
- grindstones.

Significant areas

An area is of particular significance because of tradition and or the history, including contemporary history, of any party for the area.⁷ It isn't necessary for an area to contain markings or other physical evidence indicating First Nations occupation or otherwise for that area to be a significant area.⁸

Examples of significant areas include ceremonial, birthing or burial places, or the site of a massacre.⁹

Cultural Heritage Duty of Care

The Acts set out how cultural heritage is assessed and managed through a duty of care that places an obligation on land users to take all reasonable and practicable measures to ensure their activities do not harm cultural heritage.

The Cultural Heritage Duty of Care Guidelines have been created to assist land users to satisfy their duty of care to do no harm.¹⁰ You can view the guidelines [here](#).

To satisfy the duty of care, a land user must assess the risk of harm to cultural heritage arising from their activity through a series of processes to assess the risk and manage impacts.

Activities unlikely to cause harm to cultural heritage

Under the Duty of Care Guidelines¹¹ certain activities are considered generally unlikely to harm cultural heritage and it is reasonable and practicable for the activity to proceed without further cultural heritage assessment. These are activities such as walking; driving along existing roads and tracks (within the existing alignment) or other infrastructure footprint; aerial surveys; navigating through water; cadastral, engineering, environmental or geological surveys using methods (such as GPS systems) which do not cause surface disturbance; or photography.¹²

Other activities which are also considered unlikely to cause harm include: cultivation of an area which is currently subject to cattle grazing; existing roads, tracks and power lines or other infrastructure footprint; services and utilities and the immediate adjacent areas (provided the activity does not involve additional surface disturbance) and tourism and visitation activities on an area where such activities are already taking place.

Cultural Heritage Management Plans

A Cultural Heritage Management Plan ('CHMP') is an agreement between any person, such as a landowner or project proponent (the sponsor), and First Nations People (endorsed party) and explains how land use activities are managed to avoid or minimise harm to cultural heritage.¹³ There are many people or groups that would be accepted an endorsed party.¹⁴ Please contact EDO should you require advice and assistance to determine if you are eligible to be an endorsed party.

The Cultural Heritage Management Plan Guidelines provide details on the methods, structure and content of the plans.¹⁵

A CHMP may be entered into on a voluntary basis where a land user may develop and gain approval for a CHMP to have clarity and avoid breaching the cultural heritage duty of care even when there is no legal requirement to do so.¹⁶

CHMP are compulsory if an Environmental Impact Statement (EIS) is required under legislation in Queensland. This is applicable in circumstances where a permit, lease, license or any other authority is compulsory.¹⁷ Other environmental approvals and authorities may also require the preparation of a CHMP.¹⁸

The EDO is available to give advice and legal support for environmental and cultural heritage laws regarding activities that may cause harm. Mining, land development, tree clearing, State Coordinated projects, and dams are examples of activities that may cause harm.

What does a CHMP consist of?

When the sponsor and endorsed party consult regarding the plan there are multiple things that may be discussed. These things are inclusive of activity dates; specific project activities; identifying known cultural heritage in the area; how to manage and minimise the potential damage to cultural heritage; delays; accessibility to land. If the endorsed party and the sponsor cannot come to an agreement after consultation the sponsor can refer the proposed plan to the Land Court.¹⁹

No CHMP agreement reached

If a cultural heritage management plan is not agreed to by the parties then the activities cannot proceed if one is required under the legislation. This is why only the sponsor has the right to seek assistance from the Land Court. If a CHMP is not required by law, then the activities must still ensure that they do not cause harm to cultural heritage and the sponsor must still work within the Guidelines to fulfil the duty of care to protect cultural heritage.

Land Court

If a sponsor applies to the Land Court, there can be a hearing of a referral however it is up to their discretion.²⁰ If the hearing proceeds all parties to the hearing are entitled to speak.²¹ Prior to a hearing the Land Court can order the parties to attend mediation.²² Following the hearing and or review of the plan the Land Court must offer their recommendation to the Minister.²³ The general requirement is that the Land Court's recommendation should be sent to the minister within four months of receiving the referral.²⁴ The Minister may then decide whether to approve the CHMP.²⁵

If a hearing is to proceed the EDO strongly recommends you contact us or seek Independent legal advice.

¹ At the time of writing the Acts were under review. EDO's submission to the Stage One Options Paper can be read [here](#).

² ACHA s23, TSICHA s23.

³ ACHA Sch 2, TSIHA Sch 1.

⁴ Cultural Heritage Duty of Care Guidelines Section 1.3 <https://www.datsip.qld.gov.au/resources/datsima/people-communities/cultural-heritage/duty-of-care-guidelines.pdf>

⁵ ACHA s8, TSICHA s8.

⁶ ACHA s10, TSICHA s10.

⁷ ACHA s9, TSICHA s9.

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- ⁸ *ACHA* s12, *TSICHA* s12.
- ⁹ *ACHA* s12, *TSICHA* s12.
- ¹⁰ *ACHA* s23, *TSICHA* s23.
- ¹¹ *ACHA* s28, *TSICHA* s28.
- ¹² Aboriginal Cultural Heritage Act 2003 Duty of Care Guidelines p 6.
- ¹³ *ACHA* s102, *TSICHA* s102.
- ¹⁴ *ACHA* ss34, 35 & Sch2, *TSICHA* ss34, 35 & Sch1.
- ¹⁵ *ACHA* s85, *TSICHA* s85.
- ¹⁶ *ACHA* s83, *TSICHA* s83.
- ¹⁷ *ACHA* s87, *TSICHA* s87.
- ¹⁸ *ACHA* s88, *TSICHA* s88.
- ¹⁹ *ACHA* s112(3), *TSICHA* s112(3).
- ²⁰ *ACHA* s116(1), *TSICHA* s116(1).
- ²¹ *ACHA* s116(2), *TSICHA* s116(2).
- ²² *ACHA* s116(3), *TSICHA* s116(3).
- ²³ *ACHA* s117(1), *TSICHA* s117(1).
- ²⁴ *ACHA* s119, *TSICHA* s119.
- ²⁵ *ACHA* s120(1), *TSICHA* s120(1).