Submission of: Jeanie Govan, Assoc Prof Sharon Harwood, and Dr Ed Wensing

Cultural Heritage Acts Review
Department of Seniors Disability Services and Aboriginal and Torres Strait Islander Partnerships
E: CHA_Review@dsdsatsip.qld.gov.au

From: Assoc Prof Sharon Harwood, Jeanie Govan and Dr Edward Wensing
C/- Assoc Prof Sharon Harwood
E: [redacted]

RE: Submission to the Options Paper finalising the review of Queensland's Cultural Heritage Acts

To Whom It May Concern

The Queensland Government should be congratulated for undertaking this review of the Cultural Heritage Acts. This review is long overdue and most welcomed. However, from our own review of the proposals contained within this Options paper in combination with the range of other statutes that affects the way that lands, and waters are managed in Queensland, we believe that the Queensland Government should undertake a comprehensive overhaul of all the statutes that refer to Aboriginal Tradition or [Torres Strait] Island Custom to create consistency throughout Queensland. To amend the Cultural Heritage Acts in isolation to how the range of Acts treat culture further exacerbates the current inconsistencies in the practices underpinning the protection and enhancement of cultural heritage in Queensland.

In our considered opinion there are now a wide range of statutes impinging on Aboriginal and Torres Strait Islander peoples land and water interests that have been enacted since the 1970s that has created a high degree of inconsistency between them. It is becoming apparent that the inconsistencies between the different statutes is cause for concern, if not confusion, not only for Aboriginal and Torres Strait Islander peoples, but also for planners and other professionals that have to work with the different statutes. In this submission, we have reviewed the different statutes to draw attention to the different interpretations of Aboriginal Tradition and Island Custom and how confusing the different requirements can be, especially when several of the different statutes might be at play at any one time or situation. In our opinion, the proposals put forward in the Options paper for the review of Queensland's Cultural Heritage Acts do not address the relationship that the Queensland Government is seeking to create with Queensland's Indigenous population; namely, to ensure that these Acts continue to protect and conserve Queensland's Aboriginal and Torres Strait Islander cultural heritage.

Furthermore, our submission also demonstrates that as a consequence of the inconsistencies in the definitions of terms and requirements in the different statutes, there is confusion about what human rights are to be included in decision making that affects Aboriginal and Torres Strait Islander people's cultural heritage and the human rights contained within the United Nations *Declaration of the Rights of Indigenous People* (UNDRIP). In particular, how the right to self-determination and the right to Free Prior and Informed Consent (FPIC) are to be exercised when it comes to protecting and conserving their cultural heritage.

Any proposed new Cultural Heritage Acts should ensure that:

1. Aboriginal and Torres Strait Islander peoples are in control of their cultural heritage, and that their free, prior and informed consent is obtained in any dealings with their cultural heritage;
2. the mechanisms for achieving self-determination in relation to their cultural heritage are firmly embedded within any proposed framework;

3. there is greater transparency by all parties about decision making, accountability and dispute resolution.

This submission is made in two Sections. Section 1 provides an overview of the way in which legislation in Queensland has defined and restricted the level of autonomy that Aboriginal and Torres Strait Islanders have over the planning, use, management and development of their lands, culture, and traditions. This critique gives context to the recommendations (made in this submission) for creating a human rights-based approach that recognises that Aboriginal and Torres Strait Islander peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional expressions and the right to maintain, control, protect and develop their intellectual property of such cultural heritage, traditional knowledge and traditional expressions (consistent with the UNDRIP). Section 2 responds to the Overarching Framework proposed to protect Cultural Heritage to achieve self-determination, and free, prior, and informed consent.

Whose Cultural Heritage is being protected?

Before addressing the sections of this report is it important to first distinguish whose cultural heritage is being protected through these amendments. The United Nations (2021: vii) refers to *ancestral lands as the source of Indigenous peoples' cultural, spiritual, social, and political identity and the foundation of traditional knowledge systems*. Furthermore, Article 31 of the UN Declaration on the Rights of Indigenous Peoples states that:

1. *Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage expressions, as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*
2. *In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.*

Article 33 states that:

3. *Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.*
4. *Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.*

We believe that the Cultural Heritage legislation must therefore give clear guidance as to who must be consulted and whose traditions define the cultural heritage to be protected, particularly where a conflict may arise. We believe this clarification is necessary because neither the *Human Rights Act 2019* (Qld) or the *Planning Act 2016* (Qld) make this distinction. These two statutes require that all Aboriginal people must be consulted irrespective of ancestral, historical, or residential connection. We believe the Queensland Government should apply an approach which is consistent with Articles 31 and 33 of the United Nations *Declaration on the Rights of Indigenous Peoples* and enable the Aboriginal and Torres Strait Islander peoples concerned to determine who needs to be consulted. At a minimum in Queensland, this must include registered native title claimants or native title holders as defined in the *Native Title Act 1993* (Cth) and those with ancestral connections to cultural heritage, irrespective of whether they were party to a native title claim or determination.

Section 1. What is the Queensland Government's strategic intent?

We are very concerned that the process of identifying Indigenous cultural values may end up being designed through a non-Indigenous lens to fit with the land use planning and development system in Queensland. While using maps to identify where cultural heritage exists may provide consistency with the ways that other values (constraints) such as bushfire, environmental values, scenic amenity, and flood immunity are presented and assessed, we do not believe that Aboriginal or Torres Strait Islander cultural heritage values can be determined through the same process. We are adamant that only the Aboriginal and Torres Strait Islander peoples who hold the cultural knowledge and traditions that may be relevant to a place can identify and assess how that knowledge and tradition may be affected. We therefore also believe that the Queensland Government is obligated to apply the principles in the UN Declaration on the Rights of Indigenous Peoples. Namely, the rights to self-determination, the right to free, prior and informed consent, the right to maintain and protect their cultural heritage, traditional knowledge and traditional cultural expressions, and the right to control their intellectual property. The Aboriginal and Torres Strait Islander people concerned should be the people (not governments or other third parties) making decisions about how their cultural heritage values will be impacted and advising on how those impacts can be avoided, ameliorated, or accommodated. This is the only way that self-determination and free, prior, and informed consent can work and requires a fundamentally different approach to what is being proposed in the assessment framework outlined in the Options Paper.

From the review of legislation (see Appendix A) that governs the protection, consideration, and application of cultural heritage, traditional knowledge and traditional expressions in the planning, use, management and development of land and waters in Queensland, it is apparent that there is critical need for a more coherent strategic policy framework for the protection and conservation of Aboriginal and Torres Strait Islander peoples cultural heritage and their ongoing connections to and responsibilities for Country. For example, the *Acts Interpretation Act 1954* (Qld) define what is meant by Aboriginal Tradition and Island Custom but fails to consider the difference between a human right to be involved in decision making and the rights of Indigenous people to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional expressions over the lands and waters that they have an ancestral connection to. The *Legislative Standards Act 1992* (Qld) requires all legislation to have *sufficient regard* to Aboriginal tradition and Island custom. But what does '*sufficient regard*' mean in practice? Several other statutes (the *Nature Conservation Act 1992* (Qld)*, Wet Tropics World Heritage Protection and Management Act 1993* (Qld) and *Environmental Protection Act 1994* (Qld)) requires the entity to only '*have regard'* to Aboriginal Tradition and Island Custom. What does that mean in practice?

The problem is that none of the statutes provides clear enough guidance on what to do to enact the rights of the Aboriginal and Torres Strait Islander peoples in circumstances when their cultural heritage or other ongoing connections to land and waters may be adversely impacted. Essentially what happens is that Aboriginal Tradition and Island Custom is simply disregarded if it conflicts with what the management agency seeks to do with the lands and waters at hand.

More concerning is the *Aboriginal Land Act 1991* (Qld) which introduces the term *Aborigines particularly concerned with the land* to define an Aboriginal who: a) has a particular connection with the land under Aboriginal tradition or b) lives on or uses the land or neighbouring land. The term

Aborigine is a colonial term which many Aboriginal people find offensive and outdated. It is time for this outdated term to be removed from the statutes.

The *Planning Act 2016* (Section 5,2(d)) describes how the purpose of the Act will be advanced through valuing, protecting, and promoting Aboriginal and Torres Strait Islander knowledge, culture, and tradition. However, in practice this means that irrespective of whether an Aboriginal or Torres Strait Islander person has ancestral connections to the lands and waters, that the purpose of the Act can only be advanced if the collective knowledge, culture, and tradition is valued, protected, and promoted. This invariably means that those who have the cultural knowledge to speak about country are treated the same as those who live in the area (human right to be involved). This begs the question: whose knowledge, culture and tradition are to be valued, protected, and promoted? How will the Human Rights Commission resolve the conflict between the protection of cultural heritage of those who have ancestral connections and those who have a human right to be involved?

Finally, the elephant in the room is the *State Public Works and Development Organisation Act 1971* (Qld) which regulates (amongst other things) major projects in the state of Queensland. This statute fails to acknowledge Aboriginal and Torres Strait Islander people or their culture in any section of the Act. Moreover, the Social Impact Assessment guideline is only given statutory force through the *Strong and Sustainable Resource Communities Act 2017* (Qld) - which as an aside, does not specifically address social impacts of development to nearby Aboriginal or Torres Strait Islander communities.

The relevant statutes to lands and waters in Queensland are not consistent in their consideration of Aboriginal or Torres Strait Islander culture, nor do they distinguish between the cultural rights of those with ancestral connections and the human rights provided for historical residents in planning and development activities. This mish mash of approaches simply infers that the state of Queensland does not have a coherent relationship or policy approach with Queensland's and Aboriginal and Torres Strait Islander peoples. As a consequence, there is a range of inconsistent approaches to the identification and protection of cultural heritage in Queensland. This inconsistency will have serious consequences for the proposed framework and the implementation of compliance mechanisms – specifically its application through the *Planning Act 2016* (Qld).

We therefore recommend that the *Acts Interpretation Act 1954* (Qld) be amended to redefine what is meant *by Aboriginal tradition* and *Island custom* to explicitly distinguish:

a) Aboriginal and Torres Strait Islander people as a population to be considered within inclusion policies and engagement practices as a mechanism to ensure that their human rights are taken into consideration in decisions that affect their life are upheld; and
b) Aboriginal and Torres Strait Islander people who have ancestral connections to territories so that they may maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional expressions and their right to maintain, control, protect and develop their intellectual property of such cultural heritage, traditional knowledge, and traditional expressions, to ensure their identity, along with cultural and economic viability.

We also recommend that the Queensland Government could follow the approach adopted by the province of British Columbia in Canada.

In 2019, the province of British Columbia passed its own statute to implement UNDRIP, the first sub-national jurisdiction in Canada to do so. The Act's objectives are to affirm the application of Declaration to the laws of British Columbia, to contribute to the implementation of the Declaration, and to support the affirmation of, and develop relationships with, Indigenous governing bodies. Unlike the Canadian statute, the British Columbia Act also includes provisions authorising the

provincial government to enter into agreements with Indigenous governing bodies for joint decision-making or consent with respect to the use of statutory powers.

Under the Act, the provincial government must develop an action plan in consultation and cooperation with Indigenous peoples. A draft has been prepared for consultation, outlining proposed actions to be taken in cooperation with Indigenous peoples between 2021 and 2026, with progress to be reviewed and publicly reported annually. Actions are grouped under the four themes of self-determination and inherent right of self-government; title and rights of Indigenous peoples; ending Indigenous-specific racism and discrimination; and social, cultural, and economic well-being.

British Columbia has also developed ten draft principles, modelled on those introduced by the Canadian federal government in 2017, which provide high-level guidance on how provincial representatives engage with Indigenous peoples (see Figure below).

Figure: Draft Principles for British Columbia's Relationship with Indigenous Peoples

The Province of British Columbia recognises that:

1. All relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.
2. Reconciliation is a fundamental purpose of section 35 of the *Constitution Act*, 1982.
3. The honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.
4. Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.
5. Treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.
6. Meaningful engagement with Indigenous peoples aims to secure their free, prior and informed consent when B.C. proposes to take actions which impact them and their rights, including their lands, territories and resources.
7. Respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.
8. Reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with the federal government and Indigenous nations that promotes a mutually supportive climate for economic partnership and resource development.
9. Reconciliation is an ongoing process that occurs in the context of evolving Crown-Indigenous relationships.
10. A distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of Indigenous peoples in B.C. are acknowledged, affirmed, and implemented.

Source: British Columbia 2018

Adopting the same approach as British Columbia would provide a much stronger basis for the protection of all of the rights enshrined within the UN *Declaration on the Rights of Indigenous Peoples*.

Section 2. The new Cultural Heritage Assessment Framework

Firstly, it is critically important that the assessment framework move beyond the antiquated *stone and bones* mentality to include a definition of Intangible Cultural Heritage (ICH). Defining ICH must enable the protection of the culture of Aboriginal people who are connected to the lands and waters with their ancestors. Hence the need to distinguish the rights of historical residents/owners from those with ancestral connections to lands and waters as previously discussed.

Secondly, the proposed framework should be tenure blind. By this we assert that National Parks, State Forests, Marine Parks etc should be subject to the framework, just as freehold and state lands are also considered.

If ICH is included in the definition of cultural heritage, then the notion of prescribed and excluded activities and high risk areas requires reconsideration. The notion of a prescribed or excluded activity requires the land to be first mapped to identify the areas of cultural significance. ICH is not a spatial attribute that can be mapped, however, land that possesses the ICH can. Therefore, the only way that the cultural assessment framework can be achieved is for the Aboriginal people with ancestral connections to first map their lands and waters, then they determine the activities or impacts that may have a deleterious impact on their cultural heritage and then they assign a level of assessment to the activity to ensure the protection of the cultural heritage value.

We believe that it will take some time to develop a method of mapping to inform a system that is capable of working within the existing legal and land tenure frameworks (ie the Land Court system).

Therefore, we propose the following:

1. Aboriginal and Torres Strait Islander people create their own cultural heritage management plans for their ancestral lands. Issues such as who would do this, what system would be used to create the maps and how this would be properly resourced would need to be resolved. This does not infer that the detail of cultural significance be made publicly available, rather that the process protects intellectual property over their cultural heritage, traditional knowledge, and traditions expressions. A system for the development of such plans, including the criteria to guide identification, recording, and mapping the detail would require careful consideration and negotiation with First Nations parties. It must also be mindful of the Indigenous data sovereignty and the protection of intellectual property rights.
2. Included in the plans should be a risk assessment process that ranks areas according to impacts of development (ie land use) upon cultural heritage values. Outcomes from the risk assessment could then determine the level of protection required and therefore ascribe categories of significance. This may include a continuum of protection interventions (ie defining impact parameters) or a continuum of significance to maintaining cultural heritage, traditional knowledge and traditional expressions.
3. The outcomes of the preferred planning and mapping process would need to be considered a State Interest for the purposes of the State Planning Policy (S4 of the *Planning Act 2016*) and to be considered appropriately in local government planning and development assessment. However, plans and maps should also be triggered for all relevant legislation such as the *Nature Conservation Act 1992, Wet Tropics World Heritage Protection and Management Act 1993 and Environmental Protection Act 1994 and the Water Act 2000.*
4. The plans and maps would require a robust evidence trail that also protects intellectual property rights as there will no doubt be legal challenges ahead.
5. Aboriginal and Torres Strait Islander people would need to be involved in the decision making at the clan level to ensure self-determination and FPIC.

Finally, the approach to protecting cultural heritage should define a more conciliatory process that unites all who share an ancestral connection to an area irrespective of whether they are party to a Native Title determination (or outstanding claim) to participate in the protection of their cultural heritage, traditional knowledge, and traditions expressions.

There is no doubt that a cultural heritage assessment framework should be prescribed as a primary statute to protect Aboriginal and Torres Strait Islander cultural heritage, traditional knowledge, and traditions expressions. However, the proposed framework should be based on the outcomes of cultural heritage plans that are developed by clans and families to really understand the significance of their cultural heritage, traditional knowledge, and traditions expressions from the perspective of the ancestral custodians of lands and waters. We believe that a system that is based on impacts and risks should be created with First Nations people and the mechanisms for integrating their decision making into the Queensland planning, conservation and development assessment system should also include mapping, consultation, development application and assessment procedures, compliance, and dispute resolution.

Please do not hesitate to contact Sharon Harwood in the first instance should you wish to discuss the contents of this submission further.

Assoc Prof Sharon Harwood

The comments provided within this submission are those of the authors and do not necessarily represent the views of any organisations they may be affiliated with. Please contact, Assoc Prof Sharon Harwood directly should you wish to discuss the contents of this submission.

References

United Nations (2021) *State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources* (5th edition) accessed 25th February 2022 https://www.un.org/en/desa/state-world%E2%80%99s-indigenous-peoples

United Nations (2007) *Declaration on the Rights of Indigenous Peoples.* General Assembly Resolution 61/295. Available at: http://legal.un.org/avl/pdf/ha/ga_61-295/ga_61-295_ph_e.pdf

About the Submitters:

Jeanie Govan was the first female Aboriginal planner to graduate from the Master of Planning (Tropical Urban and Regional Planning) at James Cook University. Jeanie is a practicing social and community planner with 30 years' experience working in and with Aboriginal communities and organisations across northern Australia. Jeanie's publication history includes books, chapters, and journal articles about the development of Aboriginal owned lands.

Sharon Harwood is a qualified and practicing planner with nearly 30 years' experience working with rural and remote communities on natural resource planning, community planning and development projects across northern Australia. Sharon is a Fellow and Registered Planner with the Planning Institute of Australia, an Adjunct Associate Professor at both James Cook and Charles Darwin University. Sharon was awarded Australian Planner of the Year (2019-20) and Queensland Planner of the year (2018-19) by the Planning Institute of Australia. See: S Harwood google scholar for publication history.

Edward (Ed) Wensing is an experienced urban and regional planner, policy analyst and academic. Ed has held senior positions in government, the private sector and with NGOs and professional associations. Ed has worked across all jurisdictions in Australia and has an extensive practical knowledge and understanding of Commonwealth, State and Territory laws and regulations relating to land tenure, statutory Aboriginal and Torres Strait Islander land rights, native title rights and interests, land use planning, environmental protection, cultural heritage protection and management, natural resource management and the roles and responsibilities of local government. Ed's publication record includes book chapters, journal articles, research reports, discussion papers, policy papers, resource guides, book reviews, conference papers and public lectures.

Appendix A. Statute review and associated definitions

Legislation	Action required	Comments
Acts Interpretation Act 1954 (Qld)	**Section 36 (Meaning of commonly used words and expressions):** • ***Aboriginal tradition*** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships. • ***Island custom***, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances, and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances, and beliefs relating to particular persons, areas, objects or relationships.	• Does not follow from the United Nations definition of Indigenous people which refers to ancestral connection. This definition confuses the beliefs (etc) of Aboriginal and/or Torres Strait Islander people generally or a particular community or a group. Which one is it to be? • How is ancestral connection differentiated from that of an ancestral tradition? which one overrides the other and which one is to be mapped? • This definition does not include a definition of cultural heritage, traditional knowledge, or traditional expressions.
State Public Works and Development Organisation Act 1971 (Qld)	**An Act to provide for State planning and development through a coordinated system of public works organisation** Definition of environment includes— (a) ecosystems and their constituent parts, including people and communities; and (b) all natural and physical resources; and (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and (d) the social, economic, aesthetic and **cultural** conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).	Part 4, section 26(1)(a) of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) does not contain any provision about Aboriginal or Torres Strait Islander Culture. The definition of environment in the SDPWO Act and the EP Act includes social matters that affect people and communities. The consideration of social impacts through an SIA is therefore required for EISs under both Acts. SIA Guideline is silent on Aboriginal or Torres Strait Islander Culture. However, an EIS is required to investigate impacts on culture, history, and the ability to access cultural resources – which in turn requires a cultural heritage management plan. No guideline for the development of a cultural heritage management plan within this Act. However, Part 7 of the

		Cultural Heritage Acts are triggered when an environmental impact statement is required for a project.
Aboriginal Land Act 1991 (Qld)	**An Act providing for the grant, and the claim and grant, of land as Aboriginal land, and for other purposes.** **Preamble** Whereas— 1. Before European settlement land in what is now the State of Queensland had been occupied, used, and enjoyed since time immemorial by Aboriginal people in accordance with Aboriginal tradition. 2. Land is of spiritual, social, historical, cultural, and economic importance to Aboriginal people. 3. After European settlement many Aboriginal people were dispossessed and dispersed. 4. Some Aboriginal people have maintained their ancestors' traditional affiliation with particular areas of land. 5. Some Aboriginal people have a historical association with particular areas of land based on them or their ancestors having lived on or used the land or neighbouring land. 6. Some Aboriginal people have a requirement for land to ensure their economic or cultural viability. 7. Some land has been set aside for Aboriginal reserves or for the benefit of Aboriginal people and deeds of grant in trust are held on behalf of certain Aboriginal people. 8. The Parliament is satisfied that Aboriginal interests and responsibilities in relation to land have not been adequately and appropriately recognised by the law and that this has contributed to a general failure of previous policies in relation to Aboriginal people. 9. The Parliament is further satisfied that special measures need to be enacted for the purpose of securing adequate advancement	The preamble in this statute demonstrates respect for Aboriginal people and gives context to tradition. However, it also expands upon the definition provided in the WTMA about Aboriginal peoples particularly concerned with the land by incorporating a group connection i.e. members of a group that has a particular connection. It should be noted that the term 'Aborigine' is no longer regarded as offensive and no longer as appropriate terminology.

	of the interests and responsibilities of Aboriginal people in Queensland and to rectify the consequences of past injustices. 10. It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by this Act, for the adequate and appropriate recognition of the interests and responsibilities of Aboriginal people in relation to land and thereby to foster the capacity for self-development, and the self-reliance and cultural integrity, of the Aboriginal people of Queensland. **Aborigines particularly concerned with land etc.** (1) For the purposes of this Act, an Aborigine is particularly concerned with land if the Aborigine— (a) has a particular connection with the land under Aboriginal tradition; or (b) lives on or uses the land or neighbouring land. (2) For the purposes of this Act, Aboriginal people are particularly concerned with land if— (a) they are members of a group that has a particular connection with the land under Aboriginal tradition; or (b) they live on or use the land or neighbouring land.	
Legislative Standards Act 1992 (Qld)	**Section 4** (2) The principles include requiring that legislation has sufficient regard to— (a) rights and liberties of individuals: and (b) the institution of Parliament. (3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation— (j) has sufficient regard to Aboriginal *tradition* and Island *custom*.	• What is sufficient and how is it measured? • Who determines what sufficient regard is?

Nature Conservation Act 1992 (Qld)	**Section 4 Object of Act** The object of this Act is the conservation of nature while allowing for the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal *tradition* or Island *custom*. **Section 5 How object is to be achieved** The conservation of nature is to be achieved by an integrated and comprehensive conservation strategy for the whole of the State that involves, among other things, the following— (f) Recognition of interest of Aborigines and Torres Strait Islanders in nature and their cooperative involvement in its conservation: • the recognition of the interest of Aborigines and Torres Strait Islanders in protected areas and native wildlife; • the cooperative involvement of Aborigines and Torres Strait Islanders in the conservation of nature;	Nature conservation is the primary purpose of this Act. Indigenous people can only be involved in the management, not in the decision making or planning that leads to the subsequent management of the area. Therefore, cultural heritage protection will always come second or even third on lands that are managed under this Act.
Wet Tropics World Heritage Protection and Management Act 1993 (Qld)	**5 Aboriginal people particularly concerned with land** For the purposes of this Act, Aboriginal people are particularly concerned with land if— (a) they are members of a group that has a particular connection with the land under Aboriginal tradition; or (b) they live on or use the land or neighbouring land. **10 Authority's functions** (1) The authority's functions are to— (a) develop and implement policies and programs in relation to the management of the wet tropics area; and (b) formulate performance indicators for the implementation of policies and programs approved by the Ministerial Council; and (c) advise and make recommendations to the Minister and the Ministerial Council in relation to—	This act refers to people particularly concerned with the land if they are a member of a group that has a particular connection with the land under tradition. But given the definition of tradition this could be one of four types of connections. Moreover, this definition adds an additional three types of groups to be concerned with – those that live on or use the land or neighbouring land. This particular piece of legislation requires the WTMA to have regard to the Aboriginal tradition of Aboriginal people particularly concerned with land in the wet tropics area; and are to liaise, and cooperate with, Aboriginal people particularly concerned with land in the wet tropics area. Notwithstanding that the fact that the world heritage designation of the Wet Tropics did not include cultural values as part of the designation – this statute does not show any respect for those with an ancestral connection to lands.

	(i) the management of the wet tropics area; and (ii) Australia's obligation under the World Heritage Convention in relation to the wet tropics area; and (d) prepare, and ensure the implementation of, management plans for the wet tropics area; and (e) administer funding arrangements in relation to the wet tropics area; and (f) enter into, and facilitate the entering into of, **cooperative management agreements** (including joint management agreements) with land-holders, **Aboriginal people particularly concerned with land in the wet tropics area** and other persons; and (g) enter into arrangements for the provision of rehabilitation and restoration works in relation to any land in the wet tropics area; and (h) gather, research, analyse and disseminate information on the wet tropics area; and (i) develop public and community education programs in relation to the wet tropics area; and (j) promote the wet tropics area locally, nationally, and internationally; and (k) liaise with the governments and authorities of the State, the Commonwealth, other States and the Territories, and international and foreign organisations and agencies; and (l) monitor the state of the wet tropics area; and (m) advise and report to the Minister and the Ministerial Council on the state of the wet tropics area; and (n) perform functions incidental to a function under another paragraph of this subsection. (5) Subject to subsection (4), in performing its functions, the authority must, as far as practicable— (a) ***have regard*** *to* the Aboriginal tradition of Aboriginal people particularly concerned with land in the wet tropics area; and	There is no provision within this statute to allow for self-determination or FPIC.

	(b) ***liaise, and cooperate with***, Aboriginal people particularly concerned with land in the wet tropics area.	
Environmental Protection Act 1994 (Qld)	**6 Community involvement in administration of Act** This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aborigines and Torres Strait Islanders under Aboriginal tradition and Island custom, interested groups and persons and the community generally.	The EPA bunches the community as one – to include consultation with industry, interested groups and so forth. In this instance regard is given to the views and interests of 1) Aboriginal people who share a body of traditions, observances, customs and beliefs of *generally* or of a 2) *particular community* or 3) *group of Aboriginal people*, and includes any such traditions, observances, customs and beliefs relating to 4) *particular persons*, areas, objects or relationships. It is simply not clear which views and interests or which group or individual and their traditions are to be regarded.
Water Act 2000 (Qld)	**Purposes of Act and their achievement** (1) The main purposes of this Act are to provide a framework for the following— (a) the sustainable management of Queensland's water resources and quarry material by establishing a system for— (i) the planning, allocation and use of water; and (ii) the allocation of quarry material and riverine protection; (b) the sustainable and secure water supply and demand management for the south-east Queensland region and other designated regions; (c) the management of impacts on underground water caused by the exercise of underground water rights by the resource sector; (d) the effective operation of water authorities. (2) For subsection (1)(a), *sustainable management* is management that— (e) **recognises the interests of Aboriginal people and Torres Strait Islanders and their connection with water resources**;	This statute does not refer to tradition and custom but does recognise the connection to water resources – albeit not explicitly about the ancestral connection. Of all the statutes in Queensland related to water – this one needs a significant overhaul to be consistent with the UNDRIP – so that Aboriginal and Torres Strait Islander people can participate in decision making about water releases (environmental flow) that affects their cultural heritage. There is an urgent need to protect Aboriginal people who continue to live on country who are impacted by natural resource and/or major projects, with contaminated and/or limited water to have a guarantee to accessing clean drinkable water. Essentially as a state, the Queensland government allocates the water flow for a financial return but does not involve or consider the impact on cultural heritage values.

Planning Act 2016 (Qld)	**Section 3 Purpose of Act** (1) The purpose of this Act is to establish an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning (*planning*), development assessment and related matters that facilitates the achievement of ecological sustainability. (2) *Ecological sustainability* is a balance that integrates— (a) the protection of ecological processes and natural systems at local, regional, State, and wider levels; and (b) economic development; and (c) the maintenance of the **cultural**, economic, physical and social wellbeing of people and communities. **Section 4 System for achieving ecological sustainability** The system to facilitate the achievement of ecological sustainability includes— (a) State planning policies (b) regional plans (c) planning schemes (d) temporary local planning instruments (TLPIs) (e) planning scheme policies (f) a development assessment system, (g) a variety of offences and enforcement arrangements; (h) Ministerial powers (i) dispute resolution Section 5 Advancing purpose of Act (1) An entity that performs a function under this Act must perform the function in a way that advances the purpose of this Act. (2) Advancing the purpose of this Act includes— (d) **valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition**; and (e) conserving places of cultural heritage significance.	This statute makes provision to value, protect and promote Aboriginal and Torres Strait Islander knowledge culture and tradition in planning activities. However, the guideline associated with S5(2)(d) merely refers to the Cultural Heritage Acts to identify the location of cultural heritage. In this instance cultural heritage is assumed to be the same as knowledge culture and tradition and if it is not able to be triggered through the development assessment phase (ie via a CHP) then cultural heritage is missed entirely from development assessment. Unlike the other statutes this one requires the culture to be valued, protected, and promoted. Other statues considered in this submission merely require 'regard' to be made to the tradition. However, in order to value, protect and promote – Aboriginal and Torres Strait Islander people must first be consulted about their knowledge, culture and tradition. There is no definition of what constitutes knowledge and culture, how it is to be identified, protected (and who decides what is adequately protected and what mechanisms are used to protect) and no mechanism to ensure that it is valued to the satisfaction of the affected Aboriginal or Torres Strait Islander group. This act does not distinguish between a human right for and Aboriginal or Torres Strait Islander person to be included in decision making as a resident from the Indigenous rights associated with ancestral connections to self-determination and FPIC.

Human Rights Act 2019 (Qld)	**Section 28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples** (1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. (2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community— (a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and (b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and (c) to enjoy, maintain, control, protect and develop their kinship ties; and (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.	Does not make a distinction between a right pursuant to the United Nations Declaration on the Rights of Indigenous people and a human right to be included in decisions that affect their lives. Refers to tradition and custom – and therefore does consider ancestral land connections above others.