



# Torres Strait Islander Cultural Heritage Act 2003

Reprinted as in force on 21 September 2007

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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
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Queensland

# Torres Strait Islander Cultural Heritage Act 2003

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# **Torres Strait Islander Cultural Heritage Act 2003**

[as amended by all amendments that commenced on or before 21 September 2007]

**An Act to make provision for Torres Strait Islander cultural heritage**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Torres Strait Islander Cultural Heritage Act 2003*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Act binds all persons**

- (1) This Act binds all persons including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

## **Division 2                      Purpose of Act**

### **4                      Main purpose of Act**

The main purpose of this Act is to provide effective recognition, protection and conservation of Torres Strait Islander cultural heritage.

### **5                      Principles underlying Act's main purpose**

The following fundamental principles underlie this Act's main purpose—

- (a) the recognition, protection and conservation of Torres Strait Islander cultural heritage should be based on respect for Torres Strait Islander knowledge, culture and customary practices;
- (b) Torres Strait Islanders should be recognised as the primary guardians, keepers and knowledge holders of Torres Strait Islander cultural heritage;
- (c) it is important to respect, preserve and maintain knowledge, innovations and practices of Torres Strait Islander communities and to promote understanding of Torres Strait Islander cultural heritage;
- (d) activities involved in recognition, protection and conservation of Torres Strait Islander cultural heritage are important because they allow Torres Strait Islanders to reaffirm their obligations to Island custom;
- (e) there is a need to establish timely and efficient processes for the management of activities that may harm Torres Strait Islander cultural heritage.

### **6                      How main purpose of Act is to be achieved**

For achieving effective recognition, protection and conservation of Torres Strait Islander cultural heritage, this Act provides for the following—

- (a) recognising Torres Strait Islander ownership of Torres Strait Islander human remains wherever held;

- (b) recognising Torres Strait Islander ownership of Torres Strait Islander cultural heritage of a secret or sacred nature held in State collections;
- (c) recognising Torres Strait Islander ownership of Torres Strait Islander cultural heritage that is lawfully taken away from an area by a Torres Strait Islander party for the area;
- (d) establishing a duty of care for activities that may harm Torres Strait Islander cultural heritage;
- (e) establishing powers of protection, investigation and enforcement;
- (f) establishing a database and a register for recording Torres Strait Islander cultural heritage;
- (g) ensuring Torres Strait Islanders are involved in processes for managing the recognition, protection and conservation of Torres Strait Islander cultural heritage;
- (h) establishing a process for the comprehensive study of Torres Strait Islander cultural heritage;
- (i) establishing processes for the timely and efficient management of activities to avoid or minimise harm to Torres Strait Islander cultural heritage.

## **Division 3 Interpretation**

### **7 Definitions**

The dictionary in the schedule defines particular words used in this Act.

### **8 Meaning of *Torres Strait Islander cultural heritage***

*Torres Strait Islander cultural heritage* is anything that is—

- (a) a significant Torres Strait Islander area in Queensland;  
or
- (b) a significant Torres Strait Islander object; or

- (c) evidence, of archaeological or historic significance, of Torres Strait Islander occupation of an area of Queensland.

## **9 Meaning of *significant Torres Strait Islander area***

A *significant Torres Strait Islander area* is an area of particular significance to Torres Strait Islanders because of either or both of the following—

- (a) Island custom;<sup>1</sup>
- (b) the history, including contemporary history, of any Torres Strait Islander party for the area.

## **10 Meaning of *significant Torres Strait Islander object***

A *significant Torres Strait Islander object* is an object of particular significance to Torres Strait Islanders because of either or both of the following—

- (a) Island custom;
- (b) the history, including contemporary history, of a Torres Strait Islander party for an area.

## **11 Extension of evidence of occupation to surroundings**

If a particular object or structure is evidence of Torres Strait Islander occupation, the area immediately surrounding the object or structure is also evidence of Torres Strait Islander occupation to the extent the area can not be separated from the object or structure without destroying or diminishing the object or structure's significance as evidence of Torres Strait Islander occupation.

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<sup>1</sup> Under the *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions), *Island custom*, known in the Torres Strait as Ailan Kustom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

**12 Identifying significant Torres Strait Islander areas**

- (1) This section gives more information about identifying significant Torres Strait Islander areas.
- (2) For an area to be a significant Torres Strait Islander area, it is not necessary for the area to contain markings or other physical evidence indicating Torres Strait Islander occupation or otherwise denoting the area's significance.
- (3) For example, the area might be a ceremonial place, a burial place or the site of a massacre.
- (4) Also, if significant Torres Strait Islander objects exist in an area and the significance of the objects is intrinsically linked with their location in the area—
  - (a) the existence of the objects in the area is enough on its own to make the area a significant Torres Strait Islander area; and
  - (b) if it is reasonably appropriate under this Act, the immediate area and the objects in it may be taken to be, collectively, a significant Torres Strait Islander area.
- (5) For identifying a significant Torres Strait Islander area, regard may be had to authoritative anthropological, biogeographical, historical and archaeological information.

**13 Interpretation to support existing rights and interests**

A provision of this Act must not be interpreted in a way that would allow the provision to operate in a way that prejudices—

- (a) a right of ownership of a traditional group of Torres Strait Islanders, or of a member of a traditional group of Torres Strait Islanders, in Torres Strait Islander cultural heritage used or held for traditional purposes under Island custom; or
- (b) a person's enjoyment or use of, or free access to, Torres Strait Islander cultural heritage, if—
  - (i) the person usually lives according to Island custom as it relates to a particular group of Torres Strait Islanders; and

- (ii) the access, enjoyment or use is sanctioned by the Island custom; or
- (c) native title rights and interests.

## **Part 2                      Ownership, custodianship and possession of Torres Strait Islander cultural heritage**

### **Division 1                Preliminary**

#### **14      Object and intent**

- (1) The object of this part is to make rules about ownership, custodianship and possession of Torres Strait Islander cultural heritage.
- (2) The basic intent underlying the rules stated in this part is that Torres Strait Islander cultural heritage should be protected.
- (3) A supporting intent is that, as far as practicable, Torres Strait Islander cultural heritage should be owned and protected by Torres Strait Islanders with traditional or familial links to the cultural heritage if it is comprised of any of the following—
  - (a) Torres Strait Islander human remains;
  - (b) secret or sacred objects;
  - (c) Torres Strait Islander cultural heritage lawfully taken away from an area.
- (4) Another supporting intent is that Torres Strait Islander cultural heritage of the type mentioned in subsection (3)(a) or (b) that is in the custody of the State, including the Queensland Museum, should continue to be protected by the State until it can be transferred into the protection of its Torres Strait Islander owners.



## **Division 2                      Torres Strait Islander human remains**

### **15            Ownership of Torres Strait Islander human remains**

- (1) On the commencement of this section, Torres Strait Islanders who have a traditional or familial link with Torres Strait Islander human remains in existence immediately before the commencement become the owners of the human remains if they are not already the owners.
- (2) Subsection (1) applies regardless of who may have owned the Torres Strait Islander human remains before the commencement of this section.

### **16            Torres Strait Islander human remains in custody of State**

- (1) This section applies to Torres Strait Islander human remains if the human remains are in the custody of an entity that represents or is the State.
- (2) The persons who own the human remains may at any time ask the entity—
  - (a) to continue to be the custodian of the human remains; or
  - (b) to return the human remains to them.
- (3) If the entity is satisfied the persons making the request under subsection (2) are the owners of the human remains, the entity must comply with the request to the greatest practicable extent.
- (4) The persons who own the human remains are not limited to making only 1 request under subsection (2).

*Example—*

The owners could ask for the Queensland Museum to continue its custody of the human remains while they make suitable arrangements for dealing with the human remains, at which time they could ask for the human remains to be returned to them.

**17 Possession of Torres Strait Islander human remains**

- (1) This section applies to a person, other than the State, if the person has in the person's possession Torres Strait Islander human remains that were in existence immediately before the commencement of this section and the person does not have the necessary traditional or familial links with the human remains to be the owner of the human remains.
- (2) The person must take all reasonable steps to ensure that the human remains are taken into the custody of the chief executive as soon as practicable.

Maximum penalty for subsection (2)—200 penalty units.

**18 Knowledge of Torres Strait Islander human remains**

- (1) This section applies to a person if the person—
  - (a) knows of the existence and location of Torres Strait Islander human remains, but does not own the human remains or have possession of them; and
  - (b) knows, or ought reasonably to know, the human remains are, or are reasonably likely to be, Torres Strait Islander human remains; and
  - (c) knows or suspects—
    - (i) that the chief executive does not know of the existence of the human remains; or
    - (ii) that the chief executive knows of the existence of the human remains, but does not know the human remains are, or are reasonably likely to be, Torres Strait Islander human remains.
- (2) The person must—
  - (a) as soon as practicable, advise the chief executive of the existence and location of the human remains; and
  - (b) give the chief executive all details about the nature and location of the human remains the chief executive reasonably requires.

Maximum penalty—100 penalty units.

- (3) For subsection (2), the obligation to advise the chief executive and to give the chief executive details must be complied with—
- (a) if all the circumstances giving rise to the obligation arose before the commencement of this section—as soon as practicable after the commencement; or
  - (b) if all the circumstances giving rise to the obligation arise after the commencement, or if the circumstances arose partly before the commencement and arise partly after the commencement—as soon as practicable after all the circumstances apply.
- (4) For subsection (1)(c), the chief executive is taken to be in possession of any knowledge that was ever in the possession of the Minister mentioned in section 35<sup>2</sup> of the repealed Act.

## **Division 3                      Secret and sacred objects**

### **19            Ownership and custody of secret or sacred object**

- (1) This section applies to an object that is Torres Strait Islander cultural heritage if—
- (a) the object is a secret or sacred object; and  
*Example of secret or sacred object—*  
a ceremonial item
  - (b) the object is, immediately before the commencement of this section, in the custody of an entity that represents or is the State, or after the commencement comes into the custody of an entity that represents or is the State.
- (2) The Torres Strait Islanders who have a traditional or familial link with the object, if they are not already the owners, become the owners of the object—
- (a) if the object was in the custody of the entity immediately before the commencement of this section—on the commencement; or

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2        Section 35 (Duties respecting burial remains) of the repealed Act

- (b) otherwise—when the object comes into the custody of the entity.
- (3) The persons who own the object may at any time ask the entity—
  - (a) to continue to be the custodian of the object; or
  - (b) to return the object to them.
- (4) If the entity is satisfied the persons making the request under subsection (3) are the owners of the object, the entity must comply with the request to the greatest practicable extent.
- (5) The persons who own the object are not limited to making only 1 request under subsection (3).

*Example—*

The owners could ask for the Queensland Museum to continue its custody of an object while they make suitable arrangements for dealing with the object, at which time they could ask for the object to be returned to them.

## **Division 4                      Other Torres Strait Islander cultural heritage**

### **20            Ownership of Torres Strait Islander cultural heritage**

- (1) The following Torres Strait Islander cultural heritage is not in the ownership of the State—
  - (a) human remains and secret or sacred objects owned by Torres Strait Islanders under division 2 or 3;
  - (b) Torres Strait Islander cultural heritage passing into the ownership of a Torres Strait Islander party under this Act;
  - (c) Torres Strait Islander cultural heritage owned by a person whose ownership is confirmed under a provision of this Act;
  - (d) Torres Strait Islander cultural heritage owned by a person to whom ownership is lawfully transferred.
- (2) Otherwise, the State owns Torres Strait Islander cultural heritage.

- (3) Subsection (2) applies to an object or evidence that is Torres Strait Islander cultural heritage even if the object or evidence—
  - (a) forms, or has previously formed, part of land; or
  - (b) is located, or has previously been located, in, on or under land.
- (4) Subsections (2) and (3) do not operate to give the State ownership of—
  - (a) land in which is situated an object or evidence that becomes owned by the State under subsection (2); or
  - (b) any other land.

## **21 Continued use of surface**

- (1) This section applies if Torres Strait Islander cultural heritage is located on the surface of land, and—
  - (a) under the tenure on which the land is held, the owner or occupier of the land is entitled to the use and enjoyment of the surface of the land; or
  - (b) a person is otherwise entitled to the use and enjoyment of the surface of the land.
- (2) Despite the existence of the Torres Strait Islander cultural heritage, the owner or occupier or other person is entitled to the use and enjoyment of the land to the extent that the person does not unlawfully harm the cultural heritage.

## **Division 5 Role of Queensland Museum**

### **22 Care of Torres Strait Islander cultural heritage**

- (1) The Queensland Museum may act under the *Queensland Museum Act 1970* in relation to all Torres Strait Islander cultural heritage in its custody.
- (2) Subsection (1) applies subject to the particular requirements of this Act about the ownership, custody or protection of Torres Strait Islander cultural heritage.

- (3) The Queensland Museum may at any time accept custody of Torres Strait Islander cultural heritage.

## **Part 3                      Protection of Torres Strait Islander cultural heritage**

### **Division 1                Key cultural heritage protection provisions**

#### **23            Cultural heritage duty of care**

- (1) A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Torres Strait Islander cultural heritage (the *cultural heritage duty of care*).

Maximum penalty—

- (a) for an individual—1000 penalty units;
- (b) for a corporation—10000 penalty units.
- (2) Without limiting the matters that may be considered by a court required to decide whether a person has complied with the cultural heritage duty of care in carrying out an activity, the court may consider the following—
- (a) the nature of the activity, and the likelihood of its causing harm to Torres Strait Islander cultural heritage;
- (b) the nature of the Torres Strait Islander cultural heritage likely to be harmed by the activity;
- (c) the extent to which the person consulted with Torres Strait Islander parties about the carrying out of the activity, and the results of the consultation;
- (d) whether the person carried out a study or survey, of any type, of the area affected by the activity to find out the location and extent of Torres Strait Islander cultural heritage, and the extent of the study or survey;

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- (e) whether the person searched the database and register for information about the area affected by the activity;
  - (f) the extent to which the person has complied with cultural heritage duty of care guidelines;
  - (g) the nature and extent of past uses in the area affected by the activity.
- (3) A person who carries out an activity is taken to have complied with the cultural heritage duty of care in relation to Torres Strait Islander cultural heritage if—
- (a) the person is acting—
    - (i) under the authority of another provision of this Act that applies to the Torres Strait Islander cultural heritage; or
    - (ii) under an approved cultural heritage management plan that applies to the Torres Strait Islander cultural heritage; or
    - (iii) under a native title agreement or another agreement with a Torres Strait Islander party, unless the Torres Strait Islander cultural heritage is expressly excluded from being subject to the agreement; or
    - (iv) in compliance with cultural heritage duty of care guidelines; or
    - (v) in compliance with native title protection conditions, but only if the cultural heritage is expressly or impliedly the subject of the conditions; or
  - (b) the person owns the Torres Strait Islander cultural heritage, or is acting with the owner's agreement; or
  - (c) the activity is necessary because of an emergency, including for example, a bushfire or other natural disaster.

**24 Unlawful harm to Torres Strait Islander cultural heritage**

- (1) A person must not harm Torres Strait Islander cultural heritage if the person knows or ought reasonably to know that it is Torres Strait Islander cultural heritage.

Maximum penalty—

- (a) for an individual—
- (i) if the Torres Strait Islander cultural heritage is a registered significant area or registered significant object—1000 penalty units or 2 years imprisonment; or
  - (ii) otherwise—1000 penalty units;
- (b) for a corporation—10000 penalty units.
- (2) A person who harms Torres Strait Islander cultural heritage does not commit an offence under subsection (1) if—
- (a) the person is acting—
- (i) under the authority of another provision of this Act that applies to the Torres Strait Islander cultural heritage; or
  - (ii) under an approved cultural heritage management plan that applies to the Torres Strait Islander cultural heritage; or
  - (iii) under a native title agreement or another agreement with a Torres Strait Islander party, unless the Torres Strait Islander cultural heritage is expressly excluded from being subject to the agreement; or
  - (iv) in compliance with cultural heritage duty of care guidelines; or
  - (v) in compliance with the cultural heritage duty of care; or
  - (vi) in compliance with native title protection conditions, but only if the Torres Strait Islander cultural heritage is expressly or impliedly the subject of the conditions; or



- (b) the person owns the Torres Strait Islander cultural heritage, or is acting with the owner's agreement; or
  - (c) the harm is the result of doing an act that is necessary because of an emergency, including for example, a bushfire or other natural disaster.
- (3) For subsection (1), it does not matter whether the circumstances of the person's knowledge arose before the commencement of this section, or arise after the commencement, or arose partly before the commencement and arise partly after the commencement.

## **25 Prohibited excavation, relocation and taking away**

- (1) A person must not excavate, relocate or take away Torres Strait Islander cultural heritage if the person knows or ought reasonably to know that it is Torres Strait Islander cultural heritage.

Maximum penalty—

- (a) for an individual—1000 penalty units;
  - (b) for a corporation—10000 penalty units.
- (2) A person who excavates, relocates or takes away Torres Strait Islander cultural heritage does not commit an offence under subsection (1) if—
- (a) the person is acting—
    - (i) under the authority of another provision of this Act that applies to the Torres Strait Islander cultural heritage; or
    - (ii) under an approved cultural heritage management plan that applies to the Torres Strait Islander cultural heritage; or
    - (iii) under a native title agreement or another agreement with a Torres Strait Islander party, unless the Torres Strait Islander cultural heritage is expressly excluded from being subject to the agreement; or
    - (iv) in compliance with cultural heritage duty of care guidelines; or

- (v) in compliance with the cultural heritage duty of care; or
  - (vi) in compliance with native title protection conditions, but only if the Torres Strait Islander cultural heritage is expressly or impliedly the subject of the conditions; or
  - (b) the person owns the Torres Strait Islander cultural heritage, or is acting with the owner's agreement; or
  - (c) the excavation, relocation or taking away is necessary because of an emergency, including for example, a bushfire or other natural disaster.
- (3) For subsection (1), it does not matter whether the circumstances of the person's knowledge arose before the commencement of this section, or arise after the commencement, or arose partly before the commencement and arise partly after the commencement.

## **26 Unlawful possession of Torres Strait Islander cultural heritage**

- (1) A person must not have in the person's possession an object that is Torres Strait Islander cultural heritage if the person knows or ought reasonably to know that the object is Torres Strait Islander cultural heritage.

Maximum penalty—

- (a) for an individual—1000 penalty units;
  - (b) for a corporation—10000 penalty units.
- (2) A person who has in the person's possession an object that is Torres Strait Islander cultural heritage does not commit an offence under subsection (1) if—
- (a) the person is acting—
    - (i) under the authority of another provision of this Act that applies to the object; or
    - (ii) under an approved cultural heritage management plan that applies to the object; or

- (iii) under a native title agreement or another agreement with a Torres Strait Islander party, unless the object is expressly excluded from being subject to the agreement; or
  - (iv) in compliance with cultural heritage duty of care guidelines; or
  - (v) in compliance with the cultural heritage duty of care; or
  - (vi) in compliance with native title protection conditions, but only if the object is expressly or impliedly the subject of the conditions; or
- (b) the person owns the object, or is acting with the owner's agreement; or
  - (c) the person's possession of the object is necessary because of an emergency, including for example, a bushfire or other natural disaster.
- (3) For subsection (1), it does not matter whether the circumstances of the person's knowledge arose before the commencement of this section, or arise after the commencement, or arose partly before the commencement and arise partly after the commencement.
- (4) This section does not apply to Torres Strait Islander human remains.

## **27 Court may order costs of rehabilitation or restoration**

- (1) On a conviction of a person for an offence under this division involving the unlawful harming or possessing of Torres Strait Islander cultural heritage, the court may, if considered appropriate, order the person to pay to the State or another appropriate entity an amount for or towards—
- (a) the cost of any repair or restoration of the Torres Strait Islander cultural heritage needing to be carried out; and
  - (b) the cost of any repair or restoration of anything else that is not itself the Torres Strait Islander cultural heritage, but that is associated with the Torres Strait Islander cultural heritage and also needs to be repaired or restored because of the offence.

(2) In this section—

*conviction* includes a plea of guilty or a finding of guilt by a court, even though a conviction is not recorded.

## **Division 2                    Duty of care guidelines**

### **28            Cultural heritage duty of care guidelines**

- (1) The Minister may by gazette notice notify guidelines (*cultural heritage duty of care guidelines*) identifying reasonable and practicable measures for ensuring activities are managed to avoid or minimise harm to Torres Strait Islander cultural heritage.
- (2) In formulating cultural heritage duty of care guidelines, the Minister may consult with the following—
  - (a) Torres Strait Islander groups;
  - (b) industry groups;
  - (c) local governments;
  - (d) other persons the Minister considers appropriate.

## **Division 3                    Information about cultural heritage**

### **29            Information protection provision**

- (1) This section applies to a person who, under this Act, submits to the chief executive or the Minister a report or other document about Torres Strait Islander cultural heritage matters.
- (2) The person must not include in the report or other document knowledge or information given to or otherwise acquired by the person if—
  - (a) the person knows the knowledge or information is of a secret or sacred nature; and
  - (b) the Torres Strait Islanders in whose understanding the knowledge or information is of a secret or sacred nature

have not agreed to its inclusion in the report or other document.

Maximum penalty—

- (a) for an individual—100 penalty units;
- (b) for a corporation—1000 penalty units.

### **30 Putting cultural heritage management plan into effect**

- (1) A person who is involved in putting an approved cultural heritage management plan into effect must take all reasonable steps to ensure the chief executive is advised about all Torres Strait Islander cultural heritage revealed to exist because of any activity carried out under the plan.

Maximum penalty—

- (a) for an individual—100 penalty units;
  - (b) for a corporation—1000 penalty units.
- (2) Subsection (1) does not require the giving of advice to the chief executive if giving the advice would be a contravention of the information protection provision.

### **31 Other activities**

- (1) A person who is involved in carrying out an activity, other than an activity under an approved cultural heritage management plan, may advise the chief executive of Torres Strait Islander cultural heritage revealed to exist because of the activity.
- (2) Subsection (1) does not authorise the giving of advice to the chief executive if giving the advice would be a contravention of the information protection provision.



- (7) The penalty amount mentioned in subsection (6) is the maximum penalty amount that may be imposed for an offence under the subsection, even if the offence is committed by a corporation.
- (8) A stop order under this section is ineffective in its application to an activity if the activity is the subject of an injunction granted in the exercise of the exclusive jurisdiction the Land Court has for cultural heritage matters under the *Land Court Act 2000*, section 32H.

### **33 Particular steps to preserve cultural heritage**

The Minister may—

- (a) for the State, acquire by purchase or gift Torres Strait Islander cultural heritage for the purpose of its preservation; and
- (b) cause structures to be erected, and other steps to be taken, that are necessary or desirable to preserve the Torres Strait Islander cultural heritage.

## **Part 4 Native title parties, Torres Strait Islander parties and Torres Strait Islander cultural heritage bodies**

### **34 Native title party for an area**

- (1) Each of the following is a *native title party* for an area—
  - (a) a registered native title claimant for the area;
  - (b) a person who, at any time after the commencement of this section, was a registered native title claimant for the area, but only if—
    - (i) the person's claim has failed, but there is no other registered native title claimant for the area, and

- there is not, and never has been, a native title holder for the area; or
- (ii) the person has surrendered the person's native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or
  - (iii) the person's native title has been compulsorily acquired or has otherwise been extinguished;
- (c) a registered native title holder for the area;
  - (d) a person who was a registered native title holder for the area, but only if—
    - (i) the person has surrendered the person's native title under an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or
    - (ii) the person's native title has been compulsorily acquired or has otherwise been extinguished.
- (2) If a person would be a native title party under subsection (1)(b) but the person is no longer alive, the native title party is instead taken to be the native title claim group who, under the Commonwealth Native Title Act, authorised the person to make the relevant native title determination application.

### **35 Torres Strait Islander party for an area**

- (1) A native title party for an area is a *Torres Strait Islander party* for the area.
- (2) Subsection (3) applies to a native title party for an area who—
  - (a) is or was a registered native title claimant; or
  - (b) is the native title claim group who authorised a person who is no longer alive, but who was a registered native title claimant, to make a native title determination application.
- (3) The native title party is a *Torres Strait Islander party* for the whole area included within the outer boundaries of the area in relation to which the application was made under the Commonwealth Native Title Act for a determination of native



title, regardless of the nature and extent of the claimant's claims in relation to any particular part of the whole area.

- (4) Subsection (5) applies to a native title party for an area who is or was a registered native title holder the subject of a determination of native title under the Commonwealth Native Title Act.
- (5) The native title party is a *Torres Strait Islander party* for the whole area included within the outer boundaries of the area in relation to which the application for the determination was made, regardless of the extent to which native title was found to exist in relation to any particular part of the whole area.
- (6) However, a native title party to whom subsection (5) applies is not a *Torres Strait Islander party* for a part of the area if—
  - (a) native title was not found to exist in relation to the part; and
  - (b) there is a registered native title claimant for the part.
- (7) If there is no native title party for an area, a person is a *Torres Strait Islander party* for the area if—
  - (a) the person is a Torres Strait Islander with particular knowledge about traditions, observances, customs or beliefs associated with the area; and
  - (b) the person—
    - (i) has responsibility under Island custom for some or all of the area, or for significant Torres Strait Islander objects located or originating in the area; or
    - (ii) is a member of a family or clan group that is recognised as having responsibility under Island custom for some or all of the area, or for significant Torres Strait Islander objects located or originating in the area.

**36 Registration as Torres Strait Islander cultural heritage body**

- (1) The Minister may, on the application of a corporation, register the corporation as a Torres Strait Islander cultural heritage body for an area.
- (2) The Minister must not register a corporation as a Torres Strait Islander cultural heritage body for an area if there is currently another corporation registered as a Torres Strait Islander cultural heritage body for the area or any part of the area.
- (3) However, the Minister may register a corporation (the *new corporation*) as a Torres Strait Islander cultural heritage body for an area even though there is currently another corporation (the *registered corporation*) registered as a Torres Strait Islander cultural heritage body for the area or any part of the area if—
  - (a) the new corporation's registration is only for the purposes of a particular project; and
  - (b) the registered corporation has given written agreement to the new corporation's registration for the purposes of the project; and
  - (c) the registration provides that the registration is effective only until the project finishes.
- (4) The Minister may register a corporation as a Torres Strait Islander cultural heritage body for an area only if the Minister is satisfied that—
  - (a) the corporation—
    - (i) is an appropriate body to identify Torres Strait Islander parties for the area; and
    - (ii) has the capacity to identify Torres Strait Islander parties for the area; and
  - (b) either—
    - (i) Torres Strait Islander parties for the area that are native title parties for the area agree the corporation should be registered; or
    - (ii) if there is no Torres Strait Islander party for the area that is a native title party for the area—there is

substantial agreement among the Torres Strait Islander parties for the area that the corporation should be registered.

*Examples of corporations that may be appropriate to be registered—*

a registered native title body corporate, a representative body that is a corporation, a Torres Strait Islander body incorporated for furthering the interests of Torres Strait Islanders in relation to land or cultural matters

- (5) In deciding whether to register a corporation as the Torres Strait Islander cultural heritage body for an area, the Minister may do any of the following—
  - (a) consult with Torres Strait Islander parties for the area or parts of the area;
  - (b) advertise for submissions about the proposed registration of the corporation;
  - (c) anything else the Minister considers necessary to inform himself or herself.
- (6) The Minister may cancel the registration of a corporation as the Torres Strait Islander cultural heritage body for an area if the Minister is no longer satisfied about the matters mentioned in subsection (4) in relation to the corporation.
- (7) In this section—
 

**register**, a corporation, means record the corporation in the register.

### **37 Function of Torres Strait Islander cultural heritage body**

- (1) The function of a Torres Strait Islander cultural heritage body for an area is to identify, for the benefit of a person who needs to know under this Act, the Torres Strait Islander parties for the area or for a particular part of the area.
- (2) The Minister may give a Torres Strait Islander cultural heritage body for an area the financial or other help the body needs to carry out its function.

## **Part 5**                    **Collection and management of Torres Strait Islander cultural heritage information**

### **Division 1**            **Torres Strait Islander Cultural Heritage Database**

#### **38**     **Establishment of database**

- (1) The chief executive must establish and keep the Torres Strait Islander Cultural Heritage Database.
- (2) The chief executive may keep the database in the form or forms the chief executive considers to be the most appropriate in the circumstances for achieving the purpose of establishing the database.

#### **39**     **Purpose of establishing database**

- (1) The purpose of establishing the database is to assemble, in a central and accessible location, information about Torres Strait Islander cultural heritage.
- (2) The database is intended to be a research and planning tool to help Torres Strait Islander parties, researchers and other persons in their consideration of the Torres Strait Islander cultural heritage values of particular areas.
- (3) The placing of information on the database is not intended to be conclusive about whether the information is up-to-date, comprehensive or otherwise accurate.

#### **40**     **Placing information on database**

- (1) The chief executive may place information on the database to the extent the chief executive considers appropriate, having regard especially to the consistency of the information with existing anthropological, biogeographical, historical and archaeological information.
- (2) Information the chief executive places on the database may be either information another person asks the chief executive to

place on the database or information the chief executive already holds.

#### **41 Taking information off database**

- (1) The chief executive may take information off the database if the chief executive is satisfied the information has been recorded in error.
- (2) However, before acting under subsection (1) to take information about Torres Strait Islander cultural heritage for a particular area off the database, the chief executive must, to the extent it is reasonably practicable to do so, consult with any Torres Strait Islander party for the area.

#### **42 Availability of database to public generally**

The chief executive must not give access to the database generally.

#### **43 Availability of database to Torres Strait Islander party**

- (1) This section applies if a Torres Strait Islander party for an area seeks information from the database.
- (2) The chief executive must give the Torres Strait Islander party information from the database to the extent that, in the chief executive's opinion, the information on the database relates to the area.

#### **44 Availability of database for cultural heritage duty of care purposes**

- (1) This section applies if a person carrying out an activity, including for example a land user, seeks information from the database.
- (2) The chief executive must give the person information from the database if, in the chief executive's opinion, the person has a particular need to be aware of the information for satisfying the person's cultural heritage duty of care.

- (3) However, the person does not necessarily comply with the person's cultural heritage duty of care only because the person has consulted the database.
- (4) If information is to be given to the person under subsection (2), the information may be given to a nominee or professional advisor acting for the person.

#### **45 Availability of database to researcher**

- (1) This section applies if a researcher into Torres Strait Islander cultural heritage seeks information from the database.
- (2) The chief executive may give the researcher information from the database to the extent that, in the chief executive's opinion, the information on the database relates to the research.

## **Division 2 Torres Strait Islander Cultural Heritage Register**

#### **46 Establishment of register**

- (1) The chief executive must establish and keep the Torres Strait Islander Cultural Heritage Register.
- (2) The chief executive may keep the register in the form or forms the chief executive considers to be the most appropriate in the circumstances for—
  - (a) achieving the purpose of establishing the register; and
  - (b) ensuring the register otherwise complies with the requirements of this division.

#### **47 Purpose of establishing register**

- (1) The purpose of establishing the register is to assemble in a central and accessible location—
  - (a) information contained in cultural heritage studies; and
  - (b) information about whether particular areas have been the subject of cultural heritage management plans; and

- (c) information about Torres Strait Islander cultural heritage bodies; and
  - (d) other information necessary to help the consideration of Torres Strait Islander cultural heritage, including for example addresses for service of Torres Strait Islander parties.
- (2) The register is intended to be—
- (a) a depository for information for consideration for land use and land use planning, including, for example, for local government planning schemes and for regional planning strategies; and
  - (b) a research and planning tool to help people in their consideration of the Torres Strait Islander cultural heritage values of particular objects and areas.

#### **48 Recording information from cultural heritage study**

- (1) This section applies if, under part 6, the chief executive or Minister records in the register the findings of a cultural heritage study.
- (2) The chief executive or Minister must record—
- (a) a description of the cultural heritage study adequate to distinguish it from other cultural heritage studies; and
  - (b) a description of the study area, including, if necessary for accurately locating the study area, a plan of the area and a detailed description of its boundaries; and
  - (c) a description of all Torres Strait Islander cultural heritage that has been identified in the study area and a description of its location; and
  - (d) in general terms, the reasons anything identified as Torres Strait Islander cultural heritage has been so identified; and
  - (e) if the study makes recommendations for the management of Torres Strait Islander cultural heritage identified in the study—the recommendations; and
  - (f) for each area or object assessed as a significant Torres Strait Islander area or significant Torres Strait Islander

- object—the name of each Torres Strait Islander party that assessed the area or object as a significant Torres Strait Islander area or significant Torres Strait Islander object; and
- (g) the name and contact details of each endorsed party for the study; and
  - (h) the name of each endorsed party for the study who did not take part in the carrying out of the study; and
  - (i) the name and contact details of each Torres Strait Islander cultural heritage body for the study area; and
  - (j) the name and contact details of each cultural heritage assessor for the study; and
  - (k) when the study was completed.

#### **49 Information about cultural heritage management plans**

- (1) The chief executive must record in the register identifying details for each cultural heritage management plan approved, or in the process of being developed, under this Act.
- (2) The chief executive must arrange the register in a way giving the persons searching the register reasonable access to information about—
  - (a) whether any particular area of the State is the subject of—
    - (i) an approved cultural heritage management plan; or
    - (ii) a cultural heritage management plan in the process of being developed under this Act; and
  - (b) the contact details for the sponsor and endorsed parties for each approved plan and plan being developed.

#### **50 Keeping register up-to-date**

- (1) The Minister may add information to, or take information off, the register if the Minister is satisfied the adding or taking off is a necessary adjustment for keeping the register up-to-date.
- (2) However, before acting under subsection (1) to take information off the register, the Minister must, to the extent it



is reasonably practicable to do so, consult with any Torres Strait Islander party for the area to which the information relates.

- (3) Information added to the register under subsection (1) is taken to be information recorded in the register.
- (4) Information taken off the register under subsection (1) is taken to be information no longer recorded in the register.

## **51 Availability of register to public generally**

- (1) The chief executive must give access to the register generally.
- (2) The chief executive may require a person seeking to obtain information from the register to pay the fee prescribed under a regulation.

# **Part 6 Cultural heritage studies**

## **Division 1 Introduction**

### **52 Requirements for carrying out cultural heritage study and recording findings**

Divisions 2 to 6 state the requirements for carrying out a cultural heritage study and for having its findings recorded in the register.

### **53 Roles and responsibilities for carrying out cultural heritage study**

- (1) Any person, including the Minister, may be the sponsor for a cultural heritage study.
- (2) However—
  - (a) Torres Strait Islander parties are responsible for assessing the level of significance of areas and objects included in the study area that are or appear to be

significant Torres Strait Islander areas and significant Torres Strait Islander objects; and

- (b) if the findings of a cultural heritage study are to be included in the register, the study must be carried out, and its findings put in written form, in the way this part requires.

#### **54 Cultural heritage study guidelines**

- (1) The Minister may by gazette notice notify guidelines to help people in choosing suitable methodologies for carrying out cultural heritage studies.
- (2) However, a failure to conform to the guidelines is not a ground for refusing to record a cultural heritage study's findings in the register.
- (3) Before notifying the guidelines, the Minister may consult with the following—
  - (a) Torres Strait Islander groups;
  - (b) industry groups;
  - (c) local governments;
  - (d) other persons the Minister considers appropriate.

### **Division 2 Preparing to carry out cultural heritage study**

#### **55 Reference to part of study area may be taken to include reference to whole**

For this division, a reference relating to a part of a study area may, if it is convenient to do so, be taken to include a reference to the whole of the study area.

#### **56 Giving of written notice (proposed study)**

- (1) The sponsor for a cultural heritage study must give a written notice (*written notice (proposed study)*) to—
  - (a) the chief executive; and

- (b) each person who is an owner or occupier of a part of the study area; and
  - (c) if, for a part of the study area, there is no Torres Strait Islander cultural heritage body—each Torres Strait Islander party that is a native title party for the part of the study area; and
  - (d) each entity that is a Torres Strait Islander cultural heritage body for a part of the study area; and
  - (e) if, for a part of the study area, there is no Torres Strait Islander cultural heritage body and there is also no Torres Strait Islander party that is a native title party—each entity that is a representative body for the part of the study area; and
  - (f) each local government whose local government area includes a part of the study area.
- (2) The written notice (proposed study) must, to the greatest practicable extent, be given simultaneously to each person to whom it is required to be given.
- (3) If, under subsection (1)(c), the written notice is required to be given to a native title party for a part of the study area, the written notice may be sent to the address for service entered for the party in—
- (a) the register; or
  - (b) if no address for service is entered in the register, but an address for service is entered in the National Native Title Register or the Register of Native Title Claims—the National Native Title Register or the Register of Native Title Claims.

## **57 Basic information requirements for written notice (proposed study)**

The written notice (proposed study) must comply with the following requirements (the *basic information requirements* for the notice)—

- (a) it must advise the sponsor's name and contact details, including the sponsor's address for service;

- (b) it must advise that the sponsor intends to carry out the cultural heritage study;
- (c) it must describe the study area for the study and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the study area's location in relation to the nearest town, using bearings and approximate distances.

**58 Additional requirements for notice to Torres Strait Islander cultural heritage body**

- (1) If the written notice (proposed study) is given to a Torres Strait Islander cultural heritage body, the notice must, as well as complying with the basic information requirements for the notice—
  - (a) advise the body that if it wishes to identify a Torres Strait Islander party to take part in the cultural heritage study, it must give a written notice to the sponsor identifying the party and giving the party's contact details; and
  - (b) state the notice day (proposed study) for the study, and advise the body of the time by which the sponsor must be given the written notice identifying a Torres Strait Islander party to take part in the cultural heritage study; and
  - (c) advise the body that a Torres Strait Islander party identified by the body might not be endorsed to take part in the study if the body does not give the sponsor the written notice within the required time.
- (2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice identifying a Torres Strait Islander party to take part in the cultural heritage study must be—
  - (a) the end of 30 days after the notice day (proposed study) for the study; or
  - (b) a later time decided by the sponsor.

**59 Additional requirements for notice to Torres Strait Islander party**

- (1) If the written notice (proposed study) is given to a Torres Strait Islander party, the notice must, as well as complying with the basic information requirements for the notice—
  - (a) advise the party that if it wishes to take part in the cultural heritage study, it must give a written notice to the sponsor that the party wishes to take part in the study; and
  - (b) state the notice day (proposed study) for the study, and advise the party of the time by which the sponsor must be given the written notice that the party wishes to take part in the study; and
  - (c) advise the party that it might not be endorsed to take part in the study if it does not give the sponsor the written notice within the required time.
- (2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in the study must be—
  - (a) the end of 30 days after the notice day (proposed study) for the study; or
  - (b) a later time decided by the sponsor.

**60 Additional requirements for notice to representative body**

If the written notice (proposed study) is given to a representative body, the notice must, as well as complying with the basic information requirements for the notice, draw the attention of the representative body to the public notice (proposed study) published or to be published under this division.

**61 Giving of public notice (proposed study)**

- (1) This section applies if, for a part of the study area (the *relevant part*)—
  - (a) there is no Torres Strait Islander cultural heritage body; and

- (b) there is no Torres Strait Islander party that is a native title party for the part.
- (2) The sponsor must ensure that a public notice (***public notice (proposed study)***) is published in a newspaper circulating generally in the relevant part.
- (3) If there is an approved form for the public notice (proposed study), the notice must be in the approved form.
- (4) The public notice (proposed study) must be published as close as practicable to the time the written notice (proposed study) is given.
- (5) The public notice (proposed study) must—
  - (a) be directed to Torres Strait Islander parties for the relevant part; and
  - (b) advise the sponsor's name and contact details, including the sponsor's address for service; and
  - (c) advise that the sponsor intends to carry out the cultural heritage study; and
  - (d) describe the study area for the study and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the study area's location in relation to the nearest town, using bearings and approximate distances; and
  - (e) describe the relevant part, if it is less extensive than the study area; and
  - (f) advise that if a Torres Strait Islander party for the relevant part wishes to take part in the study, it must give a written notice to the sponsor that the party wishes to take part in the study; and
  - (g) state the notice day (proposed study) for the study, and advise the time by which the sponsor must be given the written notice that the party wishes to take part in the study; and
  - (h) advise that a Torres Strait Islander party might not be endorsed to take part in the study if it does not give the sponsor the written notice within the required time.

- (6) For subsection (5)(g), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in the study must be—
- (a) the end of 30 days after the notice day (proposed study) for the study; or
  - (b) a later time decided by the sponsor.

**62 Torres Strait Islander cultural heritage body response to written notice and endorsement for study**

- (1) A Torres Strait Islander cultural heritage body given the written notice (proposed study) relating to a part of the study area may respond by giving a written notice to the sponsor, within the time required under the written notice (proposed study), advising the sponsor of the name and contact details of each Torres Strait Islander party for the part of the area, including the party's address for service.
- (2) If the sponsor receives a response from a Torres Strait Islander cultural heritage body under subsection (1) within the time required under the written notice (proposed study), the sponsor must endorse each Torres Strait Islander party identified in the response to take part in the cultural heritage study.

**63 Torres Strait Islander party response to written notice and endorsement for study**

- (1) A Torres Strait Islander party given the written notice (proposed study) relating to a part of the study area may respond by giving a written notice to the sponsor, within the time required under the written notice (proposed study), that the Torres Strait Islander party wishes to take part in the cultural heritage study.
- (2) If the sponsor receives a response from a Torres Strait Islander party under subsection (1) within the time required under the written notice (proposed study), the sponsor must endorse the Torres Strait Islander party to take part in the cultural heritage study.

**64 Torres Strait Islander party response to public notice and endorsement for study**

- (1) A Torres Strait Islander party to which a public notice (proposed study) is directed may respond by giving a written notice to the sponsor, within the time required under the public notice (proposed study), that the Torres Strait Islander party wishes to take part in the cultural heritage study.
- (2) If the sponsor receives a response from a Torres Strait Islander party under subsection (1) within the time required under the public notice (proposed study), the sponsor must endorse the Torres Strait Islander party to take part in the cultural heritage study.

**65 Endorsement for study in absence of response**

- (1) The sponsor is not required to endorse a Torres Strait Islander party for the study area to take part in the cultural heritage study if a response provided for under this part has not been given to the sponsor, or has not been given to the sponsor within the required time.
- (2) However, the sponsor may endorse a Torres Strait Islander party for the study area to take part in the cultural heritage study even though the sponsor is not required to endorse the party.

**Division 3 Carrying out cultural heritage study****66 Role of endorsed party**

- (1) An endorsed party for the cultural heritage study has the role of—
  - (a) in particular, assessing the level of significance of areas and objects included in the study area that are or appear to be significant Torres Strait Islander areas significant and Torres Strait Islander objects; and
  - (b) generally, consulting with the sponsor about the carrying out of the cultural heritage study, and giving help and advice directed at maximising the quality and authority of the study.



- (2) The endorsed party's role under subsection (1)(b) may be performed on the party's behalf by a nominee.

## 67 **Role of sponsor**

The role of the sponsor for the cultural heritage study is to carry out the study—

- (a) in consultation with the endorsed parties for the study; and
- (b) in a way directed at maximising the quality and authority of the study.

## 68 **Engagement of cultural heritage assessors**

- (1) The sponsor may engage persons as cultural heritage assessors for the cultural heritage study.
- (2) An endorsed party for the cultural heritage study may ask the sponsor to engage a cultural heritage assessor for the study for a particular purpose.
- (3) The sponsor must comply with any reasonable request of an endorsed party under subsection (2).
- (4) However, the sponsor may engage a person as a cultural heritage assessor for the cultural heritage study only if the sponsor is satisfied the person is—
  - (a) a Torres Strait Islander for the study area; or
  - (b) an appropriately qualified person in a discipline directly relevant to the study; or

*Examples of disciplines that would ordinarily be expected to be directly relevant—*

anthropology, archaeology, history

- (c) another person who has particular knowledge or experience making the person suitable for engagement as a cultural heritage assessor.
- (5) In this section—

***Torres Strait Islander for the study area*** means a Torres Strait Islander who has particular knowledge about traditions,

observances, customs or beliefs associated with the study area, and who—

- (a) has responsibility under Island custom for some or all of the study area, or for significant Torres Strait Islander objects located or originating in the study area; or
- (b) is a member of a family or clan group recognised as having responsibility under Island custom for some or all of the study area, or for significant Torres Strait Islander objects located or originating in the study area.

## **69 Role of cultural heritage assessors**

- (1) A cultural heritage assessor for the cultural heritage study has the role of giving help and advice directed at maximising the quality and authority of the cultural heritage study.
- (2) The cultural heritage assessor may give the help and advice only to the extent agreed to by the sponsor.

## **70 Consultation supporting cultural heritage study**

- (1) The sponsor and each endorsed party for the cultural heritage study must take reasonable steps to consult with each other about carrying out the study.
- (2) Without limiting subsection (1), the sponsor and an endorsed party must consult with each other on any of the following if the sponsor or endorsed party asks for the consultation—
  - (a) timing of the cultural heritage study generally and of particular stages of the study;
  - (b) access to particular areas;
  - (c) particular methods of assessment activity;
  - (d) choosing persons to be engaged as cultural heritage assessors;
  - (e) the reasonable requirements the sponsor may have of the endorsed party, or the endorsed party may have of the sponsor, for the carrying out of the study.

- (3) The sponsor must also consult with the owner or occupier of land about obtaining access to the land if the access is reasonably required for carrying out the study.

## **Division 4                      Recording by chief executive**

### **71                      Giving of cultural heritage study to chief executive for recording**

- (1) The sponsor may give the cultural heritage study to the chief executive to record its findings in the register when the sponsor is satisfied that—
  - (a) the study has been completed to the extent that is reasonably practicable in the circumstances; and
  - (b) the study's findings are in order for recording in the register.
- (2) The chief executive may, under this part—
  - (a) record the findings of the study in the register; or
  - (b) refuse to record the findings of the study in the register.
- (3) Subsection (2) does not authorise the chief executive to assume the role of an endorsed party for the study for assessing the level of significance of areas and objects included in the study area that are or appear to be significant Torres Strait Islander areas and significant Torres Strait Islander objects.

### **72                      Consideration of cultural heritage study before recording**

- (1) In considering whether to record the findings of the cultural heritage study, the chief executive—
  - (a) must have regard to the results and nature of consultation that has happened for the purposes of the study between the sponsor and endorsed parties; and
  - (b) may seek expert advice about the study from any appropriate source; and
  - (c) may consult with any of the following about the study—

- (i) endorsed parties for the study;
  - (ii) cultural heritage assessors for the study;
  - (iii) owners and occupiers of land included in the study area;
  - (iv) land users of land included in the study area;
  - (v) local governments whose local government areas include a part of the study area.
- (2) Without limiting subsection (1)(b) and (c), expert advice and consultation may be about the soundness and viability of recommendations included in the cultural heritage study.

### **73 Requirements for recording cultural heritage study**

- (1) To record the findings of the cultural heritage study in the register, the chief executive must be satisfied that—
- (a) the sponsor has complied with the procedures and other requirements stated in this part for the carrying out of the cultural heritage study; and
  - (b) the findings and other information included in the cultural heritage study, including the study's recommendations, are consistent with authoritative anthropological, biogeographical, historical and archaeological information about the study area; and
  - (c) the cultural heritage study includes the information and other material needed for recording the study's findings under part 5, division 2; and
  - (d) the cultural heritage study also includes the following—
    - (i) an explanation of how lawful access to the study area was achieved for carrying out the study, including details of any law, or of any oral or written authority given by an owner or occupier of land in the study area, authorising access to the land;
    - (ii) a summarising statement about the existence of Torres Strait Islander cultural heritage in the study area;

- (iii) documented evidence about whether recommendations included in the study for future management of Torres Strait Islander cultural heritage have been agreed with affected land owners and occupiers;
  - (iv) a description of assessment activities carried out for the study;
  - (v) the signature of each endorsed party for the study, or the party's nominee, who is stated in the study to be in support of information and other matters in the study, and of the recording of some or all of the study's findings in the register;
  - (vi) the extent to which any endorsed party for the study does not agree with the recording of the study's findings in the register;
  - (vii) details of each endorsed party for the study who did not in fact take part in the study.
- (2) If the chief executive is satisfied under subsection (1), the chief executive must record the findings of the cultural heritage study in the register.

#### **74 Recording or refusing to record findings of cultural heritage study**

- (1) When the chief executive records, or refuses to record, the findings of the cultural heritage study in the register, the chief executive must give written notice of the recording, or refusal to record, to—
- (a) the sponsor; and
  - (b) each person who is an owner or occupier of a part of the study area; and
  - (c) each local government whose local government area includes a part of the study area; and
  - (d) each endorsed party for the study; and
  - (e) each Torres Strait Islander cultural heritage body for a part of the study area.

- (2) The recording of findings in the register is not ineffective only because—
  - (a) it is open to a person under division 5 to object to the recording of the findings; or
  - (b) a person entitled to a written notice under subsection (1) does not receive the notice.
- (3) If the chief executive refuses to record the findings of the cultural heritage study in the register, the chief executive must include in each written notice given under subsection (1) a statement of the chief executive's reasons for refusing to record the findings.

## **Division 5                      Objections, hearing and recommendation**

### **75            Definitions for div 5**

In this division—

*appeal period*, for a recording of the findings of the cultural heritage study in the register, or for a refusal to record the findings of the cultural heritage study in the register, means the 30 days immediately after the day the chief executive gives the written notice notifying the recording or the refusal to record.

*party*, to an objection to a recording of the findings of the cultural heritage study in the register, or a refusal to record the findings of the cultural heritage study in the register, means each of the following—

- (a) the person who filed the objection with the Land Court;
- (b) each other person who would have been entitled to object to the Land Court to the recording or the refusal;
- (c) the chief executive.

### **76            Objection to refusal to record findings**

- (1) A person may object to the Land Court to—

- (a) the chief executive's recording in the register of the findings of the cultural heritage study; or
  - (b) the chief executive's refusal to record in the register the findings of the cultural heritage study.
- (2) However, to object, the person (the *objector*) must be—
- (a) the sponsor for the study; or
  - (b) an endorsed party for the study; or
  - (c) a person who is an owner or occupier of a part of the study area; or
  - (d) a local government whose local government area includes a part of the study area.
- (3) The objector must file the objection with the Land Court within the appeal period.
- (4) The objector must, in filing the objection with the Land Court, identify for the Land Court the names and contact details of all other persons who the objector understands to be parties to the objection.
- (5) As soon as practicable after receiving the objection from the objector, the Land Court must—
- (a) take all reasonable steps to identify all other parties to the objection; and
  - (b) advise them of the objection.
- (6) The chief executive must give the Land Court all the help the chief executive can reasonably give to identify the parties to the objection.
- (7) The Land Court must take all reasonable steps to keep all parties to the objection informed about when the hearing of the objection is to be held.

## **77 Land Court's hearing**

- (1) The Land Court must hold a hearing of the objection.
- (2) All parties to the objection have the right to be heard at the hearing.

**78 Land Court's recommendation to Minister**

- (1) After the hearing has been completed, the Land Court must recommend to the Minister—
  - (a) if the objection was to a recording of the findings of the cultural heritage study in the register—
    - (i) that the Minister confirm the recording of the findings of the study in the register; or
    - (ii) that the Minister take the findings of the study out of the register; or
    - (iii) that the Minister amend the findings recorded in the register in accordance with details included in the recommendation; or
  - (b) if the objection was to a refusal to record the findings of the cultural heritage study in the register—
    - (i) that the Minister confirm the refusal to record the findings of the study in the register; or
    - (ii) that the Minister record the findings of the study in the register; or
    - (iii) that the Minister record the findings of the study in the register after amendment of the findings in accordance with details included in the recommendation.
- (2) Subsection (1) does not stop the Land Court, before making its recommendation to the Minister, from helping the parties to negotiate changes to the cultural heritage study.
- (3) For making a recommendation to the Minister about the cultural heritage study, the Land Court—
  - (a) must have regard to the matters about which the chief executive was required to be satisfied before recording the findings of the study; and
  - (b) may include in its considerations the nature and extent of consultation held in carrying out the study.
- (4) Subsection (1) does not authorise the Land Court to assume the role of an endorsed party for the study for assessing the level of significance of areas and objects included in the study



area that are or appear to be significant Torres Strait Islander areas and significant Torres Strait Islander objects.

## **Division 6                      Recording by Minister**

### **79            Recording or refusing to record findings of cultural heritage study**

- (1) On receiving a recommendation from the Land Court under division 5, the Minister may—
  - (a) if the objection was to a recording of the findings of the cultural heritage study in the register—
    - (i) confirm the recording of the findings; or
    - (ii) take the findings of the study out of the register; or
    - (iii) amend the findings recorded in the register in the way the Minister considers appropriate; or
  - (b) if the objection was to a refusal to record the findings of the cultural heritage study in the register—
    - (i) confirm the refusal to record the findings; or
    - (ii) record the findings; or
    - (iii) record the findings after amendment in the way the Minister considers appropriate.
- (2) However, in deciding what action to take, the Minister must have regard to—
  - (a) the Land Court's recommendation; and
  - (b) the matters about which the chief executive was required to be satisfied before recording the findings of the study.
- (3) Subsection (1) does not authorise the Minister to assume the role of an endorsed party for the study for assessing the level of significance of areas and objects included in the study area that are or appear to be significant Torres Strait Islander areas and significant Torres Strait Islander objects.

## **Part 7                      Cultural heritage management plans**

### **Division 1                      Introduction**

#### **80                      When cultural heritage management plan is or may be required—div 2**

Division 2 provides for when a cultural heritage management plan is or may be required to be developed and approved for a project.

#### **81                      Requirements for developing cultural heritage management plan and having it approved—divs 3 to 7**

Divisions 3 to 7 state the requirements for developing a cultural heritage management plan for a project and for having the plan approved for the project.

#### **82                      Responsibility for developing cultural heritage management plan**

Any person, including the Minister, may be the sponsor for a cultural heritage management plan.

#### **83                      Voluntary development of cultural heritage management plan**

A person may, under this Act, develop and gain approval of a cultural heritage management plan even though there is no legal requirement for the plan.

*Example—*

A person may seek to have an approved cultural heritage management plan in place to help the person avoid breaching the cultural heritage duty of care.

**84 Approved cultural heritage management plan may not require particular action**

In appropriate circumstances, a cultural heritage management plan developed and approved under this Act for a project may be to the effect that there are, for the project, no particular requirements for managing the impact of activities on Torres Strait Islander cultural heritage.

**85 Cultural heritage management plan guidelines**

- (1) The Minister may by gazette notice notify guidelines to help people in choosing suitable methodologies for developing cultural heritage management plans.
- (2) However, a failure to conform to the guidelines is not a ground for refusing to approve a cultural heritage management plan.
- (3) Before notifying the guidelines, the Minister may consult with the following—
  - (a) Torres Strait Islander groups;
  - (b) industry groups;
  - (c) local governments;
  - (d) other persons the Minister considers appropriate.

**Division 2 Protection of cultural heritage under cultural heritage management plans****86 Application of div 2**

This division does not apply to a project to the extent the project is the subject of—

- (a) an existing agreement; or
- (b) a native title agreement, whenever entered into, unless Torres Strait Islander cultural heritage is expressly excluded from being subject to the agreement.

**87 Cultural heritage management plan needed if EIS needed**

- (1) This section applies to a project if—
  - (a) under an Act other than this Act, a lease, licence, permit, approval or other authority is required for the project; and
  - (b) under the operation of the Act under which the authority is required, or under the operation of another Act, an EIS is required for the project.
- (2) The entity authorised to give the authority must not give it unless—
  - (a) a cultural heritage management plan for the project has been developed and approved under this Act; or
  - (b) the authority is given subject to conditions to ensure that no excavation, construction or other activity that may cause harm to Torres Strait Islander cultural heritage takes place for the project without the development and approval of a cultural heritage management plan for the project.
- (3) The entity authorised to give the authority has power to impose conditions mentioned in subsection (2)(b).
- (4) The plan area for a cultural heritage management plan developed and approved for subsection (2) may be limited to the part of the project area that is the subject of the EIS.

**88 Cultural heritage management plan may be needed if other environmental authority needed**

- (1) This section applies to a project if—
  - (a) under an Act other than this Act—
    - (i) a lease, licence, permit, approval or other authority is required for the project; and
    - (ii) under the operation of the Act under which the authority is required, or under the operation of another Act, an environmental assessment is required for the project; and
  - (b) the project is a project, or a project of a type, prescribed under a regulation for this section.

- (2) The entity authorised to give the authority must not give the authority unless—
  - (a) a cultural heritage management plan for the project has been developed and approved under this Act; or
  - (b) the authority is given subject to conditions to ensure that no excavation or construction takes place for the project without the development and approval of a cultural heritage management plan for the project.
- (3) The entity authorised to give the authority has power to impose conditions mentioned in subsection (2)(b).
- (4) The plan area for a cultural heritage management plan approved for subsection (2) may be limited to the part of the project area that is the subject of the environmental assessment.
- (5) The Minister may recommend the making of a regulation under subsection (1)(b) only if the Minister is satisfied the project or type of project will have a significant impact on Torres Strait Islander cultural heritage.
- (6) In this section—

*environmental assessment* means a form of environmental assessment or planning, not including an EIS but including, for example, an EMP submission under the *Environmental Protection Act 1994*.

## **89 Cultural heritage management plan needed under IPA**

- (1) This section applies to a project if, under IPA—
  - (a) a development application is made relating to the project; and
  - (b) the chief executive is a concurrence agency for the application.
- (2) Without limiting IPA, the chief executive may—
  - (a) require, as part of an information request under IPA, that the applicant ensure a cultural heritage management plan for the project is developed and approved under this Act; or

- (b) require to be imposed, as a condition of approval of the development application, a condition that a cultural heritage management plan for the project be developed and approved under this Act.

### **Division 3                      Preparing to develop cultural heritage management plan**

#### **90            Reference to part of plan area may be taken to include reference to whole**

For this division, a reference relating to a part of a plan area may, if it is convenient to do so, be taken to include a reference to the whole of the plan area.

#### **91            Giving of written notice (proposed plan)**

- (1) The sponsor for a cultural heritage management plan must give a written notice (*written notice (proposed plan)*) to—
  - (a) the chief executive; and
  - (b) each person who is an owner or occupier of a part of the plan area; and
  - (c) if, for a part of the plan area, there is no Torres Strait Islander cultural heritage body—each Torres Strait Islander party that is a native title party for the part of the plan area; and
  - (d) each entity that is a Torres Strait Islander cultural heritage body for a part of the plan area; and
  - (e) if, for a part of the plan area, there is no Torres Strait Islander party that is a native title party, and there is also no Torres Strait Islander cultural heritage body—each entity that is a representative body for the part of the plan area.
- (2) The written notice (proposed plan) must, to the greatest practicable extent, be given simultaneously to each person to whom it is required to be given.

- (3) However, the person required to be notified under subsection (1)(b) may be given the notice simultaneously with another notice given to the person in relation to the project under another Act.
- (4) If, under subsection (1)(c), the written notice is required to be given to a native title party for a part of the plan area, the written notice may be sent to the address for service entered for the native title party in—
  - (a) the register; or
  - (b) if no address for service is entered in the register, but an address for service is entered in the National Native Title Register or the Register of Native Title Claims—the National Native Title Register or the Register of Native Title Claims.

## **92 Basic information requirements for written notice (proposed plan)**

The written notice (proposed plan) must comply with the following requirements (the *basic information requirements* for the notice)—

- (a) it must advise the sponsor's name and contact details, including the sponsor's address for service;
- (b) it must identify the project;
- (c) it must advise that the sponsor intends to develop the cultural heritage management plan for the project;
- (d) it must describe the plan area for the plan and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the plan area's location in relation to the nearest town, using bearings and approximate distances.

## **93 Additional requirements for notice to Torres Strait Islander cultural heritage body**

- (1) If the written notice (proposed plan) is given to a Torres Strait Islander cultural heritage body, the notice must, as well as complying with the basic information requirements for the notice—

- (a) advise the body that if it wishes to identify a Torres Strait Islander party to take part in developing the cultural heritage management plan, it must give a written notice to the sponsor identifying the party and giving the party's contact details; and
  - (b) state the notice day (proposed plan) for the plan, and advise the body of the time by which the sponsor must be given the written notice identifying a Torres Strait Islander party to take part in developing the plan; and
  - (c) advise the body that a Torres Strait Islander party identified by the body might not be endorsed to take part in developing the plan if the body does not give the sponsor the written notice within the required time.
- (2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice identifying a Torres Strait Islander party to take part in developing the plan must be—
- (a) the end of 30 days after the notice day (proposed plan) for the plan; or
  - (b) a later time decided by the sponsor.

#### **94 Additional requirements for notice to Torres Strait Islander party**

- (1) If the written notice (proposed plan) is given to a Torres Strait Islander party, the notice must, as well as complying with the basic information requirements for the notice—
- (a) advise the party that if it wishes to take part in developing the cultural heritage management plan, it must give a written notice to the sponsor that the party wishes to take part in developing the plan; and
  - (b) state the notice day (proposed plan) for the plan, and advise the party of the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan; and
  - (c) advise the party that it might not be endorsed to take part in developing the plan if it does not give the sponsor the written notice within the required time.



- (2) For subsection (1)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan must be—
- (a) the end of 30 days after the notice day (proposed plan) for the plan; or
  - (b) a later time decided by the sponsor.

## **95 Additional requirements for notice to representative body**

If the written notice (proposed plan) is given to a representative body, the notice must, as well as complying with the basic information requirements for the notice, draw the attention of the representative body to the public notice (proposed plan) published or to be published under this division.

## **96 Giving of public notice (proposed plan)**

- (1) This section applies if, for a part of the plan area (the *relevant part*)—
- (a) there is no Torres Strait Islander cultural heritage body; and
  - (b) there is no Torres Strait Islander party that is a native title party.
- (2) The sponsor must ensure that a public notice (*public notice (proposed plan)*) is published in a newspaper circulating generally in the relevant part.
- (3) If there is an approved form for the public notice (proposed plan), the notice must be in the approved form.
- (4) The public notice (proposed plan) must be published as close as practicable to the time the written notice (proposed plan) is given.
- (5) The public notice (proposed plan) must—
- (a) be directed to Torres Strait Islander parties for the relevant part; and

- (b) advise the sponsor's name and contact details, including the sponsor's address for service; and
  - (c) identify the project; and
  - (d) advise that the sponsor intends to develop the cultural heritage management plan for the project; and
  - (e) describe the plan area for the plan and identify its location, including, to the extent appropriate and practicable in the circumstances, by describing the plan area's location in relation to the nearest town, using bearings and approximate distances; and
  - (f) describe the relevant part, if it is less extensive than the plan area; and
  - (g) advise that if a Torres Strait Islander party for the relevant part wishes to take part in developing the plan, it must give a written notice to the sponsor that the party wishes to take part in developing the plan; and
  - (h) state the notice day (proposed plan) for the plan, and advise the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan; and
  - (i) advise that a Torres Strait Islander party might not be endorsed to take part in developing the plan if it does not give the sponsor the written notice within the required time.
- (6) For subsection (5)(h), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan must be—
- (a) the end of 30 days after the notice day (proposed plan) for the plan; or
  - (b) a later time decided by the sponsor.

**97 Torres Strait Islander cultural heritage body response to written notice and endorsement for plan**

- (1) A Torres Strait Islander cultural heritage body given the written notice (proposed plan) relating to a part of the plan

area may respond by giving a written notice to the sponsor, within the time required under the written notice (proposed plan), advising the sponsor of the name and contact details of each Torres Strait Islander party for the part, including the party's address for service.

- (2) If the sponsor receives a response under subsection (1) within the time required under the written notice (proposed plan), the sponsor must endorse each Torres Strait Islander party identified in the response to take part in developing the cultural heritage management plan.

**98 Torres Strait Islander party response to written notice and endorsement for plan**

- (1) A Torres Strait Islander party given the written notice (proposed plan) relating to a part of the plan area may respond by giving a written notice to the sponsor, within the time required under the written notice (proposed plan), that the Torres Strait Islander party wishes to take part in developing the cultural heritage management plan.
- (2) If the sponsor receives a response from a Torres Strait Islander party under subsection (1) within the time required under the written notice (proposed plan), the sponsor must endorse the Torres Strait Islander party to take part in developing the plan.

**99 Torres Strait Islander party response to public notice and endorsement for plan**

- (1) A Torres Strait Islander party to which a public notice (proposed plan) is directed may respond by giving a written notice to the sponsor, within the time required under the public notice (proposed plan), that the Torres Strait Islander party wishes to take part in developing the cultural heritage management plan.
- (2) If the sponsor receives a response from a Torres Strait Islander party under subsection (1) within the time required under the public notice (proposed plan), the sponsor must endorse the Torres Strait Islander party to take part in developing the plan.

**100 Becoming Torres Strait Islander party after written notice (proposed plan) is given**

- (1) This section applies if, after the giving of the written notice (proposed plan), but before the notice day (proposed plan) for the cultural heritage management plan, an entity becomes a Torres Strait Islander party for a part of the plan area because it becomes a native title party for the part of the plan area.
- (2) The sponsor must give the Torres Strait Islander party a written notice that—
  - (a) includes a copy of the written notice (proposed plan) it would have been given if it had been a Torres Strait Islander party when the written notice (proposed plan) was first given under this division; and
  - (b) advises the time by which, despite anything in the written notice (proposed plan), the sponsor must be given the written notice that the party wishes to take part in developing the plan.
- (3) For subsection (2)(b), the time the sponsor advises as being the time by which the sponsor must be given the written notice that the party wishes to take part in developing the plan must be—
  - (a) the end of 37 days after the notice day (proposed plan) for the plan; or
  - (b) a later time decided by the sponsor.
- (4) A Torres Strait Islander party given a written notice under subsection (2) may respond by giving a written notice to the sponsor, within the time advised under subsection (2)(b), that the party wishes to take part in developing the plan.
- (5) If the sponsor receives a notice from a Torres Strait Islander party under subsection (4) within the time required under subsection (2)(b), the sponsor must endorse the Torres Strait Islander party to take part in developing the plan.
- (6) This section applies whether or not a public notice (proposed plan) was published.

**101 Endorsement for plan in absence of response**

- (1) The sponsor is not required to endorse a Torres Strait Islander party for the plan area to take part in developing the cultural heritage management plan if a response provided for under this part has not been given to the sponsor, or has not been given to the sponsor within the required time.
- (2) However, the sponsor may endorse a Torres Strait Islander party for the plan area to take part in developing the cultural heritage management plan even though the sponsor is not required to endorse the party.

**Division 4 Development of cultural heritage management plan****102 Role of endorsed party**

- (1) An endorsed party for the cultural heritage management plan has the role of—
  - (a) seeking agreement with the sponsor for the plan about how the project is to be managed—
    - (i) to avoid harm to Torres Strait Islander cultural heritage; and
    - (ii) to the extent that harm can not reasonably be avoided, to minimise harm to Torres Strait Islander cultural heritage; and
  - (b) consulting and negotiating with the sponsor, and with other endorsed parties for the plan, about issues needing to be addressed in the development of the plan, and about the final content of the plan; and
  - (c) generally, giving help and advice in a way directed at maximising the suitability of the plan for the effective protection and conservation of Torres Strait Islander cultural heritage.
- (2) The endorsed party's role may be performed on the party's behalf by a nominee.

**103 Role of sponsor**

The sponsor for the cultural heritage management plan has the role of—

- (a) seeking agreement with the endorsed parties for the plan about how the project is to be managed—
  - (i) to avoid harm to Torres Strait Islander cultural heritage; and
  - (ii) to the extent that harm can not reasonably be avoided, to minimise harm to Torres Strait Islander cultural heritage; and
- (b) developing the plan—
  - (i) in consultation and negotiation with the endorsed parties for the plan; and
  - (ii) in a way directed at maximising the suitability of the plan for the effective protection and conservation of Torres Strait Islander cultural heritage.

**104 Consultation**

- (1) Subjects for consultation may include, but are not limited to, the following—
  - (a) the nature and extent of known Torres Strait Islander cultural heritage in the plan area;
  - (b) the reasonable requirements for the carrying out of a site survey of Torres Strait Islander cultural heritage in the plan area, and the results of the survey if it is carried out;
  - (c) reasonable travel and accommodation requirements for endorsed parties;
  - (d) workplace health and safety issues arising out of any site survey or investigation carried out in developing the plan;
  - (e) the number of endorsed parties, or nominees of endorsed parties, who can reasonably be involved in any site survey.

- (2) Consultation may include reasonable use of any of the following ways of consulting—
  - (a) face to face meetings;
  - (b) telephone conferences;
  - (c) use of the internet;
  - (d) exchanges of correspondence.
- (3) This division does not require a survey of Torres Strait Islander cultural heritage carried out for the purposes of consultation to be carried out as a cultural heritage study under part 6.

## **105 Reaching agreement**

- (1) The sponsor and each endorsed party for the cultural heritage management plan must negotiate, and make every reasonable effort to reach agreement, about the provisions of the plan.
- (2) Without limiting how the plan may provide for the managing of project activities in relation to their impact on Torres Strait Islander cultural heritage, the plan may provide for the following—
  - (a) when particular project activities are to happen;
  - (b) when particular activities under the plan are to happen;
  - (c) arrangements for access to land for carrying out activities under the plan, including details of arrangements entered into with owners or occupiers of land;
  - (d) identification of known Torres Strait Islander cultural heritage, noting, if appropriate, any reference to the cultural heritage in the database or register;
  - (e) the way Torres Strait Islander cultural heritage is to be assessed;
  - (f) whether Torres Strait Islander cultural heritage is to be damaged, relocated or taken away, and how this is to be managed;

- (g) contingency planning for disputes, unforeseen delays and other foreseeable and unforeseeable obstacles to carrying out activities under the plan;
- (h) other matters reasonably necessary for successfully carrying out activities under the plan.

## **106 Mediation**

- (1) This section applies if at least 28 days of the consultation period for the cultural heritage management plan have elapsed, and it appears to a consultation party for the plan that—
  - (a) a dispute has arisen between 2 or more consultation parties for the plan; and
  - (b) the dispute is substantially delaying the development of the plan.
- (2) The consultation party may ask the Land Court to provide mediation of the dispute.
- (3) If in the opinion of the Land Court the dispute is suitable for mediation the Land Court may provide the mediation.
- (4) Referral of the dispute to mediation may extend the consultation period only to the extent agreed to in writing by all the consultation parties.

## **Division 5 Approval by chief executive**

### **107 Chief executive approval of plan**

- (1) Whether or not the consultation period for the cultural heritage management plan has ended, the sponsor may give the plan, as developed under this part, to the chief executive for the chief executive's approval if—
  - (a) there is no endorsed party for the plan; or
  - (b) there is at least 1 endorsed party for the plan, and all consultation parties for the plan agree that the chief executive may approve the plan.



- (2) If the circumstance mentioned in subsection (1)(a) applies, the chief executive must, under this part—
  - (a) approve the plan; or
  - (b) refuse to approve the plan.
- (3) If the circumstances mentioned in subsection (1)(b) apply, the chief executive must approve the plan.

### **108 Consideration of plan before approval if no endorsed party**

- (1) This section applies if there is no endorsed party for the cultural heritage management plan.
- (2) To approve the plan, the chief executive must be satisfied the plan makes enough provision for how the project is to be managed—
  - (a) to avoid harm to Torres Strait Islander cultural heritage; and
  - (b) to the extent that harm can not reasonably be avoided, to minimise harm to Torres Strait Islander cultural heritage.
- (3) If the plan is not a cultural heritage management plan developed voluntarily, the chief executive must also be satisfied the plan includes agreement for effective alternate dispute resolution arrangements to deal with issues that may arise in the operation of the plan.

### **109 Approving or refusing to approve plan if no endorsed party**

- (1) This section also applies if there is no endorsed party for the cultural heritage management plan.
- (2) When the chief executive approves, or refuses to approve, the plan, the chief executive must give written notice of the approval, or refusal to approve, to the sponsor for the plan.
- (3) The approval or refusal to approve is not ineffective only because the sponsor does not receive the notice under subsection (2).

- (4) If the chief executive refuses to approve the plan, the chief executive must include in the written notice given under subsection (2) a written statement of the chief executive's reasons for refusing to approve the plan.
- (5) The chief executive is not required to accept, but may accept, for the chief executive's further consideration, the plan in a form amended to take account of the matters mentioned in the chief executive's statement of reasons.

## **Division 6                      Objection or referral, hearing and recommendation**

### **110      Definitions for div 6**

In this division—

***appeal period***, for a refusal to approve a cultural heritage management plan for which there is no endorsed party, means the 30 days immediately after the chief executive gives the sponsor the written notice notifying the refusal.

***party***—

- (a) to an objection to a refusal to approve a cultural heritage management plan for which there is no endorsed party—means each of the following—
  - (i) the sponsor;
  - (ii) the chief executive; or
- (b) to a referral of a cultural heritage management plan to the Land Court for approval—means each of the following—
  - (i) each consultation party for the plan;
  - (ii) the chief executive.

### **111      Objection to Land Court to refusal to approve agreed plan**

- (1) If there is no endorsed party for the cultural heritage management plan, the sponsor for the plan may object, to the

Land Court, to the chief executive's refusal to approve the plan.

- (2) The sponsor must file the objection with the Land Court within the appeal period for the refusal.

## **112 Sponsor may refer plan to Land Court after unsuccessful mediation**

- (1) This section applies if—
  - (a) under division 4, a consultation party asks the Land Court to provide mediation of a dispute; and
  - (b) the mediation is not successful in resolving the dispute; and
  - (c) the mediator considers that resolution is unlikely before the end of the consultation period.
- (2) The mediator may authorise the sponsor to refer the plan to the Land Court and ask the Land Court to approve the cultural heritage management plan, even though the consultation period has not ended.
- (3) If the sponsor does not refer the plan on the mediator's authority, the sponsor is not prevented from acting under this division to refer the plan to the Land Court.

## **113 Sponsor may refer plan to Land Court after failure to agree**

- (1) This section applies if—
  - (a) there is at least 1 endorsed party for the cultural heritage management plan; and
  - (b) the consultation period for the plan has ended; and
  - (c) all consultation parties have not agreed that the chief executive may approve the plan.
- (2) The sponsor for the plan may refer the plan to the Land Court and ask the Land Court to approve the plan.
- (3) The sponsor must ensure that a referral of the plan to the Land Court happens within a reasonable time after the end of the consultation period for the plan.

**114 Administrative details for objection or referral**

- (1) The sponsor must, in filing an objection or referral with the Land Court, identify for the Land Court the names and contact details of all other parties to the objection or referral.
- (2) As soon as practicable after receiving the objection or referral from the sponsor, the Land Court must advise all other parties of the objection or referral.
- (3) The Land Court must take all reasonable steps to keep all parties to the objection or referral informed about when any hearing of the objection or referral is to be held.

**115 Substantive requirements for objection or referral**

- (1) The sponsor must, in filing an objection or referral with the Land Court, give the Land Court a document that—
  - (a) unless there is no endorsed party for the cultural heritage management plan—outlines the nature and extent of the consultation that happened in the consultation period for the plan; and
  - (b) states why the sponsor believes the plan makes enough provision for how the project is to be managed—
    - (i) to avoid harm to Torres Strait Islander cultural heritage; and
    - (ii) to the extent that harm can not reasonably be avoided, to minimise harm to Torres Strait Islander cultural heritage.
- (2) The Land Court must—
  - (a) give each other party to the objection or referral a copy of the document given to the Land Court under subsection (1); and
  - (b) for a referral—invite each other party to the referral to make a written submission to the Land Court about the plan and the sponsor’s submission on the plan.
- (3) The Land Court is required to take account of a party’s written submission given on an invitation under subsection (2)(b) only if the Land Court receives the submission within 30 days

after the Land Court gives the copy of the document to the party under subsection (2)(a).

### **116 Land Court's hearing**

- (1) The Land Court may hold, but is not required to hold, a hearing of an objection or referral.
- (2) All parties to the objection or referral have the right to be heard at the hearing.
- (3) The Land Court may order mediation before the hearing if the Land Court considers mediation may successfully resolve any dispute about the cultural heritage management plan.

### **117 Land Court's recommendation to Minister**

- (1) After the hearing has been completed, or, if no hearing is held, after the Land Court has considered the sponsor's document and any submission properly received by the Land Court, the Land Court must give its recommendation about the cultural heritage management plan to the Minister.
- (2) The Land Court's recommendation must be—
  - (a) that the Minister—
    - (i) for an objection—confirm the chief executive's refusal to approve the plan; or
    - (ii) for a referral—refuse to approve the plan; or
  - (b) that the Minister approve the plan; or
  - (c) that the Minister approve the plan after amendment of the plan in accordance with details included in the recommendation.
- (3) Subsection (2) does not stop the Land Court, before making its recommendation to the Minister, from helping the parties to negotiate changes to the plan.
- (4) Subsections (5) and (6) apply only if there is at least 1 endorsed party for the plan.
- (5) If, before the Land Court makes a recommendation to the Minister, all the consultation parties agree that the plan should

be approved, the sponsor may give the plan, as agreed to, to the chief executive.

- (6) The giving of the plan to the chief executive under subsection (4) is taken to be a giving of the plan to the chief executive under division 5, in the circumstances that there is at least 1 endorsed party for the plan, and all consultation parties for the plan agree that the chief executive may approve the plan.

## **118 Reaching the recommendation**

- (1) To recommend that the Minister approve the cultural heritage management plan, or that the Minister approve the plan after amendment, the Land Court must be satisfied the plan makes, or after suitable amendment will make, enough provision for how the project is to be managed—
  - (a) to avoid damage to Torres Strait Islander cultural heritage; and
  - (b) to the extent that damage can not reasonably be avoided, to minimise damage to Torres Strait Islander cultural heritage.
- (2) If the plan is not a cultural heritage management plan developed voluntarily, the Land Court must also be satisfied the plan provides for effective alternate dispute resolution arrangements to deal with issues that may arise in the operation of the plan.
- (3) The Land Court must also be satisfied that, for Torres Strait Islander cultural heritage that is to be or may be taken away when the plan is put into effect, the plan makes enough provision about—
  - (a) who is to become the owner of it; and
  - (b) who is to have the custody of it.
- (4) For making its recommendation to the Minister about the plan, the Land Court must include the following in its considerations—
  - (a) the availability and quality of documented information about the Torres Strait Islander cultural heritage significance of the plan area;

- (b) the nature of the impacts of the project;
- (c) submissions made by the parties to the objection or referral, including, if a hearing is held, oral submissions made at the hearing;
- (d) the nature and extent of past uses of the project area.

### **119 General time requirement for making recommendation**

- (1) The Land Court must take all reasonable steps to make sure that its recommendation about the cultural heritage management plan is given to the Minister within 4 months after the objection or referral is filed with the Land Court.
- (2) If the recommendation is not made within the 4 months, the Land Court must, as soon as practicable after the 4 months ends, give a written notice to the Minister—
  - (a) advising why the recommendation has not yet been made; and
  - (b) giving an estimate of when the recommendation is likely to be made.

## **Division 7 Approval by Minister**

### **120 Approving or refusing to approve plan**

- (1) On receiving a recommendation from the Land Court under division 6, the Minister may—
  - (a) for an objection—confirm the chief executive’s refusal to approve the cultural heritage management plan; or
  - (b) for a referral—refuse to approve the plan; or
  - (c) approve the plan; or
  - (d) approve the plan after amendment of the plan in accordance with the Minister’s direction.
- (2) However, in deciding what action to take, the Minister must have regard to—
  - (a) the Land Court’s recommendation; and

- (b) the matters about which the chief executive was or would have been required to be satisfied before approving the plan.

## **Part 8 Investigation and enforcement**

### **Division 1 Authorised officers**

#### **121 Appointment and qualifications**

- (1) The chief executive may appoint a public service employee as an authorised officer.
- (2) However, the chief executive may appoint a person as an authorised officer only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### **122 Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—
  - (a) the authorised officer's instrument of appointment; or
  - (b) a signed notice given to the authorised officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

#### **123 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised officer.



- (2) The identity card must—
  - (a) contain a recent photo of the authorised officer; and
  - (b) contain a copy of the authorised officer’s signature; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

#### **124 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an authorised officer must—
  - (a) produce the authorised officer’s identity card for the person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer, as authorised under this Act, enters—
  - (a) a public place when it is open to the public; or
  - (b) a place for the purpose of asking the occupier of the place for consent to enter.

#### **125 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised officer ceases to hold office;
  - (c) the authorised officer’s resignation takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

(3) In this section—

*condition of office* means a condition on which the authorised officer holds office.

## **126 Resignation**

An authorised officer may resign by signed notice given to the chief executive.

## **127 Return of identity card**

A person who ceases to be an authorised officer must return the person's identity card to the chief executive within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

# **Division 2 Powers of authorised officers**

## **Subdivision 1 Entry of places**

### **128 Power to enter places**

(1) An authorised officer may enter a place if—

(a) its occupier consents to the entry; or

(b) it is a public place and the entry is made when the place is open to the public; or

(c) the entry is authorised by a warrant.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

## **Subdivision 2 Procedure for entry**

### **129 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place.
- (2) Before asking for the consent, the authorised officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this Act; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **130 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **131 Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (2) The warrant must state—
  - (a) that a stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the authorised officer's powers under this Act; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and

- (e) the date, within 14 days after the warrant's issue, the warrant ends.

## 132 Special warrants

- (1) An authorised officer may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the special warrant before the application is sworn.
- (4) After issuing the special warrant, the magistrate must immediately fax a copy (the *facsimile warrant*) to the authorised officer if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised officer—
  - (a) the magistrate must tell the authorised officer—
    - (i) what the terms of the special warrant are; and
    - (ii) the date and time the special warrant was issued; and
  - (b) the authorised officer must complete a form of warrant (a *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the special warrant; and
    - (iii) the terms of the special warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and

the exercise of the other powers stated in the special warrant issued.

- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the special warrant.
- (9) If—
  - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
  - (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

### **133 Warrants—procedure before entry**

- (1) This section applies if an authorised officer named in a warrant issued under this Act for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised officer's identity card or other document evidencing the authorised officer's appointment;
  - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form, a copy of the facsimile warrant or warrant form;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;

- (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### **Subdivision 3 Powers after entry**

#### **134 General powers after entering places**

- (1) This section applies to an authorised officer who enters a place.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter premises, this section applies to the authorised officer only if the consent is given or the entry is otherwise authorised.
- (3) For enforcing compliance with this Act, the authorised officer may—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
  - (c) take a thing, or a sample of or from a thing, for analysis or testing; or
  - (d) take an extract from, or copy, a document at the place; or
  - (e) take into or onto the place any person, including a Torres Strait Islander party or representative of a Torres Strait Islander party, the authorised officer reasonably requires for exercising a power under this Act; or
  - (f) take into or onto the place any equipment and materials the authorised officer reasonably requires for exercising a power under this Act; or
  - (g) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (f); or

- (h) require the occupier of the place, or a person at the place, to give the authorised officer information to help the authorised officer ascertain whether this Act is being complied with.
- (4) When making a requirement mentioned in subsection (3)(g) or (h), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

### **135 Failure to help authorised officer**

- (1) A person required to give reasonable help under section 134(3)(g) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If an individual is required under section 134(3)(g) to give information, or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

### **136 Failure to give information**

- (1) A person of whom a requirement is made under section 134(3)(h) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **Subdivision 4 Power to seize evidence**

### **137 Seizing evidence at a place that may be entered without consent or warrant**

An authorised officer who enters a place that may be entered under division 2, subdivision 1 without the consent of the



occupier and without a warrant, may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this Act.

**138 Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
  - (a) an authorised officer is authorised to enter a place under division 2, subdivision 1 only with the consent of the occupier of the place or a warrant; and
  - (b) the authorised officer enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place if—
  - (a) the authorised officer reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer also may seize anything else at the place if the authorised officer reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the authorised officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this Act.

**139 Securing seized things**

Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- 1 Sealing a thing and marking it to show access to it is restricted.
- 2 Sealing the entrance to a room where the seized thing is situated and marking the entrance to show access to the room is restricted.

**140 Tampering with seized things**

If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—50 penalty units.

**141 Power to support seizure**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
  - (a) must be made by notice in the approved form; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.
- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

#### **142 Receipts for seized things**

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

#### **143 Return of seized things**

- (1) If a seized thing has not been forfeited, the authorised officer must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing has been forfeited, the authorised officer must immediately return a thing seized as evidence to its owner if the authorised officer stops being satisfied its continued retention as evidence is necessary.

#### **144 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.

- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Subdivision 5 Power to obtain information**

### **145 Power to require name and address**

- (1) This section applies if—
- (a) an authorised officer finds a person committing an offence against this Act; or
  - (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer to reasonably suspect the person has just committed an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address unless the person has a reasonable excuse.
- (4) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address is false.
- (5) A requirement under subsection (2) or (4) is called a *personal details requirement*.

### **146 Failure to give name or address**

- (1) A person of whom a personal details requirement is made must comply with the requirement unless the person has a reasonable excuse.
- Maximum penalty—20 penalty units.
- (2) A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

## **Division 3                    General enforcement matters**

### **147    Notice of damage**

- (1) This section applies if—
  - (a) an authorised officer damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction of an authorised officer damages property.
- (2) The authorised officer must immediately give notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.
- (3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's or other person's control, the authorised officer may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.
- (6) In this section—

*owner*, of property, includes the person in possession or control of it.

### **148    Compensation**

- (1) A person may claim from the chief executive the cost of repairing or replacing property damaged because of the

exercise or purported exercise of a power under a declared provision.

- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the declared provisions.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

#### **149 False or misleading information**

A person must not give information to an authorised officer the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

#### **150 False or misleading documents**

- (1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

**151 Obstructing authorised officers**

- (1) A person must not obstruct an authorised officer in the exercise of a power unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—
  - (a) it is an offence to obstruct the authorised officer unless the person has a reasonable excuse; and
  - (b) the authorised officer considers the person’s conduct is an obstruction.
- (3) In this section—  
*obstruct* includes hinder and attempt to obstruct.

**Part 9 Miscellaneous provisions****152 Delegations**

- (1) The Minister may delegate the Minister’s powers under this Act to—
  - (a) another Minister; or
  - (b) an appropriately qualified public service officer.
- (2) The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified public service officer.
- (3) In this section—  
*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

a person’s classification level in the public service

**153 Access to land**

- (1) A person who wishes to enter land to perform an activity (the *cultural heritage activity*) under this Act must consult with the owner or occupier of the land about obtaining the necessary access.

*Example—*

The sponsor for a cultural heritage management plan would need to consult with the owner or occupier of land to obtain access required to properly assess Torres Strait Islander cultural heritage values for developing the plan.

- (2) However, if the person is authorised under another Act to enter the land to carry out activities for a project, and the cultural heritage activity is a necessary complementary or ancillary activity to the project—
  - (a) the person is also authorised to enter the land to perform the cultural heritage activity; and
  - (b) unless otherwise agreed between the person and the owner or occupier, the conditions of access that apply are the same conditions of access that apply under the other Act.
- (3) The authority given to the person under subsection (2) extends to agents and employees of the person acting under the authority of the person.
- (4) If the person is the sponsor for a cultural heritage management plan, the authority also extends to endorsed parties for the plan and their representatives, if their access to the land is—
  - (a) reasonably required to properly assess Torres Strait Islander cultural heritage values for developing the plan; and
  - (b) approved by the sponsor.

**154 Advisory committees**

- (1) The Minister may establish advisory committees as the Minister considers appropriate.
- (2) An advisory committee has the function of advising the Minister in relation to the particular issues the Minister refers to it.



- (3) A member of an advisory committee holds the member's appointment on the conditions decided by the Minister.
- (4) The Minister may at any time end the appointment of a member of an advisory committee.

### **155 Purchase or compulsory acquisition to protect cultural heritage**

- (1) The Minister may issue a certificate (an *acquisition certificate*) for land if the Minister is satisfied that the State's purchase or compulsory acquisition of the land is necessary to manage, preserve or protect Torres Strait Islander cultural heritage.
- (2) If the acquisition certificate relates to a lease or easement under the *Land Act 1994*, the lease or easement may be resumed under that Act.
- (3) If the acquisition certificate relates to private land, the management, preservation or protection of Torres Strait Islander cultural heritage is a purpose for which the land may be taken under the *Acquisition of Land Act 1967*.

### **156 Proceedings for an offence**

- (1) A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886* within—
  - (a) 1 year after the offence is committed; or
  - (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (2) A proceeding for an offence against this Act that is an indictable offence may be taken, at the prosecution's election—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of the person; or
  - (b) for an examination of witnesses in relation to the charge.
- (4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- (5) If—
- (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
  - (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;
- the magistrate—
- (c) must not decide the charge as a summary offence; and
  - (d) must proceed by way of a committal proceeding.
- (6) If a magistrate acts under subsection (5)—
- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
  - (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).
- (7) The maximum penalty that may be imposed on a summary conviction of an individual of an indictable offence is as follows—
- (a) to the extent the penalty imposed is a number of penalty units—200 penalty units;
  - (b) to the extent the penalty imposed is imprisonment—1 year's imprisonment.

- (8) The maximum penalty that may be imposed on a summary conviction of a corporation of an indictable offence is 2000 penalty units.
- (9) An indictable offence under this Act is a misdemeanour.
- (10) In this section—
  - indictable offence* means an offence against this Act for which the maximum penalty for an individual is—
    - (a) 1000 or more penalty units; or
    - (b) at least 2 years imprisonment, whether or not the penalty also includes a number of penalty units.

### **157 Review of Act**

The Minister must review the efficacy and efficiency of this Act within 5 years of its commencement.

### **158 Approval of forms**

The chief executive may approve forms for use under this Act.

### **159 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about fees payable under this Act.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

## **Part 10 Transitional provisions**

### **160 Confirmation of ownership of Torres Strait Islander cultural heritage before commencement**

- (1) This Act is not generally intended to interfere with ownership of Torres Strait Islander cultural heritage established before

the Act's commencement.

- (2) A person's ownership of Torres Strait Islander cultural heritage is confirmed under this Act if, immediately before the commencement of this section, the person was the owner of the cultural heritage.
- (3) Subsection (2) does not apply to Torres Strait Islander cultural heritage if, under part 2, division 2 or 3, it becomes owned by Torres Strait Islanders who have a traditional or familial link with it.

### **161 Foundation material for database**

As soon as practicable after the commencement of this section, the chief executive must take all reasonable steps to place on the database, as its foundation information, all information about Torres Strait Islander cultural heritage accumulated by the State before the commencement of this section.

### **162 Existing agreement for carrying out activity**

A person who carries out an activity under the requirements for carrying out the activity that are included in an existing agreement to which the person is a party does not commit an offence against a cultural heritage protection provision in relation to Torres Strait Islander cultural heritage expressly or impliedly the subject of the agreement.

### **163 Permit under repealed Act**

A permit issued under section 28<sup>3</sup> of the repealed Act and in force immediately before the commencement of this section, to the extent it relates to Torres Strait Islander cultural heritage—

- (a) continues in force according to its terms; and

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3 Section 28 (Permit to explore etc. Landscapes Queensland and Queensland Estate) of the repealed Act

- (b) may be dealt with under the provisions of the repealed Act relating to it, other than section 29<sup>4</sup> of the repealed Act, as if the provisions had not been repealed.

#### **164 Authority obtained before commencement**

- (1) This section applies if—
  - (a) under an Act other than this Act, an authority is required for an activity; and
  - (b) the authority was obtained before the commencement of this section.
- (2) The holder of the authority may apply to the Minister for the Minister's approval of measures (*transitional measures*) identifying reasonable and practicable measures for ensuring the activity under the authority avoids or minimises harm to Torres Strait Islander cultural heritage.
- (3) The transitional measures have effect, in relation to the carrying out of the activity under the authority, as cultural heritage duty of care guidelines.
- (4) In this section—

*authority* includes a lease, licence, permit or approval.

#### **165 Cultural heritage arrangements for project authorised before commencement**

- (1) This section applies to a project if—
  - (a) under an Act other than this Act, an authority is required for the project; and
  - (b) the authority was obtained before the commencement of this section; and
  - (c) for the purposes of obtaining the authority, arrangements were put in place, whether by placing conditions on the authority or in some other way, directed at ensuring that the project would avoid or

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4 Section 29 (Renewal of permit) of the repealed Act

minimise harm to Torres Strait Islander cultural heritage.

- (2) Until the project is finished, a person who, under the authority, carries out an activity for the project under the arrangements does not commit an offence against a cultural heritage protection provision in relation to Torres Strait Islander cultural heritage expressly or impliedly the subject of the arrangements.
- (3) In this section—  
*authority* includes a lease, licence, permit or approval.

### **166 Cultural heritage arrangements for project not authorised before commencement**

- (1) This section applies to a project if—
  - (a) under an Act other than this Act, an authority is required for the project; and
  - (b) the authority was applied for, but not obtained, before the commencement of this section; and
  - (c) the applicant was notified before the commencement of this section that an EIS was required for the project; and
  - (d) for the purposes of obtaining the authority, arrangements were put in place, whether by placing conditions on the authority or in some other way, directed at ensuring that the project would avoid or minimise harm to Torres Strait Islander cultural heritage.
- (2) Part 7, division 2 does not apply to the project.
- (3) Until the project is finished, a person who, under the authority, carries out an activity for the project under the arrangements does not commit an offence against a cultural heritage protection provision in relation to Torres Strait Islander cultural heritage expressly or impliedly the subject of the arrangements.
- (4) In this section—  
*authority* includes a lease, licence, permit or approval.

**167 References to repealed Act**

In an Act or document, a reference to the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987* may, if the context permits, be taken to be a reference to this Act.

## Schedule Dictionary

### section 7

***alternate dispute resolution arrangements*** means arrangements that, to the greatest practicable extent, provide for the handling of disputes other than before a court.

***appeal period***—

- (a) for part 6, division 5—see section 75; or
- (b) for part 7, division 6—see section 110.

***approved cultural heritage management plan*** means a cultural heritage management plan that has been approved by the chief executive or the Minister under part 7.

***approved form*** means a form approved by the chief executive under section 158.

***area*** means—

- (a) an area of land; or
- (b) an expanse of water; or
- (c) an area of land under water; or
- (d) any combination of 2 or more of paragraphs (a) to (c).

***authorised officer*** means a person appointed as an authorised officer under section 121.

***basic information requirement***—

- (a) for a written notice (proposed study)—see section 57; or
- (b) for a written notice (proposed plan)—see section 92.

***Commonwealth Native Title Act*** means the *Native Title Act 1993* (Cwlth).

***consultation party***, for a cultural heritage management plan, means—

- (a) the sponsor for the plan; or
- (b) an endorsed party for the plan.



## Schedule (continued)

***consultation period***, for a cultural heritage management plan, means the period of 84 days starting immediately after the period of 30 days after the notice day (proposed plan).

***cultural heritage assessor***, for a cultural heritage study, means a person engaged under section 68 as a cultural heritage assessor for the study.

***cultural heritage duty of care*** see section 23.

***cultural heritage duty of care guidelines*** see section 28.

***cultural heritage management plan*** means a document providing for how activities for a project are to be managed for their impact on Torres Strait Islander cultural heritage.

***cultural heritage protection provision*** means section 23, 24, 25 or 26.<sup>5</sup>

***cultural heritage study*** means a comprehensive study of Torres Strait Islander cultural heritage in an area conducted under part 6 for the purpose of recording the findings of the study on the register.

***database*** means the Torres Strait Islander Cultural Heritage Database established under section 38.

***declared provision*** means any of the following provisions—

- section 128
- section 134
- sections 137 to 139
- section 141.

***EIS*** means an environmental impact statement.

***endorsed party*** means—

- (a) for a cultural heritage study—a Torres Strait Islander party endorsed under section 62, 63, 64 or 65 to take part in the study; or

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<sup>5</sup> Section 23 (Cultural heritage duty of care), 24 (Unlawful harm to Torres Strait Islander cultural heritage), 25 (Prohibited excavation, relocation and taking away) or 26 (Unlawful possession of Torres Strait Islander cultural heritage)

## Schedule (continued)

- (b) for a cultural heritage management plan—a Torres Strait Islander party endorsed under section 97, 98, 99, 100 or 101 to take part in developing the plan.

***existing agreement*** means an agreement—

- (a) that was entered into before the commencement of this schedule, and that is still in force, with an entity that becomes, on the commencement of this schedule, a Torres Strait Islander party; and
- (b) that expressly or impliedly deals with Torres Strait Islander cultural heritage.

***facsimile warrant*** see section 132(4).

***harm***, to Torres Strait Islander cultural heritage, means damage or injury to, or desecration or destruction of, the cultural heritage.

***information protection provision*** means section 29.

***IPA*** means the *Integrated Planning Act 1997*.

***land user*** means a person carrying out, or proposing to carry out, activities on land likely to materially affect the land.

*Example of activities—*

farming activities, construction activities

***National Native Title Register*** means the National Native Title Register under the Commonwealth Native Title Act.

***native title agreement*** means—

- (a) an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements; or
- (b) any of the following under part 2, division 3, subdivision P of the Commonwealth Native Title Act—
- (i) an agreement mentioned in section 31(1)(b);
- (ii) a determination of the relevant Minister under section 36A;
- (iii) a determination of the arbitral body under section 38; or

## Schedule (continued)

- (c) an access agreement or negotiated agreement under the native title mining provisions.

***native title mining provisions*** means the *Mineral Resources Act 1989*, parts 12 to 18, and part 19, divisions 2 and 5.

***native title party***, for an area, see section 34.

***native title protection conditions*** means native title protection conditions under the *Mineral Resources Act 1989*, section 25AA, 141AA or 194AAA.

***native title rights and interests*** see the Commonwealth Native Title Act, section 223.

***notice day (proposed plan)***, for a cultural heritage management plan, means the day nominated by the sponsor for the plan as the day that may reasonably be assumed to be the day by which—

- (a) the written notice (proposed plan) for the plan will have been received by each person to whom it is required to be given; and
- (b) each public notice (proposed plan) required to be given will have come to the attention of the persons to whom it is directed.

***notice day (proposed study)***, for a cultural heritage study, means the day nominated by the sponsor for the study as the day that may reasonably be assumed to be the day by which—

- (a) the written notice (proposed study) for the study will have been received by each person to whom it is required to be given; and
- (b) each public notice (proposed study) required to be given will have come to the attention of the persons to whom it is directed.

***owner***, of an area, means the person for the time being entitled to receive the rent for the area or who would be entitled to receive the rent for it if it were let to a tenant for rent.

***party***—

- (a) for part 6, division 5—see section 75; or

## Schedule (continued)

(b) for part 7, division 6—see section 110.

***personal details requirement*** see section 145(5).

***plan area***, in relation to a cultural heritage management plan, means the area the subject of the plan.

***private land*** means land forming part of Queensland that is not State land.

***project*** includes—

- (a) a development or proposed development; and
- (b) an action or proposed action; and
- (c) a use or proposed use of land.

***project area***, in relation to a project, means the area the subject of the project, whether in construction or operational phases.

***public notice (proposed plan)*** see section 96(2).

***public notice (proposed study)*** see section 61(2).

***Queensland Museum*** means the Board of the Queensland Museum under the *Queensland Museum Act 1970*.

***register*** means the Torres Strait Islander Cultural Heritage Register established under section 46.

***registered native title body corporate*** see the Commonwealth Native Title Act, section 253.

***registered native title claimant*** see the Commonwealth Native Title Act, section 253.

***registered native title holder*** means—

- (a) a registered native title body corporate; or
- (b) an entity, other than a registered native title body corporate, that is the subject of a determination of native title under the Commonwealth Native Title Act and is registered on the National Native Title Register as holding native title rights and interests.

***registered significant area*** means an area recorded in the register as a significant Torres Strait Islander area.

## Schedule (continued)

**registered significant object** means an object recorded in the register as a significant Torres Strait Islander object.

**Register of Indigenous Land Use Agreements** means the Register of Indigenous Land Use Agreements under the Commonwealth Native Title Act.

**Register of Native Title Claims** means the Register of Native Title Claims under the Commonwealth Native Title Act.

**repealed Act** means the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*.

**representative body** see the Commonwealth Native Title Act, section 253.

**sacred** means sacred according to Island custom.

**secret** means secret according to Island custom.

**significant Torres Strait Islander area** see section 9.

**significant Torres Strait Islander object** see section 10.

**sponsor** means—

- (a) for a cultural heritage study—the person who accepts responsibility for the study; or
- (b) for a cultural heritage management plan—means the person who accepts responsibility for the plan.

**State land** means all land forming part of Queensland that is not freehold land, or land contracted to be granted in fee-simple by the State.

**stop order**, for a person's activity, means an order of the Minister—

- (a) requiring the person to stop the activity; or
- (b) prohibiting the person from starting the activity.

**study area**, for a cultural heritage study, means the area the subject of the study.

**Torres Strait Islander cultural heritage** see section 8.

## Schedule (continued)

***Torres Strait Islander cultural heritage body***, for an area, means an entity registered under part 4 as a Torres Strait Islander cultural heritage body for the area.

***Torres Strait Islander human remains***—

- (a) includes burial objects and associated material; but
- (b) does not include human remains—
  - (i) buried under the authority of the law of Queensland or another State; or
  - (ii) in or from a place recognised as a burial ground for interment of human remains buried under the authority of the law of Queensland or another State.

***Torres Strait Islander party***, for an area, see section 35.

***warrant form*** see section 132(5).

***written notice (proposed plan)*** see section 91(1).

***written notice (proposed study)*** see section 56(1).

## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 September 2007. Future amendments of the Torres Strait Islander Cultural Heritage Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	16 April 2004	
1A	2007 Act No. 39	21 September 2007	

## 5 List of legislation

### **Torres Strait Islander Cultural Heritage Act 2003 No. 80**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 16 April 2004 (2004 SL No. 37)

amending legislation—

### **Land Court and Other Legislation Amendment Act 2007 No. 39 ss 1–2, 41 sch**

date of assent 29 August 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 21 September 2007 (2007 SL No. 236)

## 6 List of annotations

### **Stop orders**

s 32 amd 2007 No. 39 s 41 sch

### **Definitions for div 5**

s 75 def “party” amd 2007 No. 39 s 41 sch

### **Objection to refusal to record findings**

s 76 amd 2007 No. 39 s 41 sch

### **Land Court’s hearing**

prov hdg amd 2007 No. 39 s 41 sch

s 77 amd 2007 No. 39 s 41 sch

### **Land Court’s recommendation to Minister**

prov hdg amd 2007 No. 39 s 41 sch

s 78 amd 2007 No. 39 s 41 sch

### **Recording or refusing to record findings of cultural heritage study**

s 79 amd 2007 No. 39 s 41 sch

### **Mediation**

s 106 amd 2007 No. 39 s 41 sch



**Definitions for div 6**

s 110 def “party” amd 2007 No. 39 s 41 sch

**Objection to Land Court to refusal to approve agreed plan**

prov hdg amd 2007 No. 39 s 41 sch

s 111 amd 2007 No. 39 s 41 sch

**Sponsor may refer plan to Land Court after unsuccessful mediation**

prov hdg amd 2007 No. 39 s 41 sch

s 112 amd 2007 No. 39 s 41 sch

**Sponsor may refer plan to Land Court after failure to agree**

prov hdg amd 2007 No. 39 s 41 sch

s 113 amd 2007 No. 39 s 41 sch

**Administrative details for objection or referral**

s 114 amd 2007 No. 39 s 41 sch

**Substantive requirements for objection or referral**

s 115 amd 2007 No. 39 s 41 sch

**Land Court’s hearing**

prov hdg amd 2007 No. 39 s 41 sch

s 116 amd 2007 No. 39 s 41 sch

**Land Court’s recommendation to Minister**

prov hdg amd 2007 No. 39 s 41 sch

s 117 amd 2007 No. 39 s 41 sch

**Reaching the recommendation**

s 118 amd 2007 No. 39 s 41 sch

**General time requirement for making recommendation**

s 119 amd 2007 No. 39 s 41 sch

**Approving or refusing to approve plan**

s 120 amd 2007 No. 39 s 41 sch

**SCHEDULE—DICTIONARY**

def “tribunal” om 2007 No. 39 s 41 sch