



18 February 2010

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Indigenous Cultural Heritage Acts Review
Department of Environment and Resource Management
GPO Box 2454
Brisbane QLD 4001

Dear Review Manager,

Please find attached a submission from the Australian Archaeological Association Inc. (AAA) on the Key Issues and Draft Recommendation document relating to the Queensland Indigenous Cultural Heritage Acts Review. The AAA provided a submission to the original Indigenous Cultural Heritage Acts Review in February 2009. Although some of the AAA's concerns in that submission have been addressed in the Key Issues document, the vast majority have been ignored. The AAA finds this disappointing and remains concerned that major flaws in the legislation, flaws that deny the efficacy of Indigenous heritage management in Queensland, remain.

AAA has made recommendations regarding most components of the Key Issues document. This submission is arranged in accordance with the arrangement of discussion paper itself, viz, with comments relating to each of the Parts of the Acts themselves. In summary, these recommendations are:

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 2 – Ownership of heritage: Awareness training is important and the AAA would be pleased to provide advice on the development of a training programme.
3. 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 participate in the native title process;
 - b. Proponents 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;

4. 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.
5. 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 processes 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.
6. 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.
7. 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.
8. Part 8 – Investigation and enforcement: Formal workshops would be a more effective way to encourage compliance with the Acts than a website alone.
9. Part 9 – Miscellaneous: Review of the Acts in five years will be needed to address issues ignored in the current review.

For each of these areas we have provided detailed discussion in the attached submission, and have made recommendations for improvements to the Acts.

We conclude our submission with the same overarching recommendation, made in February 2009, for the establishment of an Independent Indigenous Cultural Heritage Board to oversee the implementation of Indigenous cultural heritage management planning in Queensland.

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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*Queensland
Indigenous Cultural Heritage Acts Review
Key Issues and Draft Recommendations*

18 February 2010

**A submission from the
Australian Archaeological Association Inc.**

Executive Summary

This submission has been prepared by the Australian Archaeological Association Inc. (AAA). Members include professional archaeologists, Aboriginal people (many of whom are also professional archaeologists), archaeology students, and others with an interest in Queensland Indigenous heritage. The Association's principal concerns are:

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 2 – Ownership of heritage: Awareness training is important and the AAA would be pleased to provide advice on the development of a training programme.
3. 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 participate in the native title process;
 - b. Proponents 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;
4. 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.
5. 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 processes 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.
6. 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.
7. 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.
8. Part 8 – Investigation and enforcement: Formal workshops would be a more effective way to encourage compliance with the Acts than a website alone.
9. Part 9 – Miscellaneous: Review of the Acts in five years will be needed to address issues ignored in the current review.

We conclude our submission with a recommendation for the establishment of an Independent Indigenous Cultural Heritage Board to oversight the implementation of Indigenous cultural heritage management planning in Queensland.

Preamble

The Australian Archaeological Association (AAA) represents archaeologists and cultural heritage practitioners (including Aboriginal archaeologists and cultural heritage practitioners) from all over Australia. This submission is a compilation of the views of over 70 members of the AAA. Comments have been gathered from an internet discussion site, established expressly for this Review, and from discussion about the legislation held during the AAA Annual Conference held at Flinders University, Adelaide, in December 2009.

The AAA provided a submission to the original Indigenous Cultural Heritage Acts Review in February 2009. Although some of the AAA's concerns in that submission have been addressed in the Key Issues document, the vast majority of the Associations concerns have been ignored. The AAA finds this disappointing and remains concerned that major flaws in the legislation, that deny the efficacy of Aboriginal heritage management in Queensland, remain.

Introduction

Will the recommended changes to the Acts improve Indigenous cultural heritage management in Queensland?

Although many of the proposed changes to the *Aboriginal Cultural Heritage Act 2003* will address aspects of AAA's original concerns, some of our most significant concerns have not been addressed.

One of the major concerns raised in our original submission was an overarching concern that relates to the Acts as a whole, rather than to individual parts of the Acts. This concern relates to the fact that the *Aboriginal Cultural Heritage Act 2003* is essentially identical to the *Torres Strait Islander Cultural Heritage Act 2003*. The very different culture of the Torres Strait should be recognised in a unique cultural heritage act for this cultural group – an act that provides for the unique culture, specific needs and special interests of Torres Strait Islander people, which may be very different from those of mainland Indigenous peoples.

Other more specific concerns are:

1. Non-physical heritage (i.e. intangible heritage such as song, dance, story, etc.) is still not adequately addressed;
2. The cultural landscape setting for Aboriginal heritage is not sufficiently recognised;
3. Duty of Care requirements are assessed by development proponents and not independent heritage assessors or the regulatory authority;
4. Significance assessment is separated from the cultural heritage agreement process, including CHMPs; and
5. An Independent Indigenous Cultural Heritage Board has not been considered.

The limited opportunity for the regulatory authority to monitor development activity and ensure best practice cultural heritage management is implemented lessens the effectiveness of the Act.

Issues

Part 1 Definitions of heritage; management of archaeological heritage; awareness and CHM training

Concern 1.1 – Definitions in the act are not implemented in practice

Definitions of Aboriginal heritage are wide-ranging and concur with current cultural heritage discourses. It is worth noting that UNESCO has defined cultural heritage as follows:

Cultural heritage is not limited to material manifestations, such as monuments and objects that have been preserved over time. This notion also encompasses living expressions and the traditions that countless groups and communities worldwide have inherited from their ancestors and transmit to their descendants, in most cases orally (UNESCO 2003).

Although the *definition* of Aboriginal heritage meets best practice cultural heritage, the practice of cultural heritage management as provided in the Act, and in recent examples of the implementation of the Act, ignore many aspects of the definitions.

Case study

To illustrate this problem we present a recent case study:

*On the Darling Downs north of Toowoomba lies a major ceremonial site, the Gummingurru Aboriginal stone arrangement. Originally this site was a men's initiation site, and was part of a complex of sites used by Jarowair and other peoples en route to the Bunya festival in the Bunya Mountains. Some 3km east of Gummingurru was a women's initiation site. Evidence for this women's site exists today only in the form of oral testimony. No physical evidence of its existence survives (cf. Section 12 of the Act). The women's site is threatened by a proposed housing development, but **because no physical evidence for its existence survives it cannot be protected** according to CHCU staff.*

Until the provisions of the Act enforce the definitions for Aboriginal heritage, the Act will not meet its stated aims to:

- Respect Aboriginal knowledge, cultural and traditional practices;
- Recognise Aboriginal people as guardians of heritage;
- Maintain Indigenous knowledge and promote understanding of Aboriginal culture;
- Allow Aboriginal people to reaffirm obligations to law and country.

Recommendation 1.1

The AAA recommends that the ACHA be amended so that the heritage places that meet the definitions of heritage in the act are able to be protected.

Concern 1.2 – Recognition of archaeological sites as part of Aboriginal heritage

Recommendations for amendment of the Act to include provisions to recognise that some heritage values, such as buried archaeological materials, may not be significant to Indigenous peoples, yet are clearly part of the Indigenous heritage of Queensland, are supported. As key stakeholders in the identification and management of archaeological heritage places, the AAA requests recognition in the development of relevant legislative or regulatory provisions.

Recommendation 1.2

The AAA recommends that professional and qualified cultural heritage managers, with experience in Indigenous cultural heritage management, working closely with Indigenous stakeholders/boards/advisory groups etc. be included as stakeholders in any drafting of legislative or regulatory provisions relating to the protection of archaeological heritage places.

Concern 1.3 – Recognition of the need for awareness and capacity-raising strategies, including establishment of best-practice heritage management training.

Recommendations for implementing strategies to increase awareness of the provisions of the Act, including the roles for Aboriginal Parties and heritage professionals, and the benefits of heritage management, are supported. As key stakeholders in heritage management practice and training, the AAA requests recognition in the development of relevant legislative or regulatory provisions.

Recommendation 1.3

The AAA recommends that professional and qualified cultural heritage managers, with experience in Indigenous cultural heritage management, working closely with Indigenous stakeholders/boards/advisory groups etc. be included as stakeholders in any drafting of legislative or regulatory provisions relating to awareness and capacity-raising strategies, including establishment of best-practice heritage management training.

Part 2 Ownership and possession of cultural heritage

It is difficult to legislate for many of the concerns raised in this Part of the Key Issues paper. Proposals to implement awareness and capacity-raising are worthwhile and the AAA, with a membership that includes a large number of professional cultural heritage managers and University lecturers, is well-placed to provide guidance and assistance in the development of ideas in this area.

Recommendation 2.1

The AAA recommends that professional and qualified cultural heritage managers, with experience in Indigenous cultural heritage management, working closely with Indigenous stakeholders/boards/advisory groups etc. be included as stakeholders in the development of awareness and capacity-raising strategies aimed to address concerns relating to ownership, storage and management of Indigenous cultural heritage.

Part 3 Protection of Indigenous cultural heritage

This Part of the Acts addresses several related, but separate issues. These issues can be grouped under the following headings:

- Engaging Aboriginal Parties and Torres Strait Islander Parties;
- and
- Establishing Duty of Care;
- and
- Developing Alternative Cultural Heritage Management Plans

The amalgamation of a wide range of elements into a single Part of the Acts is problematic, and part of the problem with the protection of Indigenous heritage in Queensland is related to the complexity of this part of the Acts. In this submission the three themes that underpin Part 3 of the Acts are discussed individually.

Concern 3.1 – Engaging Aboriginal Parties and Torres Strait Islander Parties

This issue is closely linked to the matters raised in Part 4 of the Key Issues discussion paper. While identification of Aboriginal Parties and Torres Strait Islander Parties is coupled with native title registration, there will always be Aboriginal peoples and Torres Strait Islanders disenfranchised by these Acts. There are a large number of Indigenous Australians who, for a variety of reasons, cannot register a native title claim, yet have close connections to country and cultural heritage. There are no recommendations in the Key Issues discussion paper which address the problems of involving such traditional custodians of cultural heritage.

AAA has investigated the mechanisms used in other states and territories of Australia for the identification of key Indigenous parties with respect to cultural heritage issues. The AAA argues that the provisions of the *Northern Territory Aboriginal Sacred Sites Act 2006* are the most relevant to the situation in Queensland. In the Northern Territory, the term ‘custodian’ is used to identify appropriate Indigenous cultural heritage managers. A ‘Custodian’ is defined in section 3 of the *Northern Territory Aboriginal Sacred Sites Act 2006* to mean ‘*an Aboriginal who, by Aboriginal tradition, has responsibility for that site*’.

Further discussion of this term has been provided in a discussion paper on ‘*Possible Reforms To The Legislative Arrangements For Protecting Traditional Areas And Objects*’, prepared by the Central and Northern Lands Councils (2009) and published by the Federal Minister for Environment, Arts and Heritage. In this document it is further stated that:

identification of traditional custodians is performed by the AAPA [Aboriginal Areas protection Authority] or the Land Councils (i.e. the independent Indigenous body) and not the proponent – an approach that is viewed by the [International] Prosser Report as best practice (Central Land Council and Northern Land council 2009:9)

Recommendation 3.1

The AAA recommends that mechanisms to identify Aboriginal Parties (and Torres Strait Islander Parties) be decoupled from native title provisions and that traditional custodian status be recognised in a similar way to that used in the *Northern Territory Aboriginal Sacred Sites Act 2006*.

Concern 3.2 - Alternative Cultural Heritage Agreements

We endorse the recommendation to require all cultural heritage agreements, including ILUAs and alternatives to CHMPs to include express reference to cultural heritage management. However, such agreements will continue to remain outside the mainstream cultural heritage management planning process unless they are registered with CHCU in the same way as CHMPs.

Recommendation 3.2

The AAA recommends that all cultural heritage agreements, whether formal CHMPs, ILUAs, or other agreements, be registered with CHCU in the same way as CHMPs.

Concern 3.3 – Alternatives to a cultural heritage agreement

The AAA is extremely concerned at proposals that will allow development proponents to undertake development activities without any cultural heritage agreement. The AAA is aware that, at times, it may be difficult to reach agreement on cultural heritage management, especially where an important development activity will destroy important cultural heritage. However, proposals to:

- Allow proponents to negotiate with individual authorised nominees, rather than with Aboriginal Parties, has the potential to lead to bullying or even corruption;
- Allow ‘a member of a relevant professional organisation (e.g. archaeologists, anthropologists, historians)’ to ‘certify the proponent has established a plan for managing cultural heritage that meets prescribed standards’ if agreement between proponents and Aboriginal Parties has not been finalised in 60 days is unethical.
- Any ‘archaeologist, anthropologist or historian’ who would agree to undertake such an activity could not be regarded as professional. This indicates that the Acts should include a provision for the registration of heritage professionals, or for standards of education and experience of cultural heritage assessors to be demonstrated before any person can be recognised as a ‘professional’ heritage assessor.

In the first case, legitimate traditional custodians are even further disenfranchised by this process.

Recommendation 3.3.1

The AAA recommends that under no circumstances should ‘nominees’ be authorised to negotiate on cultural heritage matters on behalf of traditional custodians. Such a proposal is contrary to traditional Aboriginal decision-making arrangements, and disenfranchises legitimate traditional custodians of cultural heritage.

In the second case, archaeologists, anthropologists and historians are to be given a responsibility greater than that of traditional custodians in the management of cultural heritage. No qualified, professional archaeologist, anthropologist or historian would undertake to make such a certification without an Aboriginal Party having endorsed such action. To do so is against the Codes of Ethics of all major professional and discipline associations (copies available on request). Certainly no members of AAA (nor members of the professional Australian Association of Consulting Archaeologists Inc.) could make such a certification without being charged with an offence against the codes of Ethics and the Constitutions of both Associations.

Recommendation 3.3.2

The AAA recommends that, because no ethical, qualified, professional cultural heritage assessors (archaeologists, anthropologists, historians) would ever certify an activity not previously approved by traditional custodians, alternative measures to overcome inertia in the heritage assessment process be developed. The AAA recommends that professional and qualified cultural heritage managers, with experience in Indigenous cultural heritage management, working closely with Indigenous stakeholders/boards/advisory groups etc. be included as stakeholders in the development of such measures.

In the third case, as there are no requirements under the Acts for heritage assessors to be registered with a professional organisation, or for heritage assessors to have any professional training or experience in cultural heritage management, the proposed amendments to the Acts leave the door open for unqualified persons to claim abilities as heritage professionals and to act unethically.

Recommendation 3.3.3

The AAA recommends that, because no ethical, professional cultural heritage assessors (archaeologists, anthropologists, historians) would ever certify an activity not previously approved by traditional custodians, measures to ensure that only qualified, experienced, professional cultural heritage assessors are ever employed as heritage assessors be developed. The AAA recommends that professional and qualified cultural heritage managers, with experience in Indigenous cultural heritage management, working closely with Indigenous stakeholders/boards/advisory groups etc. be included as stakeholders in the development of such measures.

Concern 3.4 – Establishing when cultural heritage agreements are required

This concern lies at the heart of the AAA's concerns with heritage protection under the Acts. Our original submission contained a detailed discussion of the AAA's concerns regarding the implementation of the Duty of Care Guidelines. None of our major concerns has been addressed in the Key Issues discussion paper. We attach our original discussion as Appendix A.

Our key concern in February 2009 was that development proponents would self-assess the Duty of Care required of their developments. Developers are rarely skilled in cultural heritage identification, nor are they trained to understand the possible impacts of previous disturbance on Aboriginal heritage places.

It is vitally important that the assessment of the need for cultural heritage assessment be undertaken by either:

- A qualified heritage assessor, working with Aboriginal Parties or Torres Strait Islander Parties;

or

- The regulatory authority (as occurs in other states of Australia) with the regulatory authority resourced to allow this to occur.

Recommendation 3.4.1

The AAA recommends that the Duty of Care provisions of the Act be amended to provide that the requirement for cultural heritage assessment to be undertaken either by a heritage professional, working with Indigenous Parties, or by the regulatory authority.

The recommendation in the Key Issues discussion paper for the establishment of a ‘code stipulating when proponents must seek to make a cultural heritage agreement’, including a code to identify if buried heritage could be adversely affected by development, is supported by the AAA. As experts in this field, AAA would be keen to provide advice in the development of such a code.

Recommendation 3.4.2

The AAA recommends that the AAA, or any other professional and qualified cultural heritage managers, with experience in Indigenous cultural heritage management, working closely with Indigenous stakeholders/boards/advisory groups etc. be considered a stakeholder in any development of a code stipulating when proponents must seek to make a cultural heritage agreement.

Part 4 Indigenous Parties and Cultural Heritage Bodies

Our original submission contained a detailed discussion of the AAA’s concerns regarding the way Aboriginal Parties (and Torres Strait Islander Parties) are defined and identified in the Indigenous Heritage Acts. Few of these concerns have been addressed in the Key Issues discussion paper. We attach our original discussion as Appendix B.

The discussion paper addresses the important concern regarding the ‘last claim standing’ provisions, and AAA endorses these recommendations. However there are many situations where, for a number of reasons, Aboriginal peoples and Torres Strait islanders are not in a position to claim native title, yet they have strong and unarguable connections to country and cultural heritage. To continue to privilege registered native title claimants over all other legitimate traditional custodians is to continue to disempower many Indigenous cultural heritage owners. AAA implores those undertaking the Review of Indigenous Cultural Heritage Acts to work with traditional custodians and relevant stakeholders to seek an alternative to coupling Indigenous Party status with native title provisions.

In our discussion in Section 3.1 above, we noted that AAA has investigated the mechanisms used in other states and territories of Australia for the identification of key Indigenous

parties with respect to cultural heritage issues. The AAA argues that the provisions of the *Northern Territory Aboriginal Sacred Sites Act 2006* are the most relevant to the situation in Queensland. In the Northern Territory, the term ‘custodian’ is used to identify appropriate Indigenous cultural heritage managers. A ‘Custodian’ is defined in section 3 of the *Northern Territory Aboriginal Sacred Sites Act 2006* to mean ‘an Aboriginal who, by Aboriginal tradition, has responsibility for that site’.

Further discussion of this term has been provided in a discussion paper on ‘*Possible Reforms To The Legislative Arrangements For Protecting Traditional Areas And Objects*’, prepared by the Central and Northern Lands Councils (2009) and published by the Federal Minister for Environment, Arts and Heritage. In this document it is further stated that:

identification of traditional custodians is performed by the AAPA [Aboriginal Areas protection Authority] or the Land Councils (i.e. the independent Indigenous body) and not the proponent – an approach that is viewed by the [International] Prosser Report as best practice (Central Land Council and Northern Land council 2009:9)

Recommendation 4.1

The AAA recommends that mechanisms to identify Aboriginal Parties (and Torres Strait Islander Parties) be decoupled from native title provisions and that traditional custodian status be recognised in a similar way to that used in the *Northern Territory Aboriginal Sacred Sites Act 2006*.

Recommendation 4.2

The AAA recommends that the Queensland government works with traditional custodians and relevant stakeholders to seek an alternative to coupling Indigenous Party status with native title provisions.

Part 5 Collection and Management of Information

A number of important aims have been identified in this part of the Key Issues discussion paper, including aims such as:

- Improve the comprehensiveness of the databases and registers;
- Provide information to help identify Indigenous Parties;
- Enable the protection of cultural heritage.

However no specific information on how any of these aims are to be achieved has been provided. Until more information is available the AAA is unable to comment on any of these desirable aims.

Any improvement to the database and register will require:

- An audit of all heritage databases and registers in Queensland to extract data missing from the central database and register;
- An audit of all reports and CHMPs and alternative cultural heritage agreements to extract data missing from the central database and register;

- An audit of all publications on Indigenous cultural heritage in Queensland to extract data missing from the central database and register; and
- Resourcing of a ground-truthing review of all data on the database and register to assess whether or not heritage places have survived erosion or development or other activity and update the information on the condition of each place on the register.

This will require substantial resourcing.

Recommendation 5.1

The AAA recommends that the Queensland government provides resourcing to undertake a thorough audit of information relating to Indigenous heritage in Queensland to allow the central database and register to be checked, corrected and updated.

Part 6 Cultural Heritage Studies

Cultural Heritage Studies (CHS) are rarely used, but should be a compulsory prelude to any and every cultural heritage agreement including CHMPs. Best-practice cultural heritage management planning requires that planning is preceded by assessment, including the kind of assessment required in a CHS. Cultural Heritage Studies have little relevance outside the planning process.

The recommendations for amendments to encourage the adoption of the CHS process, outlined in the Key Issues discussion paper, will be ineffective without linking the CHS process to the cultural heritage assessment and CHMP process. This is the situation in Victoria, where new legislation that is similar to Queensland's has recently been adopted, and this has been the policy in New South Wales, Tasmania, South Australia, Western Australia and the Northern Territory for many years.

Recommendation 6.1

The AAA recommends that Cultural Heritage Studies be linked to the cultural heritage assessment and CHMP process. AAA recommends that undertaking a CHS should be a mandatory prelude to any and all cultural heritage assessments, including CHMPs and alternative cultural heritage agreements.

Part 7 Cultural Heritage Management Plans

Our original submission contained a detailed discussion of the AAA's concerns regarding provisions for cultural heritage management planning in the Indigenous Heritage Acts. Few of these concerns have been addressed in the Key Issues discussion paper. We attach our original discussion as Appendix C.

The Key Issues discussion paper addresses only the concerns about consultation period and the role of the Land court. Other serious issues have been ignored.

Concern 7.1 – The limited formal triggers for a CHMP

The CHMP is the most important component of any cultural heritage management process. A CHMP should be a compulsory component of **all** development proposals, as occurs in Victoria. At the very least, the need for a CHMP must be assessed by professional heritage assessors working with Indigenous parties, or professional staff in the regulatory authority.

Recommendation 7.1

The AAA recommends that assessment of the need for cultural heritage assessment be undertaken be assessed either by a heritage professional, working with Indigenous Parties, or by the regulatory authority.

Concern 7.2 – The separation of significance assessment from management planning

Best practice cultural heritage management (e.g. Burra Charter 1999; Pearson and Sullivan 1995) emphasises that significance must guide cultural heritage decision-making. Without physical assessment of a proposed development locale it is virtually impossible to predict the occurrence of cultural heritage and hence it is impossible to produce a CHMP that takes account of Indigenous knowledge of heritage, and concerns for management, conservation, or salvage. Such unreliability and uncertainty can lead to accidental discovery of, and subsequent harm to, cultural heritage that can delay development and distress traditional owners.

Recommendation 7.2

The AAA recommends that a cultural heritage assessment of all proposed developments be undertaken as a mandatory part of the cultural heritage assessment process. Cultural heritage assessments should be undertaken by a qualified heritage professional, working with Indigenous Parties.

Part 8 Investigation and enforcement

AAA generally supports the recommendations relating to this Part of the Acts, however AAA notes that simply publishing requirements on the DERM website is insufficient to meet awareness requirements. Compliance with the Acts could be encouraged better via workshops or other face-to-face education and training opportunities, which could then be supported via Internet information. AAA, because of its experience in this area, would be keen to provide advice and assistance if requested.

Recommendation 8.1

The AAA recommends that members of the AAA, or professional and qualified cultural heritage managers, with experience in Indigenous cultural heritage management, working closely with Indigenous stakeholders/boards/advisory groups etc. be included as stakeholders in any drafting of legislative or regulatory provisions relating to awareness and capacity-raising strategies, including establishment of best-practice heritage management training to encourage compliance with the Acts.

Part 9 Miscellaneous

Given the large number of major problems with the Queensland Acts, both identified in the Key Issues discussion paper and not yet addressed by any discussion, AAA would recommend a further review of the Acts in five years, rather than seven years.

Recommendation 9.1

The AAA recommends that the Acts be reviewed again in five years.

Conclusion

Many of the problems identified by the AAA in this submission could be reduced by the introduction of an **Indigenous Cultural Heritage Board**.

In its current form, where developers self-assess projects under poorly developed Duty of Care provisions, the Acts do not enable Indigenous owners any substantial control over the heritage management process. In her *Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, Justice Elizabeth Evatt (Evatt, 1996: xxiv) made a number of recommendations, including:

Recommendation 6.3: Aboriginal Cultural Heritage Bodies

Minimum standards for State and Territory legislation should include the establishment of Aboriginal cultural heritage bodies with responsibility for site evaluation and for the administration of the legislation. They should:

- *be independent;*
- *be controlled by Aboriginal members representative of Aboriginal communities;*
- *have gender balance;*
- *have adequate staffing, expertise and resources; and*
- *have access to independent advisors, e.g. anthropologists, archaeologists*

The *Queensland Heritage Act 1992* has an independent Heritage Advisory Board to advise the Minister and the regulatory authority about decisions regarding built heritage management. Similar provisions for independent Heritage Advisory Boards exist in other Australian states and territories with respect to Indigenous cultural heritage management. No such board exists in the provisions of the ACHA. It is recommended, therefore, that a **Queensland Indigenous Cultural Heritage Board (QICHB)** be established, in keeping with Justice Evatt's recommendations.

Indigenous oversight of cultural heritage and secret and sacred information could be achieved by setting up the QICHB. This Board could also serve the purpose of giving advice about heritage protection and mediate disputes between Indigenous Parties. An independent Indigenous Cultural Heritage Board could provide a less antagonistic opportunity for dispute resolution, and could also be used to provide advice to the Minister and the regulatory authority about problems with the Act that could be addressed through policy development, rather than legislative reform. Other States have such advisory bodies.

The QICHB should be set up with the following attributes:

1. a balance of representatives from different regions in Queensland with nominations from Aboriginal and Torres Strait Islander bodies. Members of the Board should be people who are recognised authorities on their own sites and traditions.
2. composition of the Board should be 12 Indigenous members with a fair balance of gender.
3. up to three appointments should be nominated from the Indigenous Cultural Heritage Coordination Unit of DNRW. These appointments should be professional people with relevant expertise from within the public service.
4. meetings could be held when required but no fewer than three times a year. There should be a quorum of eight with at least two female and two male members attending.

Functions of the QICHB

The functions¹ of the QICHB should include:

- Provide advice to the Minister on measures for the effective protection and management of Indigenous cultural heritage in Queensland, including the management of culturally sensitive information relating to that heritage;
- Provide advice to the Minister on policy matters relating to the protection of specific Indigenous cultural heritage places, areas, or remains in Queensland;
- Provide advice to the Minister on the protection of intangible heritage;
- Provide advice to the Minister on draft policy documents and guidelines;
- Provide advice to the Minister on measures to promote the role of Indigenous people in the protection and management of Indigenous cultural heritage and in the administration of the Act;
- Develop measures to promote public awareness and understanding of Indigenous cultural heritage in Queensland.
- Regularly review cultural heritage management procedures as set out in the Act and associated regulations and guidelines;
- Provide advice to the Minister on performance of the Act (and its administration) against its stated intentions;
- Regularly review cultural heritage activities and projects in Queensland;
- Regularly review Duty of Care assessments;
- Review the determination of s.35(7) Indigenous Parties;
- Provide advice to the Minister on resourcing needs of NTRBs and ACHBs;
- Provide advice on the updated content of a Register of Indigenous Parties and addresses for services;
- Review any reports on Indigenous cultural heritage produced by the CHCU.

¹ Many ideas for the functions of the QICHB came from s.132 of the *Aboriginal Heritage Act 2006 (Vic)*.

Appendix A - Duty of Care provisions

Introduction

Duty of Care provisions aim to ensure that any activity likely to harm cultural heritage (as defined in Schedule 2 of the Act) first considers that cultural heritage and takes all reasonable steps to minimise harm. This aim is currently not being realised because the Duty of Care process is flawed, the guidelines do not recognise the full range of cultural heritage, and the opportunity for oversight of the process by the regulatory authority is inadequate. Duty of Care is self-assessed by a land user based on the nature of impact of the land use on cultural heritage. Duty of Care Guidelines do not take account of the likelihood of buried cultural heritage, nor is there adequate regulation of the self-assessment process.

1. Problems

- 1.1 Section 23 of the ACHA, and the Duty of Care Guidelines (issued under s.28 of the Act) list some of the requirements of 'Duty of Care' actions. These actions are not linked to the *Integrated Planning Act 1997* (IPA), which leads to inconsistency across the State in the assessment of developments. Although there have been over 20,000 Database searches since the introduction of the ACHA, the fact that there are some 2000 development applications each year in Maroochy Shire alone suggests that a large number of development applications bypass the ACHA and its provisions completely. The inability of the State to report on the efficacy of the ACHA legislation is linked to the lack of a requirement to report to the regulatory authority, and to the issue of self-assessment.
- 1.2 Self-assessment of a development or other activity likely to harm cultural heritage is at the heart of the problems with site protection under the provisions of s.23 of the ACHA. Developers are rarely skilled in cultural heritage identification, nor are they trained to understand the possible impacts of previous disturbance on Aboriginal heritage places. For example, the Duty of Care Guidelines imply that a development which is planned for an area in which there has been previous ground disturbance is unlikely to further affect Aboriginal heritage. Nevertheless, the survival of buried heritage, even in the most extreme cases of prior ground disturbance, has been well documented in archaeological literature (e.g. Haslam *et al.* 2003, McDonald *et al.* 2007, Rains and Prangnell 2002). The failure of the Duty of Care Guidelines to recognise that Aboriginal heritage is often buried and therefore survives below the surface of the ground is a significant problem for the Act's capacity to meet its stated aim 'to provide effective protection and conservation of Aboriginal cultural heritage'.
- 1.3 Lack of access to reports of previous cultural heritage assessments of an area also reduces the effectiveness of the Duty of Care assessment. Making accurate decisions about Duty of Care requires that adequate information be available relating to the development area; previous land use activity; the nature of heritage in this area; and the likelihood that heritage has survived previous land use.

2. Suggested measures to rectify the problems

2.1. The assessment of Duty of Care should be the responsibility of the regulatory authority, as it is in other States and Territories, and not the responsibility of the land user. In the Northern Territory, for example, there is a system of certification for development projects to ensure consistency across the Territory in the consideration of potential impacts on cultural heritage by development proposals. In New South Wales the regulatory authorities determine the need for a CHMP, not the development proponent. In Victoria, the proponent and/or the statutory authority decide if a CHMP is required, in accordance with very specific triggers for a CHMP in the regulations. The mechanisms for assessing Duty of Care in States and Territories other than Queensland not only meet best practice cultural heritage management requirements (Pearson and Sullivan 1995), but also enhance certainty for both the cultural heritage and the developer.

For Queensland, Duty of Care could be made more effective in a number of ways:

- a. Under the provisions of IPA, local government authorities should be encouraged to make compliance with the ACHA a condition of development, not merely an advisory requirement. In Victoria, for example, s. 52 of the *Aboriginal Heritage Act 2006 (VIC)* requires that a CHMP is completed before a permit for development is issued.
- b. To achieve reliable assessment of the potential effects of development on cultural heritage, an increased role for the regulatory authority is needed.
- c. As an alternative to the regulatory authority assessing Duty of Care requirements, the Act could make provision for heritage advisors, local council heritage officers, Aboriginal Cultural Heritage Bodies, Aboriginal Parties, or a qualified cultural heritage officer employed by the land use proponent to make decisions. All such assessments would need to be reviewed and approved by the regulatory authority to ensure both consistency and accuracy.
- d. If Aboriginal Cultural Heritage Bodies and/or Aboriginal Parties are to be given a role in reviewing development applications, they, too, will need a substantial increase in resource funding.

2.2. The Duty of Care Guidelines need to be revised to take account of intangible heritage and the likelihood that buried cultural heritage has survived previous ground disturbance. Such revision should recognise that a CHMP is needed for most of the categories defined in the Duty of Care Guidelines, and not solely for Category 5 developments.

2.3. Assessment of the requirements of Duty of Care will not be effective unless assessors are able to access as much information as possible about the area in which land use is to occur. CHMPs and reports prepared as part of the CHMP process must form part of the Database, able to be accessed by Aboriginal Parties, cultural heritage advisors, and land use managers.

2.4. The appointment of an independent Indigenous Cultural Heritage Board (see Conclusion), with State-wide responsibilities, would also help to resolve these issues.

Appendix B – Identification of Aboriginal Parties

Introduction

The reliance on Native Title as the primary basis for determining the composition of Aboriginal Parties disenfranchises Aboriginal people who may have a close connection to land and heritage without necessarily being able or willing to claim Native Title.

1. Problems

1.1 There are significant issues surrounding the use of Native Title to identify Aboriginal Parties. These issues include:

- a. It is proving increasingly difficult to register Native Title claims. This has two separate consequences.

First, even where old claims have ‘failed’, it can be difficult to replace them, leaving the old claimants as the Aboriginal Parties and thereby denying others who may have as good, if not better, claims to enjoy procedural rights in relation to cultural heritage.

Second, in some cases these older claims were poorly conceived anthropologically, sometimes had only one or two applicants, and were not properly authorised. Despite such weaknesses and flaws, the claims continue to enjoy procedural rights under the ACHA even when they do not attract any procedural rights under the *Native Title Act 1993 (Cth)* (NTA) (the primary vehicle under which they were developed);

- b. Use of Native Title as the preferred basis for Aboriginal Party registration makes one of the most critical issues in the management of cultural heritage subject to the vagaries of an entirely separate piece of legislation, the primary purpose of which is completely unrelated to cultural heritage. This is noteworthy in relation to issues such as strike-outs of claims, and the existence of overlapping claims, amongst other things (but also see below);
- c. The process of using Native Title as the preferred basis for determining an Aboriginal Party is anthropologically ill-informed. People may have substantial interests in cultural heritage management despite not having the dominant Native Title interest in an area. For instance, privileging Native Title claimants over non-Native Title claimants does not take account of well understood concepts such as secondary rights in land linked to totemic associations. It also denies interests in important historical sites, such as missions and reserves, on the part of people who were forcibly removed to such places, many of which were situated away from traditional country. As a consequence, such people today have difficulty in asserting a Native Title claim.
- d. Changing circumstances surrounding many claims also create problems. In many cases, the address for service on a Native Title claim is no longer current, a situation exacerbated by the recent rationalisation of Representative Bodies. The absence of specified mechanisms to facilitate engagement except where a CHMP (or a Native Title agreement) is required adds to this problem. It means that there is a real likelihood that groups will miss out on opportunities while proponents/sponsors can

assert they have formally complied with or have meaningfully sought to comply with the provisions of the ACHA.

- 1.2 The absence of a Native Title claim, or at least a claim that was registered as of April 2004, results in a situation little different from that which existed under the *Cultural Record Act* with respect to interested parties. There is no mechanism provided in the ACHA to determine who meets the broad criteria provided under s35(7).
- 1.3 An additional problem is the disjunction between Aboriginal Parties and Endorsed Parties, and the absence of a mechanism to join new Aboriginal Parties to a CHMP negotiated prior to their assumption of that status. There are now several cases where there has been wholesale replacement of Aboriginal Parties on claims but where CHMPs have been negotiated with the displaced applicants. Those displaced applicants can continue to enjoy Endorsed Party status on a CHMP, while under provisions of the ACHA the new Aboriginal Parties cannot be joined to the process.
- 1.4 Setting aside the issue of rationalisation and old addresses for service, the use of Native Title Representative Bodies (NTRBs) can also create problems. Some NTRBs argue that they are not resourced to deal with cultural heritage issues and therefore have a policy of refusing to manage such issues even where they are an address for service. This means that groups represented by such NTRBs may be seriously disadvantaged in procedural issues surrounding cultural heritage.
- 1.5 The discrepancy between what constitutes an Aboriginal Party under a Native Title claim and the situation where s35(7) applies also is of concern. While a Native Title claim Aboriginal Party must act as a corporate entity (i.e. a single individual cannot act to their own interests or against the interests of the rest of the group), this is not the case where s35(7) applies. In such circumstances, an individual can constitute ‘an Aboriginal Party’, and it is possible to satisfy the ACHA by entering into an agreement with an individual, without any regard for the existence of others who may have equal, if not better, credentials as regards s35(7). The only circumstance where this problem can be reduced is where a CHMP is required, as the formal process of public notification can offset this situation.
- 1.6 Where there are overlapping Native Title claims and a CHMP (or Native Title agreement) is not required, it is similarly possible, by virtue of the use of the words ‘an Aboriginal Party’, to deal with one group of interests to the exclusion of others who may also have a claim of equal standing.
- 1.7 The lack of specified standards to contact Aboriginal Parties other than where a CHMP or an EIS is required means proponents have no clear guidance as to what constitutes a reasonable attempt to contact those Aboriginal Parties.

2. Suggested measures to rectify the problems

The above discussion is not intended to suggest that the ACHA dispense with, or replace, the use of Native Title to assist in determining who is an Aboriginal Party. The problems arising from the situation that existed under the *Cultural Record Act* were readily apparent and no simple formula using some other set of criteria presents itself. It is suggested,

however, that a range of measures to refine the current arrangements should be included in the amending legislation.

2.1. General matters relating to the identification of Aboriginal Parties:

While an amended ACHA cannot set parameters or conditions for the *Native Title Act*, it could address the current hierarchy of 'Aboriginal Party'. Firstly, it should define what it means by a failed claim, a term that it not used in the NTA and for which no definition is provided within the ACHA. Secondly, taking account of that definition, it could establish a higher threshold at which possession of a Native Title claim affords procedural rights. Thus, for instance, a claim that failed because it was not authorised by a claim group would not afford procedural rights to the failed claimants. That is, the threshold could operate by being better informed as to the circumstances in which a claim failed.

This solution would require a second tier of Aboriginal Party: those claims that had failed to pass the revised threshold and those people who have never had a registered Native Title claim (or not one registered as of April 2004).

The ACHA should also be better informed anthropologically. Thus, where well-developed anthropological data are available, the ACHA should have conditional clauses that allow those with established interests in land and cultural heritage but who do not constitute the Native Title claim group to have their interests recognised and to be granted status as Aboriginal Parties. The obvious question of who would assess and make such determinations is discussed below.

The issue of allowing those with valid interests in important historical sites to be involved in their management can be addressed by having a conditioning clause that provides for this eventuality. That is, a schedule of such sites can be specified in the legislation as requiring a broader involvement of 'interested parties' as against 'Aboriginal Parties'. The number of cases to which this provision would apply would not be great and would not prove a major inconvenience to the vast majority of proponents but would allow Aboriginal people with valid interests in such cases to assert those interests.

Finally, the problem of old addresses for service should be confronted by a comprehensive review, conducted by the Cultural Heritage Coordination Unit (CHCU), of all claims to assess the currency of the address for service for all Native Title Aboriginal Parties throughout the State. It should be mandatory to consult the CHCU to obtain current addresses when attempting to engage with Aboriginal Parties. Resources for this purpose should be allocated as a priority.

2.2. The issue of determining a s35(7) Aboriginal Party:

The process of self-assessment is fraught and can result in large numbers of people making such assessments for single projects, there being no means of independently validating such assertions. It is recommended that a secretariat linked to an independent agency (see later sections of this submission) should be charged with reviewing such assertions on a project by project basis. A list of criteria and guidelines would need to be developed for this purpose.

2.3. The disjunction between Aboriginal Parties and Endorsed Parties:

This can be addressed by including a clause in Part 7 that allows a Sponsor the discretion to offer the status of Endorsed Parties to Aboriginal Parties who were not Aboriginal Parties during the notification process. The ACHA should also make explicit that while it is not possible for a Sponsor to unilaterally revoke the status of an Endorsed Party who is no longer an Aboriginal Party, such an Endorsed Party may voluntarily resign their status.

2.4. Consulting with NTRBs:

The independent agency (see below), or the CHCU, should be charged with consulting with all NTRBs to determine their interests and resourcing needs with respect to assistance with the notification processes associated with cultural heritage. Where NTRBs decline to involve themselves in that notification process, or their demands prove excessive, the existence of a separate comprehensive register of Aboriginal Parties will be essential, with such a register maintained by the independent agency or CHCU, with addresses for service other than those included in a the Native Title claim summary. It should be mandatory for any development proponent, or any person wishing to conduct activities that may adversely affect cultural heritage, to examine such a register – see also Point 2.1 above.

2.5/2.6 The term ‘an Aboriginal Party’:

The term ‘**an** Aboriginal Party’ should be replaced by the term ‘**the** Aboriginal Party’ thereby removing the possibility for any one individual or, where there are overlapping claims, one group to assume such status to the discomfort or disenfranchisement of others who may have equal, if not better, credentials to such status.

2.7. Failure of the ACHA to specify mechanisms to engage with Aboriginal Parties:

To address the current failure of the ACHA to specify mechanisms to engage with Aboriginal Parties except where a CHMP or Native Title agreement is required, a register of Aboriginal Parties, based on a set of criteria covering Native Title as well as s35(7) Aboriginal Parties, should be created. The register would be developed and maintained by the independent agency (see below) or the CHCU. Examination of the register, and action to contact registered Aboriginal Parties, should be a mandatory requirement to meet the Duty of Care. .

Appendix C - CHMPs, Risk Assessment and Significance

Introduction

Separation of site identification and significance assessment from cultural heritage management planning, as seen in CHMPs, is not in line with best practice cultural heritage management (see Burra Charter 1999; Pearson and Sullivan 1995: Chapters 4 and 5).

Linking these processes together provides greater certainty for developers that accidental discovery of cultural heritage will not interfere with development.

1. Problems

Limited use of CHMPs in cultural heritage management leads to the following problems:

- 1.1 There are no clear triggers for a CHMP (or alternative agreement that includes planning for cultural heritage) unless an EIS is required under IPA or a Category 5 development under the provisions of the Duty of Care Guidelines is planned. The Act implies that CHMPs (or alternative agreement that includes planning for cultural heritage) are only needed for major developments. The reality is that planning for Aboriginal heritage should be the responsibility of all land users (including governments) even for small projects (i.e. it is not the *size* of the project or the nature of the *development* that should trigger a cultural heritage assessment; the Act should focus on the identification, assessment and management of cultural heritage *values*).

The Act also implies that only physical cultural heritage places require a CHMP (or alternative agreement that includes planning for cultural heritage). Indigenous people and heritage professionals recognise that intangible heritage, and particularly story places or sacred places with no tangible heritage, can be seriously impacted by even the least invasive development.

- 1.2 The time limit for the preparation of CHMPs is too short for complex projects. The Act sets a time limit for development of a CHMP of 84 days. The setting of a time limit for the finalisation of a CHMP does not recognise the complexity of projects which have difficult cultural heritage issues to be addressed.
- 1.3 The significance assessment provisions of the ACHA fall well short of best practice cultural heritage management. There are two issues here:
 - a) Cultural heritage identification and significance assessment are divorced from the CHMP process. Best practice cultural heritage management (e.g. Burra Charter 1999; Pearson and Sullivan 1995) emphasises that significance must guide cultural heritage decision-making. Accreditation provisions in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* require separation of significance assessment from management constraints (such as funding availability or site damage), but this does not mean that a CHMP should be produced without an inventory and assessment of the resource. Without physical assessment of a proposed development locale it is virtually impossible to predict the occurrence of cultural heritage and hence it is impossible to produce a CHMP that takes account of Aboriginal knowledge of heritage, and concerns for management, conservation, or salvage. Such unreliability and uncertainty can lead to accidental discovery of, and subsequent harm to, cultural heritage that can delay development and distress traditional owners.

- b) Assessment of social significance, which is the basis for significance to Indigenous peoples, only addresses one component of significance and generally ignores a variety of other levels of significance recognised by the Burra Charter. Archaeological and anthropological significance may at times differ from Aboriginal and/or Torres Strait Islander significance. Although the ACHA rightly emphasises Indigenous heritage values, to ignore scientific significance can lead to the destruction of very important places, particularly buried sites, not known to Indigenous people. As an example, Lake Mungo was a place not known to Aboriginal people until it was investigated by archaeologists in the late 1960s and early 1970s. This site is now on the World Heritage List because its scientific and Aboriginal significance was demonstrated through the co-operative assessment of the place by traditional owners and archaeologists.

- 1.4 There is no clear opportunity for an annual (or more frequent) review of the status of cultural heritage work in Queensland, such as *State of the Environment* reporting. In other States and Territories, annual reviews or other State-wide reporting mechanisms allow developers and heritage professionals to know what has happened with respect to cultural heritage. A similar process for Queensland would greatly enhance the effectiveness of the operation of the ACHA.
- 1.5 The provision in the Act for alternative agreements, which exist outside the CHMP framework, has the potential to remove development activity from the purview of the Department of Natural Resources and Water. Such alternative agreements can operate outside the conditions of the Act and therefore outside any process of scrutiny or registration. Alternative agreements cannot be incorporated into the Database and are therefore not available for incorporation into a knowledge system. The Act, and the regulatory authority can ensure that CHMPs meet best practice standards for heritage management, but alternative agreements cannot be reviewed to ensure they too meet high standards.

2. Suggested measures to rectify the problems

- 2.1. The regulatory authority, rather than the development proponent, should determine whether a CHMP or other form of study is required, as occurs in other States. Alternatively, a developer could present a CHMP to the regulatory authority for assessment and approval. This is similar to the process used to obtain a Certificate to Destroy heritage places in NSW. Clearly this option would require increased resourcing for the regulatory authority.

Triggers for a CHMP (or alternative agreement that includes planning for cultural heritage) need to be more than an EIS or Category 5 development. Triggers for CHMPs (or alternative agreement that includes planning for cultural heritage) for research, minor developments, or government projects that are likely to impact on cultural heritage (as determined by traditional owners, heritage professionals or the regulatory authority, not the land user) need to be included in the Act or regulations.

- 2.2. If time limits are to remain in the Act, then a hierarchy of timeframes needs to be recognised to accommodate complex projects. This hierarchy needs a facility to extend time limits if unanticipated complexity is revealed during the CHMP process. Time limits should be part of regulations, and not the Act, so that they can be more easily negotiated or varied.

2.3. a) Assessment of significance should be a requirement of the CHMP planning process, not a component of the CHMP for implementation after the finalisation of the CHMP. Currently an assessment of an area for a CHMP is voluntary (s.2.8 of the CHMP Guidelines). This provision should be made mandatory. This would ensure that cultural heritage assessment in Queensland meets best practice provisions as outlined in the Burra Charter and in cultural heritage texts such as Pearson and Sullivan (1995), and as has been implemented in other jurisdictions, such as New South Wales, Victoria and the Northern Territory.

b) Requirements for significance assessment need to recognise that both Aboriginal/Torres Strait Islander (social) and scientific (archaeological, anthropological and historical) significance need to be assessed as part of the CHMP planning process.

2.4. Grey literature needs to be submitted to the regulatory authority and be included in the Database as a research tool. In Victoria, for example, reports on cultural heritage, known as ‘grey literature’, are legal documents and are available for reference. The 16th General Assembly of ICOMOS – the International body that established policies for best practice cultural heritage management on a global scale – meeting in Quebec, Canada, in October 2008 passed the following resolution with respect to making archaeological reports available for reference:

ICOMOS and its National Committees encourage government heritage agencies to enable public access to the results of archaeological inquiry undertaken as part of development projects, environmental impact statements and other non-research based archaeology.

Consequently, the recommendation made here for heritage ‘grey literature’ (i.e. CHMPs) to be publicly available through a controlled access process is a recognised aspect of best practice cultural heritage management. An annual report to Parliament, to be made available to the public, should also be prepared by the Cultural Heritage Coordination Unit of DNRW. In this report, CHMPs should be summarised, and data about numbers of sites reported, registered, actively protected, destroyed, managed, etc. should be made public, such as in *State of the Environment* reports.

2.5. The provision for alternative agreements should be discarded. All projects likely to harm cultural heritage should be subject to the (improved) provisions for a CHMP.

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