

# Operational policy

## Community and other relations

### Management of Indigenous Cultural Heritage on QPWS estate

*Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of National Parks, Sport and Racing. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.*

#### 1.0 Purpose

This purpose of this operational policy is to assist Queensland Parks and Wildlife Service (QPWS) staff in understanding and complying with cultural heritage duty of care obligations.

#### 2.0 Background

QPWS is required to meet its statutory cultural heritage duty of care responsibilities. This policy complements QPWS's existing commitment to working in partnership with Aboriginal peoples and taking all reasonable and practical steps to be aware of, and avoid harming, Aboriginal cultural heritage on land and water managed by QPWS.

Cultural heritage can be both physical objects and cultural traditions that Australia has inherited from the past. Aboriginal cultural heritage includes both physical objects and artefacts like artwork, navigational markers, monuments, evidence of occupation, stone and wooden artefacts and it can also include places that are associated with spiritual significance such as ceremonial sites, burial grounds and places that have special creation importance. It also includes language, spiritual connections, dream time or creation stories, traditions and knowledge. Aboriginal cultural heritage provides evidence of connection to traditional country and forms the basis of cultural identity

This operational policy will cover Torres Strait Islander People but focuses on Aboriginal cultural heritage as there is limited QPWS managed areas contained within the traditional country belonging to Torres Strait Islander Peoples.

QPWS acknowledges traditional owners as custodians of their land and sea country, and as owners and advisors of their cultural heritage. QPWS values and seeks traditional owner input into park management activities and is committed to developing and maintaining strong partnerships in cooperative management. When planning and implementing activities on the protected area estate, it is important that staff identify areas of cultural significance before beginning works, and that mitigation measures are in place for the protection of cultural heritage values when work is undertaken. A cultural heritage risk assessment to identify potential consequences of the proposed activity harming cultural values is to be undertaken. The risk assessment guides the required level of field assessment and associated consultation with traditional owners to determine appropriate mitigation measures to reduced unacceptable impacts of the proposed works.

The Aboriginal Cultural Heritage Act 2003 (ACHA) provides effective recognition, protection and conservation of Aboriginal cultural heritage. Section 23(1) of the ACHA states that a person who carries out an activity must take all reasonable and practical measures to ensure the activity does not harm Aboriginal cultural heritage. QPWS must demonstrate that practical and reasonable measures are undertaken to satisfy the duty of care

responsibility under this legislation. Otherwise, where harm does occur to cultural heritage and practical and reasonable measures cannot be demonstrated, then significant fines may result to both the individual (max penalty of \$117,800) and the corporation (max penalty of \$1,178,000).

Both the ACHA and the *Torres Strait Islander Cultural Heritage Act 2003* aim to:

- provide blanket protection of areas and objects of traditional, customary, and archaeological significance
- recognise the key role of Traditional Owners in cultural heritage matters
- establish practical and flexible processes for dealing with cultural heritage in a timely manner.

The ACHA defines Aboriginal cultural heritage as anything that is:

- a significant Aboriginal area in Queensland; or
- a significant Aboriginal object in Queensland; or
- evidence of archaeological or historic significance, of Aboriginal occupation of an area of Queensland.

The object of the *Nature Conservation Act 1992* (NCA), states that whilst achieving the conservation of nature, the following must also be demonstrated:

- a) the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom;
- b) the use and enjoyment of protected areas by the community;
- c) the social, cultural and commercial use of protected areas in a way consistent with the natural, cultural and other values of the areas.

The *Marine Parks Act 2004* also requires that it is to be achieved through the inclusion of members of Aboriginal and Torres Strait Islander communities.

In the Cape York Peninsula and on North Stradbroke Island, Indigenous Management Agreements (IMAs) are the mechanism to implement joint management of the protected areas covered by these agreements. The process for the management of cultural heritage in these areas is stipulated within the IMA that binds the parties to the IMA. In regard to any activity that affects cultural values, compliance with the IMA cultural heritage requirements should satisfy the Duty of Care obligations under the ACHA (see the Cultural Heritage Risk Assessment - CH Form 1). A Procedural Guide and toolkit supports the implementation of this policy.

### 3.0 Cultural Heritage and Native Title

Aboriginal cultural heritage is not native title, but the two remain inextricably linked. Each is managed through different legislation and have very different methods of compliance. The *Native Title Act (Cth) 1993* requires procedural rights to be afforded to native title parties with respect to activities that may affect native title, particularly activities done on State land and waters.

The existence of Aboriginal cultural heritage in an area does not mean that formal native title necessarily exists over that area. Likewise cultural heritage duty of care obligations still exists on all QPWS managed lands, regardless of an areas native title status.

### 4.0 Cultural Heritage Duty of Care

The *Aboriginal Cultural Heritage Act 2003* (PDF) (ACHA) requires anyone who carries out a land-use activity to exercise a duty of care. QPWS must take all reasonable and practicable measures to ensure that activities conducted do not harm Aboriginal cultural heritage. The cultural heritage duty of care applies to any activity

where Aboriginal or Torres Strait Islander cultural heritage is located and includes cultural heritage that has not been identified or recorded in a database.

The *ACHA Duty of Care Guidelines*, are to be used when planning an activity on protected areas that potentially disturb a site of cultural significance. Any person who proceeds to knowingly harm, excavate, relocate, remove or possess an object of cultural heritage without the agreement of the relevant Aboriginal party for the area may be in breach of the duty of care under section 23 of the ACHA and potentially liable for prosecution and/or a fine.

Items of possible cultural heritage may also be found when undertaking works. Apply the principles of 'Find – Stop – Notify – Manage' (refer to the *Procedural Guide - Managing Indigenous Cultural Heritage*).

Consultation with the appropriate Aboriginal party for an area is required to mitigate risk that the activity may harm their cultural heritage.

## 6.0 References

*Aboriginal Cultural Heritage Act 2003*

*QLD DTMR Cultural Heritage Process Manual*, June 2012

*ACHA 2003 Duty of Care Guidelines (DATSIP)*, April 2004

*Operational Policy – Indigenous partnerships in management of protected areas*

*Procedural Guide – Indigenous partnership arrangements (currently being revised)*

*Procedural Guide – Recompense to Traditional Owners participating in protected area activities or services*

### Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of National Parks, Sport and Racing should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

### Approved By

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Signature

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Date

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