

28 March 2022

Dr Chris Sarra
Director - General
Department of Seniors Disability Services Aboriginal and Torres Strait Islander Partnerships
Upload via; <https://qchub.dsdsatsip.qld.gov.au/cultural-heritage-acts-review>

Dear Dr Sarra,

Re: Submission on the Options paper Finalising the review of Queensland's Cultural Heritage Acts

The Planning Institute of Australia (PIA) is the national body representing the planning profession, and planning more broadly, championing the role of planning in shaping Australia's future. PIA facilitates this through strong leadership, advocacy and contemporary planning education.

Cultural protection has been embedded in the in the *Planning Act (Qld) 2016* in advancing the purpose of the Act in section 5:

- (d) *valuing, protecting and promoting Aboriginal and Torres Strait Islander knowledge, culture and tradition; and*
- (e) *conserving places of cultural heritage significance;*

Due to the inherent importance of the Cultural Heritage Act, and PIA's recent work in [Queensland Aboriginal and Torres Strait Islander Planning Policy - Position Statement](#) elevating the importance of education, consultation and understanding in planning for and protecting cultural heritage we felt it important to provide a submission to the Department.

Summary Statement

This review is an opportunity to:

1. provide certainty and transparency in cultural heritage protection by reinforcing approval processes through the existing planning framework and interfacing with state interests in the State Planning Policy;
2. further understand the rights of first Australians to protect and identify cultural assets, support local agencies with appropriate frameworks and training including intellectual property and protocols; and
3. provide clarity around Cultural heritage plans, core components, mandated sections, common approaches to structure and authorship.

Firstly, we draw attention to the snapshot of feedback presented in section 1.4 of the options paper. This feedback highlights common concerns across our membership and broader stakeholder groups in:

- understanding ownership and recognition of intangible cultural heritage;
- consultation methods;
- the need for studies which identify cultural heritage in order to protect it; and
- capacity building.

Any opportunity for legislative change should be viewed holistically and in concert with other relevant legislation to ensure there is alignment in policy approaches. A comparison of Queensland legislation such as the *Water Act 2000*, the *Planning Act 2016* and the *State Public Works Development Organisation Act 1971* would reveal that each of these statutes requires a vastly different approach to the management of cultural heritage.

While the proposed amendment includes a number of positive changes, PIA has concerns about the policy position with respect to several of the changed elements and this forms the basis for our submission. This submission addresses two of the items, specifically:

Item 1: Certainty and Transparency

The outcome of any policy that affects development and decision making in Queensland must deliver certainty to the community, to the development sector and to all Aboriginal and Torres Strait Islander parties. At present the proposals put forward in the Options Paper are not advanced enough to permit greater certainty to all concerned. Development certainty is critical to enabling the community (Indigenous and non-Indigenous) to make informed responses to development proposals and for development sector to complete due diligence on a range of development options (including no development).

There is no doubt that Intangible Cultural Heritage (ICH) must be protected and included in the assessment framework. However, in the absence of a draft definition and framework that permits the identification and protection of ICH, it is difficult to comment on whether the proposed system will deliver certainty to all concerned.

There must be transparency in the decision making process. This includes how the cultural heritage values are identified, the associated level of assessment, how the values are mapped and used in planning schemes, and finally how disputes about what can and cannot be developed will be dealt with in the court system.

Item 2: Intellectual Property and Protocols

PIA acknowledges that many Aboriginal and Torres Strait Islander groups may not want to share their cultural knowledge and traditions with the state government or indeed any entity. Finding ways to protect the Indigenous Cultural Intellectual Property (pursuant to the United Nations Declaration of the Rights of Indigenous people) and at the same time protect and enhance cultural heritage values becomes challenging. To this end PIA suggests that further consideration by the Queensland government about ways to protect Indigenous Cultural Intellectual Property (ICIP) and

its relationship with development assessment and associated timeframes will need to be made to achieve development certainty.

The Queensland government has a plethora of engagement protocols about how to work with Indigenous people and creating a new one is not the solution. Each Aboriginal and Torres Strait Islander party must be asked how they want to be consulted, who speaks on their behalf, and how their ICIP will be protected in the process. Creating Protocols that originate from stakeholder groups in a bottom up approach rather than top down to protect their ICIP may be the starting point for creating more effective partnerships.

Item 3: Cultural Heritage Assessment Framework

PIA acknowledges that the Cultural Heritage Acts may have failed to provide adequate protection of Aboriginal and Torres Strait Islander culture. Creating effective partnerships with Aboriginal and Torres Strait Islander people and their representative organisations in the co-design of planning processes, cultural heritage plans, and development assessment procedures is critical to advancing the development of appropriate assessment frameworks. The proposed framework put forward in the Options paper, in association with a comprehensive mapping system that integrates with the *Planning Act 2016* would be a welcomed outcome.

PIA thanks the Department for the opportunity to make a submission regarding the proposed changes to the Act. We look forward to continued discussions and engagement. These projects provide an exciting opportunity for PIA to work across government in delivering the most efficient planning framework. Once the Queensland government has completed the consultation about the range of proposals, PIA will make ourselves available to assist in providing comment and feedback on the preferred options and assessment framework.

Should you wish to discuss our submission further please contact Matt Collins, Queensland Division Manager on 0437 938 077.

Yours sincerely



Shannon Batch RPIA
President, Queensland Division