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QSMC questions to the QLRC review into Cultural Heritage Objection Process for Mining Leases

QSMC immediate questions to be addressed prior to final submission.

The QSMC and our members have grave concerns about these proposals contained in the QLRC Review of Mining Lease objections process consultation paper – July 2024. and the QSMC and our member groups require these questions to be addressed prior to the QSMC's final submission.

The QLRC documents propose an Independent Advisory Committee, *and,* an Aboriginal Advisory Committee to review all Mining Lease applications, currently many tenure applications are amicably worked out between miners/landholders/ and where applicable, *"Native Title or Aboriginal Parties"*.

Presently the review is proposed for Mining Leases only, however we can see this extended to Mining Claims and other mining tenures and even to other land users tenures for grazing, farming and development applications once these Advisory Committees are establishished!

This is a very real concern for the People of Queensland who overwhelmingly voted "No" to the Voice referendum in Queensland only now to have proposals of advisory bodys controlling government!

This Review & The Politics behind it!

The Commission's website declare the commission is *Queensland's* independent *law reform* institution and purpose is a fair, modern and simple legal framework for Queensland.

Despite the Commissions declaration of "*independence*", the commission appears to be in lock step with the Labor Governments "*Path to Treaty*" at both levels of government.. and this seems to be reflected in the QLRC's previous and current review papers.

The concept of "reimagining" and utilising various "advisory panels" is also extracted straight from the Cultural Heritage Act reviews options recommendations

As yet, the Qld Labor Government has not had the backbone to release any draft legislation from the review of Cultural Heritage Act which has been going on for what seems an eternity and are unlikely to release their draft legislation prior to an election, (at least not if there is a hope for them to win)

Q. 1 Whilst the QLRC refers to the existing Cultural Heritage Act (2003) has QLRC been privy to the Labor Governments proposed amendments or draft legislation to the CH Act and a merely using the QLRC as a mechanism to reinforce the Labor governments political will with a proposed Path to Treaty and Cultural Heritage Proposals!

Q. 2 Has the QLRC been directed to support the yet unreleased recommendations of this CH review so as to provide distance for the Labour Governments political directives from their Cultural

Heritage Review outcomes to be seen to be seen as coming from an "Independant" Authority (QLRC)

Q. 3 Has the QLRC been privy to the submissions made to the CH review by Small Scale Mining Industries and the QSMC and other Mining representative bodies (AMEC, QRC)

Given the Department of Aboriginal affairs has failed to release their agenda for any proposed changes to the CHAct 2003 does the QLRC appreciate that it is difficult to provide context to this QLRC submission review without the pending proposed changes to the CHAct supplied by the department!

The QSMC has provided submissions to the CH review and were part of the Stakeholder panel and are satisfied with Status Quo being maintained with this CH Act validating Cultural Heritage Parties except the removal of the Last man standing clause of the CH Act 2003

Last Man Standing

Under the Ch Act's 'last claim standing' clause, the most recent native title applicant is considered the traditional owners of land hence the CH Parties in Queensland where there is no registered native title holder. *(There are no registered traditional owners in an estimated 40 per cent of Queensland.*

Some of these native claims are spurious and have been dismissed in the NNTT, yet the Ch Act (Qld) legitimises these NT Claims as Aboriginal Parties and even the Labor Government doing deals with these illegitimate NT Claim holders, sometimes causing intra-indigenous conflict.

Q.1 Will the QLRC recommend the removal of the Last Man Standing clause from the Ch Act (Qld).

Q.2 What processes would QLRC create and validate Aboriginal Cultural Heritage interest over an area other than the NTAct processes.

Q.3 What process would create validates a CH interest in an area when there is no Native Title Claim or if the Last Man Standing provision is removed, what process or model are the QLRC recommending

Q.4 Given that Aboriginal Representative Bodies have been party to supporting spurious Native Title Applications can they be trusted to create or even participate in any Advisory panel or the selection process!

Human Rights Act

The QLRC paper states that the recognition and respect for Human Rights yet the "Review fails to mention and even likely *conflict* with Property rights (HRAct (Qld)**) as many tenures applications are on excluded land.**

Human Rights Act Part 2 section 24. Property rights

(1) All persons have the right to own property alone or in association with others.

(2) A person must not be arbitrarily deprived of the person's property.

Q. 1 How does the QLRC propose or consider to balance the Human Rights on excluded or freehold Land and provide landowners with immunity from interference with vested property rights when landowner/s do not want Aboriginal Parties on their private land.

Q. 2 ***How can a miner balance the rights of these parties (Land owner and Aboriginal), as it is insufficient and likely illegal for a miner or an Aboriginal party to dismiss a Landowner's rights and interests !***

Q. 3 ***In the event of a Private Land owner agreeing to a Cultural Heritage Inspection by Aboriginal Parties for a mining tenure- who will compensate the Land Owner if an area of their Land is arbitrarily deprived for the purposes of Cultural Heritage Protection during the term of the tenure, and, after the mining tenure expires?***

a. The State
b. The Miner
c. The Aboriginal Cultural Heritage Party

Q. 4 ***Small scale miners have found the Aboriginal rep bodies propose CH Ancillary agreements vastly exceed the scope of SS miners affordability and in the vast majority of instances even when a CH inspection is facilitated there is no cultural heritage identified***

Q.5 ***What costs are being proposed for tenure holders to pay Aboriginal Parties to conduct CH Inspections or what process would be installed or envisaged by the QLRC as currently SSM is using either the RTN process/ILUA's which define costs/ Determination rulings or will this responsibility be palmed of to the relevant Aboriginal party or Aboriginal Authority***

** Fact – The QSMC and small scale miners were not party or even privy to the costings schedule and policy around the development of the States – Expedited procedure and deliberately excluded by the State and parties we do not see this option as a means to address Aboriginal CH inspection costs*

What now?

There is already an existing process for non-exclusive areas under the MRAct EPAct and the NTAct (cwlth) which include the following

MRAct	*Objection period.*
EPAct	*Objection period.*
NTAct	*Advertising criteria (where no NT claimant is registered)*
	Indigenous Land Use Agreements
	Right to Negotiate
	Future Act Determinations

The QLRC documents propose an Independent Advisory Committee and an Aboriginal Advisory Committee to review <u>all</u> Mining Lease Applications.

Currently many tenure applications are amicably worked out between miners/landholders/ and where applicable, "Native Title or Aboriginal Parties".

The QSMC perceive that adding yet another level of governance or oversight will only exacerbate delays to an already snail paced process for granting Mining Tenures in Queensland affecting reducing productivity and adding significant costs for miners to bear

As previously stated *It is likely that the QLRC proposals will at the very least attract objections whether Cultural Heritage exists or not on the tenure area*

Q. 1 ***How would the QLRC recommend to apply their recommendations to minimise contributing unnecessary delay which leads to productivity losses and costs***

Q. 2 ***How will the QLRC proposals affect Cultural Heritage Agreements and Determinations already in place and how does this differ for future mining tenure applications for all tenure types as the review queries whether to include Mining Claims.*** *(presently the review is proposed for Mining Leases only, however we can see this extended to Mining Claims and other Mining tenures and even to other land users :- ie grazing, farming, development applications, once this horse has bolted)*

Q. 3 ***Does the QLRC propose to prompt the State to have another crack at the"Alternative State Provision" process?***

Q. 4 ***Who would fund such an Independent Advisory Committee & Aboriginal Advisory Committee and an expert advisory Panel as QSMC members would not welcome yet another levy being imposed on Industry as will be soon applied for this "Co-existence Qld.", which was illegitimately legislated recently in Queensland by the Miles Labor Government under the MEROLA Bill***

Environmental Impact Statements (EIS)

Currently Mining lease applications for gemstones currently do not require an EIS.

Q ***Do the QLRC perceive they will recommend that small scale mining lease holders will be now burdened with this extra regulatory process.***

CH Act 2003 Duty of Care Guidelines

The QSMC recommend SS miners utilising the "Cultural Heritage - Duty of Care Guidelines" on non-exclusive areas or extinguished areas where either a determination has been unsuccessful or where
a determination has been made instructing the CH DoC Guidelines

Whilst the QSMC endeavours to promote these guidelines and indeed have improved on the the States information certainly the state good lift its game in promoting this useful mechanism.

The State has been lack lustre in promoting these tools and supporting CH DoC documents to a level where this instils confidence in the CH DoC guidelines are relevant and useful tool as intended, for not only miners but for all other land users.

The QOMA propose that there is nothing wrong with the existing Duty of Care guidelines other than the State's role in educating Land Users and bringing existing compliance mechanisms to bear.

The QSMC fully support the "Duty of Care- Guidelines"- which should be the prima facie means of identifying if there is any Cultural Heritage on a tenure area and be retained as the main means of Cultural Heritage Protection at least in the context of small scale scale mining tenures including Mining Leases.

QSMC current summary of the QLRC Objection process proposal

The QSMC do not support removing the existing statutory criteria requirements and are satisfied that the existing criteria meets the Public interest in by and large serving the State well

The notification process proposed by the QLCR will most likely only attract more objections by subjecting all tenure applications to a process which allows aboriginal and other parties (basically every man and his dog) a say even though they may not have any valid and legal rights over the lands!!!

The QSMC do not support including new parties to the objection process!

The QSMC support the current objections process, and is not to difficult for people who are not computer savvy and reliant on basic literacy skills and computer technology the current system is not to only just not too onerous

State Obligations

The State has an obligation ensuring that a "legitimate mechanism" to Identify the A&TSI in areas where there is no Determination including Excluded lands (NTAct) and the proposals herein do not positively procure this.

"Additionally the state has an obligation to protect Property Rights under the CH Act"

Aboriginal Party's can utilise the Indigenous Land Use Agreements (ILUA (NTAct)) which is available instrument to anyone, and can approach Land owners to recognise the Cultural Heritage rights of Aboriginal Party's if they choose too.

`The QSMC would not recommend to its members to utilise the MRA 1989, third Party rights to invite purported Aboriginal Parties onto lands without the expressed consent of the Land Owner.

This is consistent with maintaining good relationships with the Land Owner under the Land Access Codes/ Merola Bar Legislation/Compensation Agreements and the like

The QSMC propose that there is nothing wrong with the existing Duty of Care guidelines other than the State's role in educating Land Users and bringing existing compliance mechanisms to bear.

The State fulfilling these mechanisms alone would provide more education and awareness and hence initiate more contact between Land Users and A&TI peoples particularly where significant Cultural heritage is identified, and isn't that the point!

Other Options rared at meeting in Emerald on the 5/8/2024

QSMC believe that Government Online Portals are generally poorly maintained and fail to provide relevant information and quite frequently loop back on themselves and like all Government sites have no contact detail barr a main number to the Government to circumvent contacting who you want or need to contact..

The costs for councils funding facilitating such objection processes is amusing as they would certainly lack the funding and more importantly, the skills to undertake mediation processes!

Our guiding principles

Q1 Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for reform of the current processes?

The current processes

Q2 Do you agree these are the strengths and problems of the current processes? Are there others not mentioned here which are appropriate to be considered for reform of the current processes?

Participating in the Government's decision-making processes

P1 Participation in the current processes should be reframed by:

(a) removing the Land Court objections hearing pre-decision

(b) including an integrated, non-adversarial participation process

(c) establishing an Aboriginal and Torres Strait Islander Advisory Committee for relevant mining proposals to facilitate Aboriginal and Torres Strait Islander input as part of the new participation process.

Q3 What are your views on proposal 1?

Q4 What forms of participation should be included in the new participation process?

Q5 How would removing the objections hearing affect private interests?

Q6 Should there be tailored participation processes depending on the nature of the project?

If so:

(a) what criteria should be used to determine different requirements for participation (for example, size, nature of risk, interest or other factors)?

(b) what should be the forms of participation?

Q7 How can we ensure the new participation process is accessible and responsive to the diverse needs of communities?

P2 A central online Government portal should be established to facilitate public notice and give up-to-date information about mining proposals. The Mineral Resources Act 1989 and the Environmental Protection Act 1994 should be amended to require material to be published on the online portal, including:

(a) notice of applications
(b) notice of opportunities to participate
(c) outcomes of participation processes
(d) information requests
(e) decisions.

Q8 What are your views on proposal 2?

Q9 What additional notice and information-sharing requirements should be included in legislation as part of the new participation process?

Q10 What direct notice requirements should be included for applications for:

(a) mining leases?

(b) associated environmental authorities?

Q11 What else is required to notify Aboriginal peoples and Torres Strait Islander peoples who may have an interest in the mining proposal?

Deciding each application

P3 An Independent Expert Advisory Panel should be established that is:

(a) comprised of people with recognised expertise in matters relevant to the assessment of environmental authority applications

(b) formed as project-specific committees to give independent expert advice to inform decisions on environmental authority applications that meet specified criteria.

Q12 What are your views on proposal 3?

Q13 What should be the criteria to form an Independent Expert Advisory Committee for an environmental authority application?

P4 The statutory criteria in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 should be amended to require the relevant decision-maker to consider:

(a) for decisions about mining lease and associated environmental authority applications – information generated through the new participation process

(b) for decisions about environmental authority applications – any advice of the Independent Expert Advisory Committee.

P5 The statutory criteria in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 for decisions about mining lease and associated environmental authority applications should be amended to require each decision-maker to consider the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage.

Q14 What are your views on proposal 4?

Q15 What are your views on proposal 5?

Q16 Should the decision-maker for the mining lease application be required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority application in reaching their decision on the statutory criteria for:

(a) public interest?
(b) adverse environmental impacts?

(c) the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage (see proposal 5)?
(d) any other criteria?

Q17 Are there additional reforms to the statutory criteria under the Mineral Resources Act 1989 and the Environmental Protection Act 1994 you would like us to consider?

Reviewing the Government's decisions

P6 Review by the Land Court should be available after the Government has decided the mining lease and environmental authority applications. Decisions of the Land Court should be appealable to the Court of Appeal on the grounds of errors of law or jurisdictional error.

The Land Court should:

(a) conduct proceedings after decisions on both applications are made
(b) conduct combined (merits and judicial) review
(c) conduct the review on the evidence before the primary decision-makers, unless exceptional circumstances are established
(d) apply existing practices and procedures.

Q18 What are your views on proposal 6?

Q19 What preconditions, if any, should there be to commence combined review?

Q20 Should the Land Court have the power to substitute its own decision on the application or should it be required to send it back to the decision-maker?
Q21 Should each party pay their own costs of the merits review or should a different rule apply?

Interactions with other laws

Q22 Are there any issues arising from interactions with decisions made under other Acts that we should consider?

Q23 What opportunities are there, if any, to integrate interacting Queensland Acts with the processes to decide mining lease and associated environmental authority applications?

Other matters

Q24 Should there be a legislated pre-lodgement process?

Q25 Is there anything else you would like to tell us about the current processes?

Q26 Are there any additional options for reform of the current processes you would like us to **consider?**

Queensland Opal Miners Association Inc.
PO Box 210
Quilpie Q 4480

Attn. [redacted] 26/10/21

Re:- QOMA Response to Stakeholder Panel to Cultural Heritage Review Draft Options paper.

G'day [redacted],

Attached is the QOMA response to the Draft Options Paper.

The QOMA does not support change to the existing Cultural Heritage Act or the Gazetted Duty of Care guidelines, as there will be adverse impacts for our industry which are already struggling to overcome impairments caused by the Native Title Act processes.

Additionally and as importantly, the QOMA do not believe that the DATSIP have investigated all the options available and perhaps in haste is pursuing these options to be seen to be doing something.

We have outlined responses where we can and hopefully you will take these into serious consideration as our livelihood depends on it and the QOMA and the greater Small Scale mining industry are dependent on prompt affordable access to tenure and any imposition that is likely to impede on this will surely attract our undivided attention

I will certainly be contacting you shortly regarding the contents herein and please do not hesitate to contact me should you wish to discuss these matters beforehand.

Kindly

[redacted]

Secretary QOMA
QSMC delegate

Queensland Opal Miners Association Inc.
PO Box 210
Quilpie Q 4480

QOMA Response to Stakeholder Panel to Cultural Heritage Review Draft Options paper

Cost Benefit Analysis & Regulatory Impact Statement

All the tables and processes in these proposals lead to consultation with the Aboriginal Parties, whether Cultural Heritage exists or not on any areas which propose any surface clearing of land or excavations.

It is obvious to the QOMA at least and is the "rather large elephant in the room" will undoubtedly lead to mandatory Cultural Heritage Inspections regimes for Land-users. (Except where the main development is going on in the Metros).

The Review and the Consultation Paper must clearly spell out what these proposed costs would be of the Consultation and Cultural Heritage Inspections and agreement regimes processes, and, be published with the Public Consultation Options Paper as part of the progression of this review.

This can be achieved by canvassing the Native Title Parties and their representative bodies on historic costs examples for Cultural Heritage agreements.

These words 'Consultation", "Cultural Heritage agreements" & "Cultural Heritage Inspections", are not just feel good esoteric words that these proposals bring to bear.

These proposals exert a financial burden, particularly on a Land User even when there is no Cultural Heritage located on a site to be mined or developed and perhaps to an aboriginal party that has no legal or legitimate cultural status over those lands.

No matter how righteous this may seem to the administrators and beneficiaries of these proposals, a full Cost Benefit Analysis and Regulatory Impact Statement of the Proposals should be undertaken by DATSIP, so that party's are aware of the potential costs of these options.

The Government must undertake and publish this information in accordance with the Governments regulatory framework & with this review.

These estimates must be supplied with the Options paper so stakeholders are aware of the cost associated with these changes proposed, particularly for those who this legislation will be imposed and have "skin in the game".

Whilst the Minister may be able to make changes to the Gazetted Duty of care Guidelines without performing and RIS, the QOMA would advise strongly against this, to ensure the small business owners who will be impacted by these proposal are afforded due consideration.

6.3 Proposals to Bolster compliance Mechanisms

QOMA response/views to Problem/Challenge/ Opportunity schedule .

1. The paper states that Consultation and agreement with the Aboriginal party and Torres Strait Islander Party is the main way to ensure compliance with the Cultural Heritage Duty of Care under the CHA.

However feedback from the A&TSI stakeholders is that in practice there is not enough consultation occurring with the A&TI Party.

The QOMA propose that this could be for a number of reasons and includes the following.

1. Cultural Heritage Assessment has been assessed by the Land User and CH does not exist. (as CH does not exist everywhere)

   Whilst we are sure it is seen by preferable that Aboriginal Party's facilitate this, it is not always practical, affordable and perhaps legitimate to do this and by and many Land-users are familiar with the Duty of Care Guidelines and the tangible forms of Cultural heritage as detailed in the DoC guidelines and as submitted in QSMC previous submission to this review

2. Some Land Users are not aware of the Cultural Heritage obligations and either not advised or ignorant of the Cultural Heritage Act.,

   It is this point 2 group that this review should be addressing in the review by:-

   :- *providing education and awareness to land-users about the existing Cultural Heritage- Duty of Care, which could be issued with tenure or development document application & provided by the administering authority. (EPA, Mines Dept, Council)*

3. Land users may unwittingly or unlawfully not complying to the existing Cultural Heritage Duty of Care obligations.

4.. There is no legitimate aboriginal party for an area for a Land user to contact.

   The State has an obligation ensuring that a "legitimate mechanism" to Identify the A&TSI in areas where there is no Determination including Excluded lands (NTAct) and the proposals herein do not positively procure this.

   Aboriginal Party's can utilise the Indigenous Land Use Agreements (ILUA (NTAct)) which is available instrument to anyone, and can approach Land owners to recognise the Cultural Heritage rights of Aboriginal Party's.

The QOMA propose that there is nothing wrong with the existing Duty of Care guidelines other than the State's role in educating Land Users and bringing existing compliance mechanisms to bear.

The State fulfilling this mechanisms alone would provide more education and awareness and hence initiate more contact between Land Users and A&TI peoples particularly where significant Cultural heritage is identified, and isn't that the point!

DATSIP Proposal -*Amend the current Guidelines to provide a due diligence process that requires with A&TSI parties rather than self-assessment?*

Q (a) Whilst the QOMA are supportive of including a Cultural Heritage Search in category 5, as we currently already recommend that our members facilitate this process for their tenure permits, we are adamantly opposed to the removal of a self-assessment model, or implementing CH Inspections over areas which have no Cultural Significance from a Land Users self-assessment in accordance with *DoC guidelines.*

Aboriginal Cultural heritage ***is not*** everywhere, and from the ACH surveys which our members have diligently complied with under the NTAct, (performed by the NTP's) have, *by and large*, have turned up very, very, very little Cultural Heritage let alone Significant Cultural Heritage and yet, this NTAct processes have imposed significant costs and insurmountable significant loss of productivity by miners ad explorers.

It is this fact, that "Aboriginal Cultural Heritage is not everywhere", *and should be treated as such,* and, reinforces the self- assessment model on exclusive land where limited area of disturbance activities, be they low impact of high impact, that do not affect broad-scale land areas.

The State proposes in this document that ACH is everywhere, *which it isn't*, and quite a foolish notion to entertain let alone pursue! So it is prudent that self-assessment be a continued method of identifying if Cultural Heritage exists particularly on Exclusive land (NTA).

Also it is apparent to the QOMA that the DATSIP proposal herein likely fails to recognise the Human Rights of Exclusive land holders. (Human Rights Act 2019) as follows:-

Section 24 Property rights

(1)All persons have the right to own property alone or in association with others.

(2)A person must not be arbitrarily deprived of the person's property.

Q (b). QOMA contend that Q (b) is amended so that in areas outside Cultural Sensitive Areas can still utilise the self-assessment framework.

In NNTT determinations the Tribunal has also utilised "the Duty of Care Guidelines" and this self-assessment as a means for a "Future Act to be done" in their determination when an agreement "cannot be reached" by the Grantee Party/proponent and the Native Title Party in Future Act Determination (NTA 2003)

For DATSIP to remove this option in this review would commit Grantee party's to a perpetual framework of Cultural Heritage Negotiations of Ground-Hog Day proportions under this proposal.

Q.(c) The QOMA have no issue with this proposal other than require more information on what is the proposed consultation & who pays for this "Consultation".

Additionally, who is doing the mapping what is perceived as Culturally Sensitive Area's. Will the mapping be a blanket approach i.e The Lake Eyre Basin, which would be unreasonable and what repeal rights would be to remove declared Sensitive Areas if they are overzealously applied and what legal mechanisms will be in place to ensure this doesn't happen.

Q. (d) remove step (b) from this criterion

Q. (e) No real concerns as long as (b) is removed from (d)

Q. (f) No real concerns other than what costs would be involved.

6.3 DATSIP - We would appreciate your views on-

Q. 1 – Whether this Option would improve the protection of Cultural Heritage in Queensland.

The DATSIP proposal as is, would undoubtedly protect Cultural Heritage to the point that there will be no progress in development, locking down the States resources and development by providing protection for "all land", **whether Cultural Heritage exists or not.**

This will only serve to provide a new regime for Solicitors, Anthropologists, heritage consultants and the like, and add costs to the land-user which are likely unsubstantiated.

The proposals as drafted, would sterilize every bit of land from any form of development unless you have deep pockets and can pay For the Cultural Heritage fees commanded by the Aboriginal Party's, and in multiple if there is more than one Aboriginal Party as some of these proposals suggest.

QOMA response

There will be that much of a bottleneck in development applications from the land users that it is highly unlikely that the Native Title Parties have enough people able to speak for the land to facilitate Cultural Heritage meetings & CH Inspections.

As already noted from our experience with regard to the NTA, that the NTP's legal representatives don't have the capacity to facilitate the demand within timeframes which would deter the progress of the State.

Currently, from our records Small Scale Mining Negotiation's take two years or more and then, another six months for granting and the CH Inspection regime is facilitated.

A repeat of this performance administered under the CHAct and this proposal would be intolerable.

Q.2- Whether this option would ensure A&TSI peoples are involved in Cultural Heritage management of their country

As above

Q.3- What are your thoughts on proactively mapping country

What does this mean, it raises more questions than answers - would this be a blanket approach who would do this and under what consultation and what oversight and parameters.

Q.4- The appropriate definition of :

(a) A Culturally Sensitive Area

A Culturally Sensitive area is an area recorded in a CH report as containing Cultural Heritage on the CH Register that has been subject to a CH inspection, containing the following :-

1. *an area or item of Tangible Cultural Heritage Significance ie bora ring, scar tree stone arrangement , fish trap etc*
2. *an area of intangible Cultural Heritage Significant to the Aboriginal party and the boundaries are clearly identified.*

(b) Moderate to High Impact Activity

This should involve all parties including Land User Industries and in particular the word moderate is "ambiguous."

(c) Significant Activity

An application or authority that requires and EIS or development approval

Q.5 - Are there any assessment frameworks that can be used as a basis to encourage early consultation with A&TSI peoples.

Yes, the existing Duty of Care Guidelines, once a significant Cultural Heritage Site or item is identified by a land-user. ***DATSIP just have to promote it***

Q.6 Should the development of a new assessment framework be led by A&TSI peoples

No*, however A&TSI peoples should always be "Key stake holders" as should be Land user peak body's and representative groups.*

Q 6.4 Question for Stakeholders- QOMA summary

In the Small Scale Mining Context the QOMA see no reason to bolster compliance mechanisms

The QOMA and QSMC do not believe that the current act is deficient and are not supportive of any substantial changes to the CHAct 2003

Additionally, the paper seems to be very limited in exploring Options and the current options offer no resolve for the Aboriginal Party's and Landuser's.

7.3 Option 1.- The QOMA do not support this option for the following rationale

Option 1 does not remedy the shortfalls of the legislation identified and undoubtedly contribute to more problems.

This Option 1 will most likely cause intra-indigenous altercations over who is rightful land claimant and rightful protector of Cultural Heritage and there is no mechanism to resolve this issue which has any legitimate oversight.

This option diminishes the rights afforded to Native Title determination holders and perhaps to Native Title Claim applicants.

Summary

The QOMA does not support this option to be in the proposal however support the abolition of Last Claim/Man Standing

Option 2.

Option 2 has similar problems as Option 1, however other A&TSI party's should not be able to become a party to Determination Areas.

Option 2 is far from being ideal, however is the best of all these worst options.

However QOMA would support that also this following recommendation for which provides remedy including in areas where there is no native title.

The QOMA and Qld. Small Scale Council (QSMC) support that Registered and Land Claims have been determined but only over areas that are ***over the Determination area.***

Rationale :-

This is mainly because the areas of a Native Title Claim in instances where a determination has been made has excluded many Land Owners of Exclusive Land from being Party to a Determination in the Native Title Claim Area, particularly in instances resulting in a Consent Determination.

During the Consent Determination application process, the State has actively canvassed the land-owners on non-exclusive lands to forego their "objection" to a Determination, which afforded the Land Owner renewal of their Land's Lease by the NTP's as a "quid pro quo" reward for "not objecting" to an Aboriginal Land Claim under the NTAct.

This has not been afforded to "Exclusive Land Owners" who were not part of the Determination process, and therefore should be, before Cultural heritage rights are extended to Aboriginal parties over Exclusive land tenures.

This ILUA instrument is available for party's to be utilised under the NTAct where any party can register and Indigenous Land Use Agreement (ILUA.)

Additionally whilst the QOMA and QSMC support the abolition of Last Claim/Man Standing, we are very concerned about any "process" which allows Qld's A&TSI peoples/ groups to also register Cultural Heritage interests by Registering for "Party Status" over a *"Determination area" or "Exclusive land."*

Other options of remedy currently available for Determination Claim areas & Land Claimants over exclusive land areas which may have been or subject to a Native Title Claim, *either pending or determined* are Indigenous land Use Agreements

1. Include Indigenous Land Use Agreements with Land Owners of Exclusive land and other excluded lands from a determination area or that will be excluded in a determination area.

   This ensures the Land Owners consent is lawfully attained and recognised and should be the Primary means of an Aboriginal Party having any lawful say of Exclusive Land.

   The Lands Department have been actively persuading Landholders to use this process under the NTA so now they can continue this persuasive service at no cost to the Native Title and Cultural Heritage Aboriginal party

Option 3 **No !**

QOMA Summary

Whilst we are supportive of protecting and preserving Cultural Heritage, the QOMA and QSMC do not support any of the 3 options proposed herein as each proposal undermines Land Ownership laws and will cause conflict between Land Owners and ATSI people and even more likely between Aboriginal party's.

Additionally these three options suggest proposals that are not consistent with the Native Title landscape, and in fact conflicts or has the inevitability of directly conflicting with the Native Title Processes.

In a rush to be seen to be supportive of the Review and the State Governments compliance to its own legislation, DATSIP has not consulted adequately to perhaps look for other options to this Cultural Heritage conundrum.

7.4 The QOMA feel that none of these options are well enough thought through and none should be put forward as an option until the following is resolved!

The Options herein do no address these oversights!

1. *These options provide for and extend to A&TSI parties CH Rights over lands that have been excluded from a Native Title determination and have not necessarily been proven to be the correct CH Party for the area albeit in the Native Title Claim Area subject to a determination.*

2. *The State extends Cultural Heritage rights over Native Title Claim areas which were "excluded from the determination areas" and the Land Owners may not have been afforded contest of the land claim under the NTAct, and/ or the Native Title Party or Claimant has not initiated an ILUA with the land Owner to "consent" to the Land Claim.*

A landholder/owner would see this oversight as a lack of consultation at the very least & fails to recognise the Human Rights of Exclusive land holders. (Human Rights Act 2019)

Section 24 Property rights

(1)All persons have the right to own property alone or in association with others.

(2)A person must not be arbitrarily deprived of the person's property.

How this does this effect smalls scale miners in our context

Small scale miners may extend access to third parties an in this context for "Cultural Heritage inspection's" if it is mining related.

However under the MRA we must also undertake "Code of conduct and Compensation agreements," with the Land Owners including on Exclusive lands.

Commonly "exclusive land holders" do not want unauthorised persons on their Land and or at odds with Miners bringing on Aboriginal Party's for CH Inspections.-

Whatever the reason it, the Miner/Explorer is in an awkward position as they are put in the position of being "between the devil and the deep blue sea"

The miner/explorer will be either off side with either the Land owner or the Aboriginal party unless the Exclusive Land Owner consents to miners CH Inspection and acknowledges the Aboriginal Peoples as the custodians of the land

8.3 Question for stakeholders

QOMA response

1. Should this be proposal put forward for public consultation?

No

2. Does this proposal provide sufficient information, and if not, what further information is required

No- A total rethink

3. In addition to the key functions above, what other functions should this entity have?

None

4. Should the entity be independent of government?

No

5. If the entity's role is to identify A&TSI parties would Cultural Heritage bodies under section 37 of The CHA no longer be required?

N/A

Kindly

[redacted]

[redacted]

Secretary QOMA
QSMC delegate

Queensland Small Miners Council

The [redacted] MP
Deputy Premier
Minister of Aboriginal and Torres Straight Partnerships

Reference: Submission to Discussion Paper for Review of the Cultural Heritage Acts

Dear [redacted]

The Queensland Small Miners Council is a forum for the States, Small Scale Mining Industry representative groups to collaborate and provide Industry policy's to Government bodies which regulate these Gold and Gemstone producers

Your department DATSIP is currently conducting reviews into the Cultural Heritage Act and The Duty of Care Guidelines and collectively the QSMC member groups are very concerned about the direction the contents of this review and what impacts this may have on our industries.

Many of the proposals in this review if implemented will be seen as a direct threat to the survival of Small Scale Mining & our own Cultural Heritage, which has survived, but only just, despite any legislation, regulation or any Government support to help protect or preserve it.

You will note, that as yet Queensland Small Miners Representative Groups, their members and the general populous in regional Queensland have not yet been extended a fair opportunity for any consultation from DATSIP with regard to this Cultural Heritage Review, nor the previous review in 2106/17.

It is vital that rural communities which are suffering from population decline, drought and economic hardship, to be included in consultation processes, in particular when proposals if imposed will impose perilous costs and delays to these communities.

It seems to have become protocol for all of the State agencies, never to conducted any consultation further West of a "Ronald" McDonalds franchise.

This is not seen by the general public as fair and proper consultation.

The Aboriginal peoples , the Aboriginal Legal representative's, and "consultants", appear to have been well canvased by DATSIP, and have an overwhelming participation level when compared to Land User's submission's participants in the 2016/17 Cultural Heritage Duty of Care guidelines review submission analysis document.

Collectively QSMC members are very concerned about the concepts that the DATSIP are proposing to advance in this Cultural Heritage Review including the submissions of the previous Review in 2106/17 which had been shelved due to the previous State election in 2016/2017.

Queensland's Small Miners Associations are supportive of the Cultural Heritage Act review and are appreciative of now being afforded the opportunity now to partake in this process.

So now, as a collective, and representing the 3,500 Small scale miners throughout Queensland the Queensland Small Miners Council (QSMC), provide this submission in earnest so you may understand our concerns, as small scale miners will again wear the brunt of many of these suggestions raised in the DATSIP Reviews if unchallenged and implemented, as we have experienced with Native Title processes of the Native Title Act, which is still inflicting onerous processes costs and delays, by poorly thought out or ill-considered legislation, which was imposed on our Small Scale Mining sectors without any consultation.

We therefore provide this submission attached and "insist" that the representatives of the Queensland Small Miners Council member groups be consulted from hereon in as this "Consultation Process" takes its course.

The Queensland Small Scale Miners Associations would require a detailed proposal of which amendments are being proposed by your government through DATSIP to the Cultural Heritage Act and the Duty of Care Guidelines six months prior to the next State election scheduled for 2020.

QSMC will be also seeking the policy position from the Opposition Minister for this DATSIP portfolio, The Hon Mr. Christian Rowan so we can compare these policy's' and ascertain what action the QSMC will need to take, if any, to preserve the interests of our members before the next election.

Kindly

[redacted]
Delegate
Queensland Small Miners Council *21.11.19*

A list below provides you the details of these Mining Representative groups contact details

Association Name	**Contact details**
Qld Opal Miners Association Inc.	[redacted]
North Qld Miners Association Inc.	
Qld, Sapphire Miners Association Inc.	
Yowah Opal Miners Social Club Inc.	
Qld. Boulder Opal Association Inc.	

Queensland Small Miners Council

Comments to the

Discussion Paper for Review of the Cultural Heritage Acts

The Queensland Small Miner Council as the first point of call to start this review would like for the DATSIP Review team to clarify who is a Land User.

It would appears that the State is picking its mark when conducting this review as the Discussion Paper appears to be targeting only land developers, construction, mining and quarrying, or, to put in bluntly, where the perceived money is, without alarming the general public!

Under the Cultural heritage Act the Definition of "land user" means a person carrying out, or proposing to carry out, activities on land likely to "*materially affect the land.*"

It is needless to say, and I'm sure the Aboriginal Parties would agree, DATSIP as failed to look at the following Land Users which should be included if DATSIP or government were not so reluctant as they too could be seen to "materially affect the land" and from our viewpoint, cannot see any valid reason why these Land users and others are excluded.

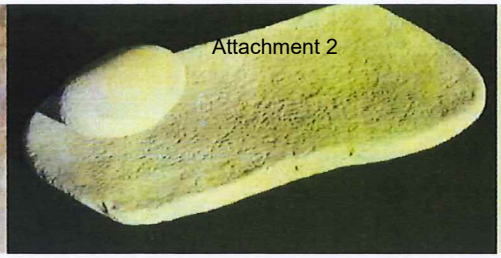
All of these Land Users listed below could be seen to "materially affect the land"

1. *Fishers & boaters who's wake can disturb coastal or estuary middens and traditional fishing grounds*
2. *Kids and families making sand castles on the beach*
3. *4x4 off roaders and trekker's who could disturb burials in Sand Dunes etc..*
4. *Bushwalkers & campers who burn firewood and clear areas for their trails & campsites.*
5. *Graziers who undertake land clearing, fencing, dam pushing.*
6. *Ma and Pa who dig up their garden planting tree's & peas,*
7. *Old mate next door putting in a below ground pool who's excavation could disturb cultural heritage,*
8. *Any extension were footings or concrete needs to be poured which covers ground and building activity which requires an extension.*
9. *Small and large scale agriculturists/horticulturists*
10. *Government back burning for fire control.*
11. *Government works including, rail, roads & bridges*
12. *Digging of graves and maintaining of parks and gardens*

Whilst this not a comprehensive list but I think you get the point

If it's in the best interest of the community to administer Cultural Heritage laws- then enforce it on all of the community, not a selected few!

Mesolithic Rock art Kurnool, India



Neolithic Grinding stones and Quern- Northern Germany

Neolithic Flint tools from Denmark

Duty of Care Guidelines – Increase the Categories

The Qld Small Scale Miners and Prospectors are vehemently opposed to decreasing the Categories of the Duty of Care Guidelines, as suggested by participants in the DATSIP review 2016/2017.

Small Scale Miners would not be supportive of any changes to the Duty of Care Guidelines unless it is to increase the amount of categories to include our recommendations.

The current "Duty of Care Guidelines" fails to formally recognise that many people who live and work daily or on a regular basis on the land, be it for grazing, agriculture or mining purposes, by and large, have the experience to recognise most, if not all, of the tangible forms of Cultural Heritage and in many instances, even know where the intangible forms of Cultural heritage are or were.

This experience is either accumulated from general education or widely available open sources, field experience and /or by passed down knowledge from fore-bearers, their employee's (including indigenous peoples), and prior land-users, who in Australian modern history, spend much more time in some instances on these lands connecting with country, conducting day to day work and leisure activities than many of the aboriginal peoples who may have once originated from these lands.

The Australian Aborigine's tangible forms of Cultural Heritage are very much the same or similar to the rest of the world's Palaeolithic history, "they are not that unique", so most of these forms of Cultural Heritage including Australians botany are readily recognisable and/ or researchable, by the average person who has even a basic level of education and/or experience on the land.

This ability is not validated in the current duty of care guidelines and must be included as a valid qualification for assessing Cultural Heritage under the Duty of Care Guidelines. This must be corrected in this review, so land-user operations including High Impact Activities can be implemented after assessment by the land-user in areas where no Cultural Heritage values have been assessed to exist and avoid unnecessary consultation.

Below – Neolithic Tranchet Axe head –Suffolk England

From our collective experience, Aboriginal consultation will consequentially result in demands for negotiation costs, inspection clearance costs, monitoring regimes and associated costs, to merely name a few, and will inevitably cause the Land User associated time delays in managing the proposed project regardless of whether there is any Cultural Heritage on the land-users work area or not.

Given the many instances of aboriginal, dispossession, desertion and decimation of their peoples and their tribal lands since European settlement, oftentimes intangible Cultural Heritage sites cannot always be identified or relocated accurately by aboriginal peoples who have not maintained real connection to their lands and are sadly frequently lost to the aboriginal peoples because of these factors.

This can be true for both exclusive (freehold, GHPL) and those non-exclusive leasehold tenures, where Aboriginal Parties, to a large extent, have been excluded from these lands for long periods or even since European settlement and oftentimes, are only relatively recently returning to these lands now to perform Cultural Heritage Inspections for Mining Operations, since inception of the NT Act.

Aboriginal Land Claimants may have also included these "exclusive areas" within their Native Title land claim applications, however are "excluded areas", from any Native Title Determination as the background - land tenure was freehold, GHPL, or some special lease which extinguishes Native Title.

The Fish-traps of Penghu, 1 of the 570 fish-traps that dot the coast of Taiwan and have operated since Qing Dynasty

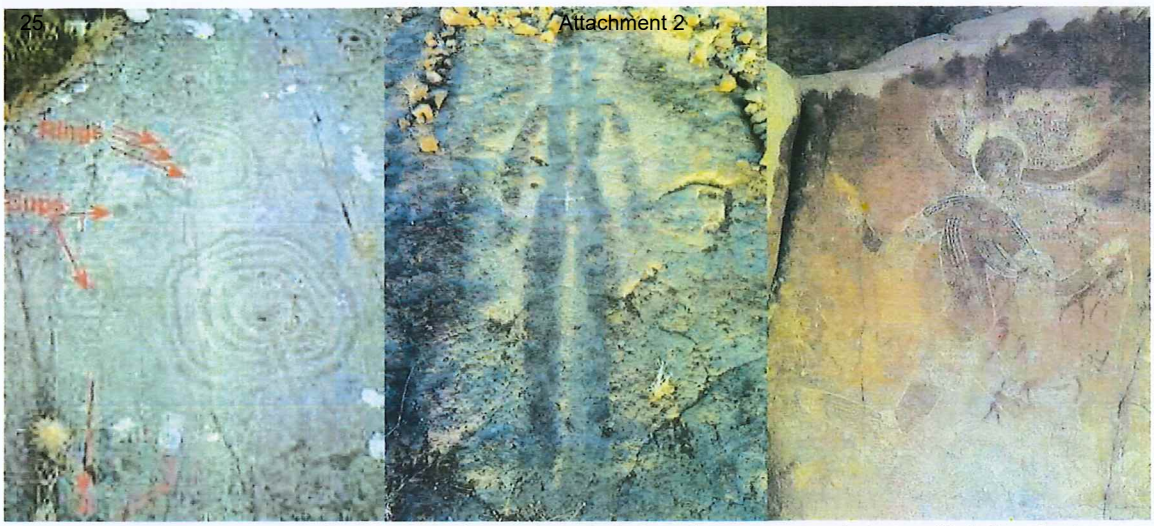
Whilst acknowledging residual Cultural Heritage may still exist, it can be controversial who owns this Cultural Heritage as in many cases where the Exclusive Land portions of a Native Title Claim has not been legally proven nor decided or where no Native Title Determination has been made on "Non- exclusive" lands.

In many instances the land-users who operate on these lands can be at least equally qualified to assess Cultural Heritage in places where there has been little if any access by aboriginal peoples, and these regional land-users are able, in most instances, to mitigate and plan operations to avoid Cultural Heritage disturbance even in areas where High Impact activities are to be conducted.

The Queensland Small Scale Miners believe, in our context, that the Self-Assessment process of the "Duty of Care Guidelines" is adequate, and if through this self-assessment evaluation the proposed or planned activity is unlikely to cause harm to cultural heritage, then the Land User should be able to proceed with the project as assessed by them in all categories.

Should any residual Cultural Heritage be discovered then a land-user/ should immediately apply the Stop-Manage and/ Notify process should any cultural heritage be revealed.

This self-assessment regime should be encouraged and advanced, with its implementation being fostered as the least restrictive alternative for Land-users and would actually provide a more collaborative participation in Cultural Heritage protection & preservation if promoted by all parties.



Petroglyph engravings - Westwood Moor Northumberland England

Konkan Rocks petroglyphs India

Dot painting Tassili n'Ajjer, Algeria

DATSIP Review Paper extractions - Land User Obligations

1. **A land user may undertake a self-assessment by following the Duty of Care Guidelines (which were gazetted by the Minister in 2004).**

   Is their need for the State need to provide a greater level of oversight of self-assessment and voluntary processes e.g. reporting on self-assessment practices

QSMC Comments

The QSMC do not believe that there is evidence to support that there is a level of "Non-Compliance" with respect to Cultural Heritage Self-assessment process that would justify the need for the government to provide a greater level of oversight.

The QSMC are generally supportive of the self-assessment process and would not condone any member who wilfully destroyed or damaged any form of Cultural Heritage.

Whilst there is always a possibility that residual Cultural heritage could possibly be unearthed during excavations from our collective experience this would be a very rare case, and there are provisions in the CH Act and Duty of care guidelines to cater for this should it happen

The Small Miners do not believe that there is a need for legislative or policy requirements by government to provide a greater level of oversight of self-assessment, however a miner or explorer should be able to provide supporting evidence of these assessments to substantiate compliance, to quantify they have undertaken the self-assessment process if ordered by a court or tribunal.

Neolithic Carved Aztec Atlatl (Woomera) at the National Museum Mexico

DATSIP Review Paper extractions - Land User Obligations

2. CHMPs

(a) A land user may decide to develop a voluntary agreement with Aboriginal and Torres Strait Islander parties.

There are no prescribed requirements for these types of agreements.

QSMC Comments

If a Miner/ Explorer intends to express "goodwill" and wish to enter into a Voluntary Agreement the SSM believe that these agreements should be registered and recorded by the administering authority for Cultural Heritage (DATSIP) or its successor.

There should be no prescribed requirement if these agreements are to be "Voluntary", otherwise it's a prescribed document which may or may not be agreeable!

And that'd be the end of any good will!

(b) The Cultural Heritage Acts also set out statutory processes for the development of a Cultural Heritage Management Plan (CHMP).

A mandatory CHMP is required for projects that require an Environmental Impact Assessment unless there is an existing agreement or a native title agreement.

Victoria prescribes a list of high impact activities (e.g. mining, construction, residential development, subdivision of land, quarrying) that threshold the CHMP process - this has resulted in approximately 3000 CHMPs over the last five years.

QSMC comments

The vast majority of Small Scale Gem and Gold producers currently do not require an Environmental Impact Assessment (EIA) in Queensland.

Should the Hon. Minister [redacted] (DATSIP) propose to now introduce this Environmental Impact Assessment (EIA) process to provide a legislative avenue via the Environmental Protection Act (EP Act 2001) which legislates the criteria for EIA's, so as to provide a "backdoor entry" for unwarranted Cultural Heritage Management Plans being sought by the Native Title Parties, would be an unconscionable act, and be seen as a direct political threat to the survival of our industries

Queensland's Small Scale Miners who have been by and large exempt from this EIA process because of the smaller environmental impact that Small Scale Miners cause. To introduce the EIA process and associated costs as a backdoor manoeuvre to force compulsory cultural inspections will cause financial distress on the land-user to satisfy an unfounded pretence that Cultural Heritage even exists on the areas they operate.

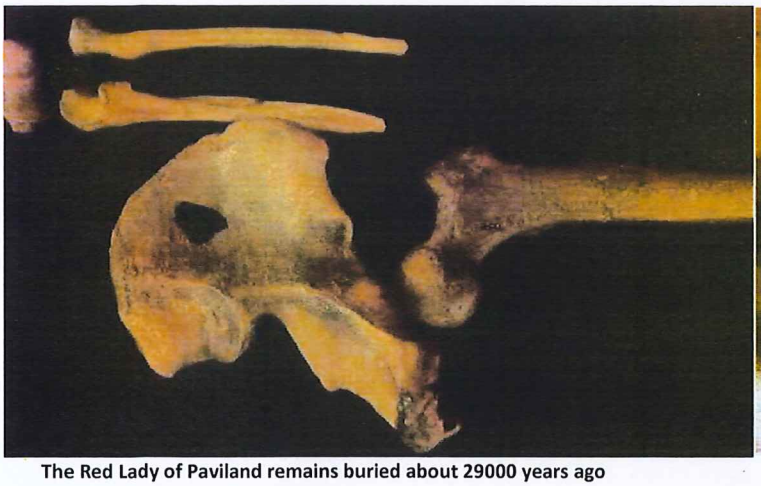
Queensland Small Scale Mining has historically been a bastion of local investment, employment and regional development and provided a means of income for those repatriated from two world wars and other conflicts and provided for those who sought these Gem and Gold as a means of income through recessions, which the world economy is perilously once again close too, and would only serve to assist to exclude this possibility for future generations by now imposing more unnecessary costs and procedures.

The Impositions and additional costs of EIA's

The Department of Environment apply upfront cost recovery fees to proponents for Environmental Impact Assessments which are adjusted annually with the CPI .

In addition to the above fees, proponents may be required to pay the costs associated for,

- public notifications during the relevant stages of the EIS or IAR processes
- Independent studies or reports the Coordinator-General commissions to examine a specific aspect of a project.
- the proponent must develop a comprehensive and inclusive consultation plan for the stakeholder groups identified under 'Audience' above.
- the consultation plan should identify broad issues of likely concern to local and regional community and interest groups



The Red Lady of Paviland remains buried about 29000 years ago

Clearwell Caves- Ochre mines Gloucestershire England mined for over 4000 years Discovered in Wales. UK.

In Victoria, where the DATSIP draws its example above, the costs to the Land user are first to engage a Cultural Heritage advisor, then ***"fees"*** *are paid to the organization who approves the CHMP (the Registered Aboriginal Party (RAP) for the area or Aboriginal Victoria if a RAP hasn't yet been appointed.*

These "fee's" from both the "EIA process and consultation" and CHMP's process will contribute significant onerous costs and untimely delays to miners operations which jeopardize their livelihoods.

It is the collective experience of many of our miners that Mining Activities are unlikely to disturb or displace Cultural Heritage even during Mining or Exploration Activities if a Miner or Explorer undertakes the self-assessment model that already exists with the current Cultural Heritage Duty of Care Guidelines

In our context (mining for Gems & Gold) the effects of the State legislating that all Mining Activities, including Gem and Gold producers must undertake compulsory CHMPs will only serve to delay the grant and renewal of Mining Tenures, as has been the case in areas which are subject to Native Title.

In areas subject to Native Title where small gem and gold miners can operate, it is not unusual for many of these tenure applications being processed through the RTN process to take up to between 2 and 5 years, to be granted with still many referred to Mediation and Determination in the processes of the Native Title Act with the National Native Title Tribunal.

As the DATSIP review Consultation Paper stated about parties negotiating voluntary agreements - raised in the 2013 Australian Government Productivity Commission Inquiry Report, "Mineral and Energy Resource Exploration" noting that facilitation should be affordable, independent and not unnecessarily increase timelines.

From our collective experience there is nothing timely nor affordable about negotiating Cultural Heritage agreements at least under the NT Act provisions, we can't imagine anything DATSIP would be design would be any better.

Small Scale Miners are not supportive and reject the need of reconsidering the threshold for formal cultural heritage assessments for Land Users and believe that this proposal is disproportionate and inappropriate given the minor amount of Cultural Heritage that has been historically discovered or disturbed on Small scale mining tenures.

Paleolithic Maccasan Stone arrangement Salawesi Indonesia

DATSIP Discussion Paper Extract-

Land Court & Tribunal for Dispute Resolution & Voluntary agreements

Is there a need for dispute resolution assistance for parties negotiating voluntary agreements – if yes, who should provide these services and what parameters should be put around the process

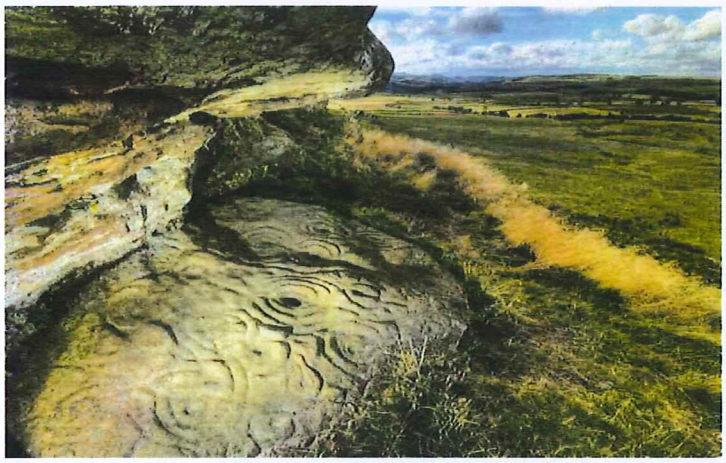
QSMC Comments

For any agreements outside the authority of the National Native Title Tribunal (NNTT) the Small Scale miners perceive that the Qld. Land Court and Tribunal are the proper authority for assisting in Voluntary agreements.

The parameters should be that the process is "voluntary not compulsory" and each party should meet its own costs with regard to voluntary agreements.

That a time frame is set of no longer than 3 months to achieve the agreement

That the Land-User (Miner or Explorer) can undertake activities after the 3 month period using the Duty of Care Guidelines if parties fail to reach an amicable agreement



5000 year old Neolithic stone carving Northumberland England

6000 year old Carved Oak found in Rhondda Valley Wales

DATSIP Discussion Paper Extract.

Is there a need to reconsider the threshold for formal cultural heritage assessments– if yes, what assessment and management processes should be considered?

During the review of the Duty of Care Guidelines in 2016–17, DATSIP received feedback from some stakeholders suggesting that:

:- government should provide a greater regulatory presence and be adequately resourced to do so, including auditing of developers and being more active in prosecuting non-compliance

:- penalties paid for breaches should go to the communities whose cultural heritage was destroyed.

:-Other jurisdictions have provided for similar mechanisms to Queensland to protect cultural heritage.

Examples of additional mechanisms adopted by other jurisdictions include interim protection orders for up to three months or an ongoing protection declaration over an area, improvement notices served on land users to remedy the contravention of a CHMP and cultural heritage audits undertaken if the Minister believes there may be contravention of a CHMP.

Question

Is there a need to bolster the compliance mechanisms designed to protect cultural heritage – if yes, what needs to be improved and what additional measures should be put in place?

QSMC Comments

Too much emphasis by this Labour Government is on compliance to the point where even socialists don't want to move to Qld.

Auditing and prosecuting of only developers would appear unjust, there are other Land users.

Additionally, the Aboriginal Parties should also be audited as well to ensure that they have provided the documentation for reporting surveys and special places is accurate and within timelines expected which should be legislated and that the Cultural Heritage Survey reports are not mischievous.

There are instances where Native Title Parties have introduced "Cultural Heritage artefacts" to a site prior to and during survey's to ensure that the Land User was excluded from an area by reporting these introduced Cultural Heritage items in the Survey Report.

Only the courts should adjudicate if a company or individual is found negligent in its "Duty of Care", it is up to the courts then to decide whether to impose improvement notices and award costs to either party.

This process allows parties to present their cases, and for the Courts to examine the evidence and adjudicate their findings.

Government should be more involved in helping promote the Cultural Heritage Act including the Duty of Care Guidelines so all parties co-operate to preserve Cultural Heritage.

:- Rock painting Altimara Caves Spain 16500- 12500 BC

DATSIP Consultation Paper extraction

Is there a need to revisit the 'last claim standing' provision – if yes, what alternatives should be considered?
Is there a need to revisit the identification of Aboriginal and Torres Strait Islander parties – if yes, who should be involved and what roles, responsibilities and powers should they have?
Should there be a process for Aboriginal and Torres Strait Islander parties to apply to be a 'Registered Cultural Heritage Body' to replace the current native title reliant model?

QSMC comments

Connection to country or being the traditional owner cannot always be seriously proclaimed by aboriginals on "exclusive land tenures" and even many "Non- Exclusive" land areas. There are many examples of Native Title application claim area's that have been dismissed by the NNTT through the registration or determination process of the NT Act., through dubious Native Title land claims.

It is controversial who owns this Cultural Heritage if particularly as the Exclusive Land portions of a Land Claim has not been legally proven or decided, and even if so, It is more likely than not the Traditional Movement of Aboriginal clans was quite fluid even up to and during European settlement along with tribal warfare common and the displacement of the losers of Tribal battles succumbing these areas to the stronger tribe.

That is too say that the Traditional Owners of today in any area at a previous time in history where unlikely the descendants of traditional owners of the same area in any previous point in history due to these factors above.

This displacement is not unique to Australia, the quantification of "country" by aboriginals is an unenviable position.

Small miners are generally supportive of the "Native Title Reliant Model" though we are even justifiably sceptical of this process, given Native Title "Consent determinations" which are sometimes manipulated by the State's engagement, by pacifying leaseholders of non-exclusive (leasehold) lands and their objections to a Native Title Claim or Determination.

This has and is done by the State asserting that the Leaseholders pending renewal of their "lease hold tenures" will be assured, should they not object to a Native Title Claim or Determination, under the NT Act processes.

Whilst the States complicity in this behaviour is an abomination, as it perversely provides pressure on the willingness of a Leaseholder proponent from candidly contesting Native Title, and by default, perhaps the Cultural Heritage ownership of those lands.

The ramifications of the leaseholder proponent being unsuccessful against a Native Title Claim determination hearing would essentially imperil the Leaseholders tenure renewal and is an overwhelming incentive not to engage in this Native Title process.

This is barely a just and ethical practice, as it circumvents full and fair opportunity for one to candidly present their case and allows others to manipulate and coerce.

This practice is likely to lead to legal challenges to Native Title Claims & Determinations in the future.

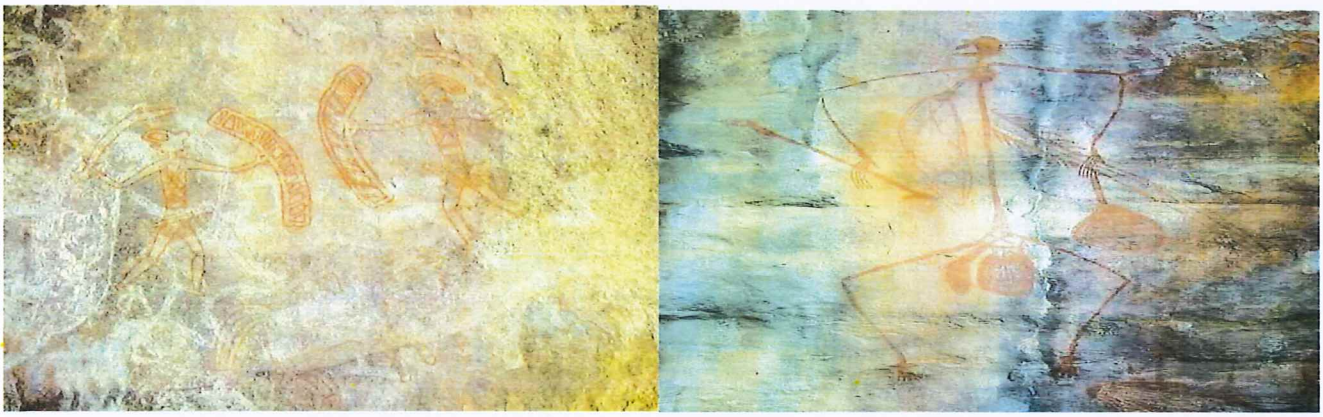
Regardless of this fact, Native Title Determinations should be the principle process which recognises whether an aboriginal party has rights on non-exclusive lands.

Additionally, if a person's native title has been compulsorily acquired or has otherwise been extinguished then the Small Miners are supportive of these instances to recognize the aboriginal party.

Whilst it has been acceptable practice for Native Title Claimants to be treated as Aboriginal Parties, it is questionable that there is legitimacy to their Land Claim, and should not be included as an Aboriginal Party unless a Native Title determination is made, and only over the lands where the determination was made.

As previously stated, there have been many instances of Land Claims made by aboriginals which have failed the Registration or Determination tests (NT Act), and to the point where the Land claim applicants application were "dubiously questionable" to say the least.

The practice by the State support of utilising the" Last Man standing" principle is remiss, and could possibly lead to legal proceedings against the State from a Land-user proponent or future Native Title claimant, if either were wronged from this legislation.



Above :- Neolithic Rock paintings in the Bhimbetka caves (India)

Queensland Small miners would be supportive of independent "local boards" being established to examine and review supporting evidence supplied by Aboriginal Representative Bodies or aboriginal parties to consider whether a Cultural Heritage applicant quantifies being recognised as a "Registered Cultural Heritage Custodian".

These unstacked "Local boards" should consist of community groups, so a broad spectrum of the community is represented to evaluate the application.

Locals are more readily able to evaluate the bona fides of an applicant and know or have access to the local history of an area rather than outsiders and boffins who are far removed from the district where the claimant group are making claim to be the rightful custodians.

The design and implementation of this idea could be drawn from the funding from the interest earned from the Environmental bonds of Prescribed EA's (EP Act) or diverted the money that the Hon. Premier, Annastacia Palaszczuk's is intending to use to graft up the Public Servants before the next election.

Culleenamore shellfish Middens 3000 years old. Sligo, Ireland

Remains of ancient stone fish traps in the tidal Menai Strait in Wales

Recording cultural heritage.

DATSIP - What the Cultural Heritage Acts say (extract)

The Cultural Heritage Acts provide for a register and a database that are important research and planning tools for Aboriginal and Torres Strait Islander parties, land users, researchers and planners in assessing and managing cultural heritage.

The register is publicly available and includes information about Aboriginal and Torres Strait Islander parties, registered Aboriginal and Torres Strait Islander cultural heritage bodies, Cultural Heritage Studies, Cultural Heritage Management Plans and designated land use areas.

The database records cultural heritage and may be made available to Aboriginal and Torres Strait Islander parties if the information relates to the party's area of responsibility, to land users if the information is necessary for them to satisfy their duty of care and to researchers.

Question - Is there a need to make improvements to the processes relating to the cultural heritage register and database – if yes, what needs to be improved and what changes should be considered?

QSMC Comments

Native title Holders and Aboriginal Custodians have a Duty of Care to accurately record areas which have been surveyed and provide descriptions of any cultural heritage and locations

All areas that have been, or will be in the future, be subject to a Cultural Heritage Inspection/survey, in accordance with a Cultural Heritage or Native Title agreement should be recorded on the Register and DATSIP's Cultural Heritage Data base.

All Cultural Heritage finds should be recorded on the Register and the DATSIP database.

This must become a legislated requirement under the CH Act, and be retrospective legislation.

It is difficult for any Land User to facilitate their Duty of Care if the Aboriginal peoples and their representative bodies or their legal representatives do not provide information & updates of Cultural heritage Surveys to the Register of DATSIP.

It is hard for anybody to protect something if you aren't informed where it is.

These conditions must be also included in the Duty of Care Guidelines

The Small Scale Miners believe that all Cultural Heritage Inspection areas & sites should be recorded on the DATSIP database, this will assist in providing Land Users and Aboriginal Parties access to this information and, in time, provide maps of Cultural Surveyed areas which would no longer require resurvey by aboriginal parties

DATSIP Review Discussion Paper

Question

Do you have any other input, ideas or suggestions on how the Cultural Heritage Acts could be improved to achieve their objectives of recognising, protecting and conserving cultural heritage?

QSMC Comments

Cultural Heritage protection of Mining sites and Areas

The Queensland small Miners would like to know what steps are being taken to preserve the States Small Scale Miners and our Culture and heritage.

That is, how the State proposes to afford to record & manage all the historical mining sites of significance in Queensland and how does the State intend to preserve the rights and aspirations of Small Scale Mining so future generations can experience the unique vocational opportunities that these industries can afford so current and future generations can enjoy and experience these vocations and make their own mark on contemporary history.

Duty of Care Guidelines.

The Duty of Care Guidelines could be redrafted to include better descriptions and photographs of Cultural Heritage items help with Land Users particularly those less experienced identifying Cultural Heritage.

The Duty of Care Guidelines should include the duty of care obligations of both the Land User and the Aboriginal custodians.

These handbooks could then be distributed to Land Users by either DATSIP or Regulating authorities (DME or EHP) when tenure applicants apply for a Future Act tenures.

Educating the general public on Cultural Heritage and the protocols is also the responsibility of the State.

The Native Title Protection Conditions - Expedited Procedure

The Expedited Procedure is a Cultural Heritage process outcome negotiated by the then Queensland Indigenous Working Group, the State the then and Queensland Mining Council (now QRC), who represent the Big end "Oil and Gas Miners," in 2002- 2003.

The NTPC's which were designed for low impact activities for Oil and Gas Industries, which basically provided a fast-track for Cultural heritage regime so seismic operations could proceed with pre-set conditions and was negotiated between these parties above under Section 237 of the NT Act 2003

This negotiation "excluded small miners" from participating and was designed and agreed specifically between these parties above.

By and large small-scale miners cannot afford the processes and costs of the NTPC's which the Oil and gas companies can dispense from their shareholders, with the actual negotiators, impervious to the costs that they had committed their shareholders to foot.

Recently some Native Title Parties Representative Groups have been touting the Expedited Procedure process as the associated costs as the "minimum Industry standard for Cultural Heritage Protection for Mining, including Small Scale Mining.

This is not the case, as Small Scale Miners were not included in the consultation, and in fact deliberately excluded.

Most small scale mining and exploration is "High Impact" and hence progressed under the Right to Negotiate (RTN) Process.

The States Small Mining Representative Groups categorically repudiate any connection to this agreement and would not support this Native Title Protection Conditions or the costs associated of this agreement being used as a model agreement for small scale miners for any form of Cultural Heritage Agreements for our Industries.