



LAND COURT OF QUEENSLAND

Chambers of Member JR McNamara

MEMORANDUM

To: Tony Cheng, Director, Strategic Policy and Legislation

From: Member McNamara

Date: 31 March 2022

Re: Cultural Heritage Acts review

Good morning Tony,

The Land Court welcomes the opportunity to make this brief submission to the Cultural Heritage Acts review. The Court would be pleased to be engaged in further discussion with the Review team regarding the proposals, in particular those concerning the consideration of the expansion of the Land Court's powers and an enhanced role.

The references to the Land Court in the Options Paper are found in Key area 1: proposal 4 – 'Provide a mechanism to resolve and deal with issues arising under the Acts'. The options for the mechanism described include:

- Establishing a First Nations body or an advisory group to assist with disputes arising under the Cultural Heritage Act (including to help the parties when there is disagreement) and appointing a suitable mediator, or other appropriate form of alternative dispute resolution, when required.
- Extending the Land Court's alternative dispute resolution (ADR) function to allow it to appoint a suitable mediator, including from the Land Court's ADR panel, to deal with all disputes under the Cultural Heritage Acts.
- Giving bodies, such as the Land Court, jurisdiction to hear disputes about, and enforce, agreements.

The Land Court is well placed to provide and coordinate ADR services to assist in the resolution of disputes regarding cultural heritage in Queensland. The Land Court is committed to resolving disputes fairly, cost-effectively and efficiently. ADR makes an important contribution to the court achieving that goal.

The court established the ADR panel to help parties find a suitably qualified Convenor. To be accepted for the panel, a Convenor must be accredited under national mediator accreditation standards. Importantly, they must also possess qualifications or experience that is relevant to the types of cases filed in the court. In that regard, the membership of the panel could be expanded to include people with specialist skills in cultural heritage including Aboriginal and Torres Strait Islander mediators, and to increase the number of member mediators qualified in anthropology, history, archaeology, and other relevant sciences.

The court's current jurisdiction in cultural heritage matters enables the court to grant an injunction upon an application being made if satisfied that a contravention of the protection provisions of the Cultural Heritage Acts is likely (s32H *Land Court Act 2000*); and to mediate and conduct objection hearings in relation to Cultural Heritage Studies under Part 6, and Cultural Heritage Management Plans under Part 7 of the Cultural Heritage Acts.

The court also presently has jurisdiction and experience in relation to disputes concerning particular types of Indigenous Land Use Agreements under s32F *Land Court Act 2000*, and negotiated agreements (s31(1)(b) *Native Title Act 1993*) under s32G *Land Court Act 2000*.

The experience of the court would lend itself to expanded jurisdiction to hear disputes about, and enforce, agreements.

The Court would also draw to the attention of the Review *Land Court Act 2000* Division 6A ss 32A-D which concerns the appointment and role of indigenous assessors, and the method of appointment of an indigenous assessor to a prescribed proceeding. Indigenous assessors could play a role if the Court's jurisdiction was extended to the hearing of disputes about, and enforcement of agreements.

Contact with the court can be made at email: Associate.McnamaraM@courts.qld.gov.au

Kind regards,

Member McNamara

Member of the Land Court of Queensland