



Queensland Small Miners Council
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Fleur Kingham
 Qld. Law Reform Commission

9th September 2024

Reference:- Qld Small Miners submission to the Objection Process of Mining Leases

The Qld Small Miners Council (QSMC) would like to thank you for taking the time to meet with some of our delegates and listen to our immediate concerns regarding the Qld. Land Reform Commission's (QLRC) review into "The Objection Process for Mining Leases," in Emerald on the 8th of August 2024.

As stated at this meeting the QSMC and our members have very grave concerns about these proposals contained in the QLRC's Review of Objections for Mining Leases consultation paper – July 2024.

The QSMC and our member groups would require these questions which were tabled with you to be addressed by the QLRC prior to the QSMC providing any final submission, and we are hopeful that we will be further consulted and be kept informed as a clearer picture of the QLRC proposal/s develop.

A troubling aspect about what is proposed by the QLRC is the lack of information regarding what weight the "advice" provided by the indigenous and environment advisory committee's would carry on the deliberations of objection outcomes, which could range from "who care's" to virtual "veto power" over all mining projects whether Cultural Heritage or Environmental issues are existing or not!

Should these proposals be recommended to be legislated, protections and safeguards must be put in place to ensure that any advisory committee does not "weaponise" their advice to be obstructionist such as landholders have implemented utilising recent changes to the Bio security Act.

However, at present the QSMC cannot support any proposal like those being proposed by the QLRC in the consultation paper, which would undoubtedly add significant delays and costs for Mining Leases projects. The QLRC proposals would be counterproductive in the small scale mining context, which are normally straight forward and unperplexing applications.

Additionally, as raised in the QSMC questions submission to the QLRC review into Cultural Heritage Objection process for Mining Leases, we are very concerned with the reality of these proposals will apply to all mining leases over all background land tenure types including those properties on lands determined to have no native title or even a native title claim and those extinguished lands which include Grazing Homestead Perpetual leases (GHPL) and Freehold properties.

Property rights, including those of GHPL and Freehold properties are also protected under the Human Rights Act, and the proposals the QLRC are submitting will undoubtedly impose upon and undermine the value of these property rights by using the miner's current ability to provide lawful access to third parties.

This in many instances will be counterproductive with ensuring good relations with landowners who have not had the opportunity extended to them to validate or contest an aboriginal party as provided under the Native Title Act for Aboriginal Land Claim/s and determination processes.

These concerns have been tabled with you and have also been clearly outlined in our previous submissions to the Datsips Cultural Heritage Review and I now provide you with the three individual submissions by the QSMC and a member associations in electronic format and they are attached hereto.

The QSMC also have long awaited the release of the outcomes for the very protracted Review into the Cultural Heritage Act (Qld), *and, as yet*, despite recent correspondence and telephone calls requesting some update from the DATSIP, to date no information has been revealed. This is despite the QSMC providing a delegate to this reviews stakeholder panel and providing extensive submissions to the Cultural Heritage Review.

The QSMC believe that Datsip are concealing this information from the general public, and we perceive that the Minister and Government has wisely decided to hold back on the release of the Labor governments design of the Cultural Heritage Review outcomes before the pending election, as it would be political suicide to do so, given the opposition to the "Voice" referendum clearly reflected in Queensland.

The QSMC would need the detailed information from this 5 year long "Cultural Heritage Review," performed by DATSIP at the instruction and behest of the Labor Government's policy "*Path to Treaty*," before the QSMC could not possibly try and respond in full to the QLRC request for submissions, as this DATSIP review information would have details pertinent and have bearing on this QLRC review for Mining Claim objections!

The QSMC are also aware that the QLRC has been well briefed on DATSIP's proposals into Cultural Heritage Review, as confirmed by John Schiavo, the Director of Datsip Cultural Heritage.

The QLRC's Objection to the Mining Lease process review proposals are verbatim to proposals tabled in the Labor Governments Cultural Heritage Review, bringing into question the "*independent*" status proclaimed by the Queensland Land Reform Commission!

Undoubtedly, the current Labor Government would prefer their government policy constructs to appear to be raised by the Queensland Law Reform Council, purportedly an "*independent body*", as it would provide the Qld. Labor government some political distance to an outcome which would be politically unpopular.

These QLRC/Datsip proposals would cause popular unrest by the public as was seen recently when the Western Australian governments "*Cultural Heritage Laws*" were introduced, which will undoubtedly arise in this state if these proposals raised now by the QLRC are to be revealed or realised as the QLRC proposal and the Qld. Labor Governments cultural heritage proposals are in lock step with the Western Australian Government's legeslation (now repealed).

The QSMC can also perceive that the DATSIP/ QLRC's proposals, which recomend two separate entities, one an Aboriginal Advisory Committee and the other an Environmental Advisory Committee, if validated, would readily be broadened surreptitiously then to simply refer matters other than Mining Leases. This unfortunately has become a routine behaviour which has been broadly used by governments and departments to covertly impose their will and policy on the public without consultation or consent.

Anyone who has read the proposals in both QLRC and the Cultural Heritage Review can see that most likely these proposed advisory committee's if established, would likely apply their powers in any instance where surface disturbances are required, for example – *planning approvals, major works and any farm management practices*, albeit currently it is only being proposed for Mining Leases for the time being, acting as a litmus test by government to see how unpopular the concept will be before rolling out the cultural heritage reforms lock stock and barrell to the broader public.

QSMC summary

In summary the QSMC do not support changes to the existing objection process for Mining Leases or for any other tenure for that matter.

Whilst the current system is not perfect, current laws provide avenues for the public and interested parties to participate in the objection process.

To extend powers to unvalidated parties which may have no lawful right to speak for country over the lands where a tenure is situated will provide any aboriginal person/s a means to undermine existing Native Title determinations and claims and adding multiple layers and costs for miners to pay and navigate even when the interested aboriginal or proponent is possibly illegitimate.

Additionally, the proposed new Aboriginal and Environmental advisory panels outlined in the QLRC consultation paper do not provide any detail on the powers, function, structure and financing of these new entities!

The objection proposal by the QLRC lacks sufficient detail on how it would all operate and function and will undoubtedly impede on Property Rights and likely Native Title rights causing a deepening rift in society and pitching interested parties perilously into dispute and thereby adding extensive costs, unnecessary delays and hence productivity all which have impact on viability, investment and the Sovereign Risk in this State.

Whilst I commend your brave attempt to be solutionist, we feel you are addressing a larger can of worms than you perceive and certainly one the community at present is not prepared or too complex to address, and likely another reason that the government has hurled you this really hot potato to deal with.

The QSMC however look forward to further consultation and information as this QLRC's refine the proposal, however the QSMC can see no need at present to reinvent the wheel as the current system is still rolling along quite satisfactory and there is no need to fix what's not broken.

Kindest regards

Secretary
QOMA/QSMC

** Prepared and signed as authorised by the following QSMC member associations*

Qld Small Miners Council	Contact details	mail@qsmc.org.au
Qld Opal Miners Association Inc.	Secretary [REDACTED] President [REDACTED]	[REDACTED] [REDACTED]
Yowah Opal Mining Community	Mining delegate [REDACTED]	[REDACTED]
Qld Boulder Opal Association Inc.	President [REDACTED]	[REDACTED]
Qld Sapphire Miners Association	Secretary [REDACTED]	[REDACTED]
North Qld Miners Associations Inc.	President [REDACTED]	[REDACTED]



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]

[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 and 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 signature]

[Redacted name]

Secretary QOMA
QSMC delegate

**Queensland Small Miners Council****PO Box 210 Quilpie Q 4480****Email: - mail@qsmc.org.au****Website: - www.qsmc.org.au**28th March 2022

The Hon. [REDACTED]

Minister of Dept. of Seniors, Disability and Aboriginal and Torres Strait Island Affairs

PO Box 15397

CITY EAST QLD. 4002

Email: CHA_Review@dsdsatsip.qld.gov.au**Reference :- QSMC -Submission to Options Paper Finalising the Cultural Heritage Review**

Dear Sir,

The Queensland Small Miners Council is a forum of the States five Small Scale Mining Industry representative groups, which collaborate to provide Industry representation for the States 4500 small scale miners to Government bodies which regulate these Gold and Gemstone producers.

The Queensland Small Miners Council support the Federal Native Title Act and also the current Cultural Heritage Act and the Duty of Care Guidelines, and in our context by and large, we believe they are still operating as intended and are achieving Cultural Heritage Protection outcomes for Aboriginal and Torres Strait Islander peoples.

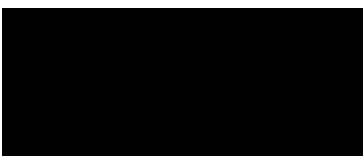
Whilst the Queensland Government's broader objective is to reframe the relationship with Aboriginal and Torres Strait Islander people's, *this "political objective,"* no matter how pious, should not be at the expense of the human rights of Land owners, which according to the proposals of the options paper prepared by your departmental "Review team," have blatantly overlooked.

As the secretary of the QOMA, I have also previously provided a detailed submission to the Cultural Heritage Review Stakeholder Panel in 2021, which pointed out this departmental oversight, yet the current "Options" provided, seem to blindly continue down the same path without any attempt to address "Land Owner rights", or any legitimate alternatives which respect the rights of all parties.

The Queensland Government must provide a balanced and legitimate path to achieve its political objectives. This could be best achieved by collaboratively working with parties to developing legitimate workable options, which respect the aspirations of ATSI peoples, Land Owners and Industry, as many of the proposals in the option paper, are invalid, lack detail or are alarming!

The QSMC appreciate the matter is complex, however with good will, mutual respect and consultation a solution can be achieved which balances the rights and aspirations of all parties.

For now the QSMC supply this supplementary submission in support of our previous submissions with the hope that our real concerns are listened to and finally addressed.



Secretary Qld Opal Miners Assoc.



Queensland Small Miners Council

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Cultural Heritage Review Team

Dept. of Seniors, Disability and Aboriginal and Torres Strait Island Affairs

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QSMC - Submission to Options Paper Finalising the Cultural Heritage Review

The QSMC member groups support & promote the protection of “all” Cultural Heritage, including the protection of Cultural Heritage Sites of Queensland’s historic small scale mining industries.

The QSMC supports and respects the Queensland’s Human Rights Act 2019 (HRAcT), and these rights afforded to all Queensland citizens and other peoples under this legislation.

This support includes the Cultural Heritage Rights of the Aboriginal and Torres Strait Islander Peoples and their descendants, which in part affords to them - *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 as described under Section 28 d of the HRAcT (Qld).*

The QSMC also fully support the Federal Native Title Legislation and processes, which affords the opportunity for ATSI peoples to support their “connection” to country claimed.

The NTAct processes have provided for the many genuine Native Title Land Claims, resulting in over **290** Native Title determinations with either “*Exclusive or Non Exclusive*” determinations & also has dismissed Native Title land claims, some of which were spurious land claims which have left these applicants as beneficiaries to the States “*Last Man Standing*” legislation under the current and now proposed Cultural heritage legislation.

The QSMC do not support the reintroduction of the “Last Man/Claim Standing,” provision in any revised legislation, which historically has been ‘introduced’, since removed and then reinstated by the State.

This Queensland government, utilising the Last Man Standing Provision, has provided a deeply flawed legislative provision which puts people in the position of speaking for country without any requirement or appropriate qualifications to do so, which undermines and makes a mockery of the Federal Native Title processes and the rights of the legitimate aboriginal peoples.

The QSMC additionally, and as equally, respects and observes the Human Rights Act 2019 (div 2 section 24), which also affords the land owners of land, “property rights”.

The property rights of these Land owners will be undermined by these departmental “Option proposals,” if legislated.

Miners, are able to provide lawful “mining related access” (MRAAct) to third party’s onto a Land Owners lands.

These option proposals places the miner is an unacceptable position, of being forced to provide access to Aboriginal party claimants, perhaps providing a back door access to the land, likely without the consent or knowledge of the Land Owner, with potential for Aboriginal parties to sterilise parts of the Land owners land, with either “Tangible or Non Tangible” claims of cultural heritage, without obtaining the consent, acknowledgement and acceptance of the Aboriginal Parties claims of Cultural heritage rights over these lands, from the Land owner/s.

As I alerted the department review team to in the “QOMA’s - Stakeholder Panel Draft options paper Submission in October of 2021, Land Owners of “Exclusive land”, have not been afforded the same opportunity to contest Native Title Claims as Non Exclusive land holders, as Exclusive land tenures were excluded from the Native Title processes, to determine the Native Title land Claim applications.

The vast majority of these Native Title Claim Determinations were, “Consent Determinations,” which naturally, respected the claim process which included- consultation, negotiation and then finally the consent by the non-exclusive lands Land holder/s.

This respectful process will be circumvented in the Options Paper proposals and tenders no legitimate means or rules for a Court or Tribunal to validate an Aboriginal Parties claim to substantiate that they are the rightful person with “connection” to Speak for Country for the preservation of Cultural heritage, as is afforded under the NTAct.

Since the implementation of The HRAAct 2019, this departmental review into Cultural Heritage has either continued with disregard for the consideration of Land Owner property rights, which is reflected in the Departments Option paper & can no longer be passed over, particularly at this late stage when the development of legislation is pending.

For the department to continue this review and/or impose any of the current options without addressing this shortfall in any proposed “legislative bill” will likely lead to its ignominious demise, as it will be scrutinised by Parliamentary Committee who will surely be alerted to the shortfalls of the “Bill” by any proficient representative group or individual who cares about the protection of Property Rights which are preserved and afforded by Queensland’s Human Rights Act.

The States, “Options paper proposals,” tendered by the Department, currently do not respect the Landowner/s “Property rights,” extended in the Human Rights Act, or balance these rights with those Human Rights of the ATSI peoples, nor do they provide a valid pathway which the ATSI peoples to obtain legal & legitimate custodian rights of Cultural Heritage outside of the Native Title Determination arena, which invokes the confidence required to legitimise and scrutinise an ATSI person or group being the rightful persons, “Speaking for Country”, with Land Users, Land Owner/s and daresay, the general public.

Proposal 1

The QSMC does not support the removal of the current Duty of Care (Doc) Guidelines and in fact to the contrary, we actually support the DoC Guidelines and processes as it is the most prudent method to ascertain whether Cultural Heritage may be identified in an area, particularly on Exclusive Lands.

Aboriginal Cultural Heritage ***is not*** everywhere and moreover, tangible “Significant” Cultural heritage is even less likely to be located during the term of the vast majority of small scale mining operations, which also includes excavating in areas which have not been previously disturbed.

To assume that Aboriginal Cultural Heritage (ACH) is everywhere is woke, and only panders to this absurd hypothesis, which in the context proposed in the Options paper, will unnecessarily impose a regime of consultation, negotiation, agreement making, “or not”, hence invoking dispute resolution mediation and perhaps arbitration, prior to the evaluation of “whether or not” cultural heritage even exists on the land users, “area of interest”.

To entertain this notion is farcical.

If this proposition is imposed it will inflict unreasonable productivity delays and financial costs on small scale miners & other Land Users and even to the State & introduce productivity impediments which will make most small scale mining operations and other land use activities unviable, particularly on areas where there is no Cultural Heritage.

The current DoC guidelines (whilst still open for improvement) is the most beneficial mechanism for the participation by Land users in the day to day operations and the protection & preservation of Cultural Heritage.

The DoC guidelines potentially would provide more mutually beneficial outcomes if utilised and promoted correctly by the Department and the State.

Additionally in “Proposal 1,” the concept of mapping areas of areas of “High Risk Cultural Heritage,” conjures reasonable concerns to Land users & Land Owners of broad scale blanketing of areas, which is likely to be invoked on here-say without any supporting rationale or evidence that areas have ACH, and therefore sterilising land without substantiated Cultural Heritage ground studies or scrutiny when evaluating these lands.

The QSMC also have concerns regarding the definition proposed as ***Prescribed Activity, and the context of where this definition is used***, which extract is as follows:-

- ***Prescribed activity:*** *an activity that causes disturbance that would result in a lasting impact to ground that has not previously been disturbed, or to the ground below the level of disturbance that currently exists.*

The context where this definition is used is of concern as already stated, Cultural Heritage is not everywhere, so utilising this definition as the trigger for a regime of Cultural Heritage protection protocols will be overzealous in most day to day land user operations.

*Additionally this definition of **prescribed activity** does not allow for the geological reality that most subsurface geological depositions are likely hundreds of thousands if not millions of years old, and when and where disturbed are likely well deeper than the occupational limits of Aboriginal and Torres Strait island peoples where tangible cultural heritage can be anticipated to be located.*

The rationale of this proposed definition and the intent of the definitions “application” is definitely overzealous and fundamentally flawed, therefore the QSMC cannot support this proposed change.

QSMC summary Options Paper Proposal 1

Given the points raised above the QSMC do not support Proposal 1, and emphatically deplore the proposal which also takes away from the fostered good will intended in the reconciliation process in favour of a more prescribed arbitration processes & in many instances, where the aboriginal parties unfortunately may not have any legitimate rights over those lands, and even in some instances dismissed by the NNTT, and will in fact, as proposed, will impede on the Human Rights of Landowners.

It is noted that the Departmental options paper seems to have overlooked the Human Rights of land owners in all of these proposals and seems to dismiss the relevance of these rights out of the equation, and is unacceptable.

QSMC do however support the following proposal

In our context, the QSMC would support, as stated, a refined Duty of Care Guideline, as a self-assessment tool which is designed with input from all parties & implemented by Land Users where other Native Title Agreements (ILUA or RTN's) or other valid mechanism for a Cultural Heritage agreement are not in place.

Land users would be able to continue to utilise the DOC guidelines to undertake operations as it is the most pertinent balance of compliance through self-assessment and cultural heritage protection.

The current “DoC guidelines” information could be better updated and actually promoted better by the Department and Government in media leading to higher participation rate and support by the community and hence higher discovery and protection of Cultural heritage.

Any Cultural Heritage identified during the course of activities that have potential to be disturbed during the land users activities would require the regulatory authority being provided a “Notice” that Cultural Heritage has been identified.

The State would then identify the legitimate Aboriginal Party, which must be endorsed by the Land Owner by either (ILUA) or other Cultural Heritage agreement.

The parties through State mediation may then may proceed in good faith to provide measures to protect and preserve the Cultural Heritage identified.

Proposal 2

The QSMC does not support Proposal 2 as small scale mining currently does not require land development processes and would not support the introduction of another departmental regime being introduced as its slow enough already and undoubtedly would invoke more fees and charges for another departmental process, all which is preposterous.

Proposal 3

The QSMC does not support to amend the Cultural Heritage Acts to expressly recognise intangible elements of Cultural Heritage.

The concerns of this proposal will likely lead to broad scale claims of intangible cultural heritage over vast areas without any requirement to substantiate the claim by an Aboriginal Party and unable to be challenged by a land user or Land Owner, and hence, the possibility of being arbitrarily deprived of parts of, or all of, the Land Owners property and sterilising land from being used by other land users.

Proposal 4

The QSMC would like to see more detail on this Proposal before supporting this proposal, however the QSMC has always had confidence that the Land and Resources Tribunal are best placed to provide arbitration and deliberations based on the evidence provided.

Proposal 5

The QSMC do not support this proposal which would require mandatory reporting of compliance to capture data and support auditing of the system.

There would be no time left in the day to actually do any work with all the compliance hoops you would have to facilitate for all the regulatory regimes now controlling the small scale mining sector.

Proposal 6

The QSMC do not support the proposal to provide for greater capacity to monitor and enforce compliance, we take that this proposal is to be undertaken by the State?

Part 2 - Reframing the definitions of 'Aboriginal party' and 'Torres Strait Islander party'

The QSMC do not support either of the proposals put forward by the State which are still in an uncultivated format and is lacking any sound rationale and the detail for any party to make an informed choice or decision.

The QSMC provide the following statements to these options collectively below:-

Option 1 & Option 2

- ***The QSMC do support the Cultural Heritage Acts are changed so that a previously registered native title claimant is not a native title party of an area, and section 35(7) is removed.***

This rationale is based on the fact that on at least on exclusive land the Land owner has not provided "consent" (NTA) to the Land Claim as it was excluded from the determination or NT Claim application and the Land Owner has not been afforded consultation or legal representation to concur with or contest this NT land claim.

Also that a Tribunal (NNTT) has perhaps heard the NTA application and dismissed the Native Title Claim. The deliberation by the Tribunal (NNTT) for the negative determination should be investigated prior to making an aboriginal party in these instances, as the NT Claimant may not have substantiated they were the correct people speaking for country or be able to substantiate "connection" as required under the NTAct and as protected under the Section 28 (d) of the Human Rights Act(Qld.

- ***The QSMC do not support the creation of a First Nations decision-making body as the parameters of the decision making framework has not been adequately tabled.***
Questions also arise what influence and powers will the decision making body have in dictating outcomes to the Government, the State, land owners and land users and even ATSI peoples and what redress is available to challenge these decisions!

QSMC believe the State must retain the responsibility and oversight for Cultural Heritage.

- *As was the case for the NT Claim process of the NTAct, the QSMC do not support a State sponsored CH Aboriginal party process where another (or many other) Aboriginal or Torres Strait Islander person/s claiming to have a "connection" to the area under Aboriginal tradition could apply for recognition as an Aboriginal party and there may be more than one or many Aboriginal or Torres Strait Islander party for these areas.*

Particularly if a new registered native title claimant/holder would automatically become the native title party for the area & the previous Aboriginal party or Torres Strait Islander party would no longer have party status.

Intra-indigenous problems over land Claims have prolonged Native Title determinations by internal disagreement between Native Title Claimants, which will also be seen in this States Cultural heritage regime if this proposal is introduced.

Additionally costs imposed to Land Owners will be multiplied by the Aboriginal parties involved which would not be sustainable for our members and other land users.

The QSMC's recommendation ...the Legitimate Option

As previously stated, the QSMC would support that an Aboriginal Party or Individual may (and already can) opt to undertake an ILUA with the Land holder or Lands Leaseholder to facilitate recognition of the Aboriginal Party's Cultural Heritage.

This legal instrument is already a valid mechanism & already available under the Native Title Act.

Alternately a voluntary mechanism by way of a Voluntary Agreement, with the Land owner.

The QSMC vehemently supports the human rights of the Land Owner, in particular on "Exclusive Land," which must also be considered and respected by the State when considering the proposals and legislative changes for this Cultural Heritage Review.

An Aboriginal Party must undertake and register an agreement (ILUA or other) or Voluntary agreement with the Land owner/ Land holder should they wish to be recognised as the Cultural Heritage Custodian of those lands in the case where a NT determination has been unsuccessful on non-exclusive land or on Exclusive Land/s.

The State already has the qualified personal & resources to assist the ATSI peoples to achieve this outcome, as they facilitated this activity during the Consent Determination process of the NTAct.

Additionally the State owns specific lands, i.e.- State Forests, parks etc., the State could lead the way, by signing ILUA's with Aboriginal and Torres Strait Islander Aboriginal party's to afford them the Cultural Heritage rights that these people seek over these State Lands.

The adoption of these positions respects the Human rights of all parties whilst preserving the Cultural Heritage of ATSI Peoples.

*Secretary QOMA
QSMC Delegate*

QSMC member group contact information

<i>Association Name</i>	<i>Association Secretariats Contact details</i>	
Qld Opal Miners Association Inc.		
North Qld Miners Association Inc.		
Qld, Sapphire Miners Association Inc.		
Yowah Opal Miners Social Club Inc.		
Qld. Boulder Opal Association Inc.		