

Factsheet 1

Land and Resources Tribunal and the Cultural Heritage Acts

As noted on the LRT website at www.lrt.qld.gov.au the LRT has exclusive jurisdiction to grant injunctive relief by s.53 *Land and Resources Tribunal Act 1999* to restrain activities that contravene:

- Sections 24(1) (unlawful harm to cultural heritage), 25(1) (prohibited excavation or relocation of cultural heritage) or 26(1) (unlawful possession of cultural heritage) of either the *Aboriginal Cultural Heritage Act 2003* or the *Torres Strait Islander Cultural Heritage Act 2003* (the Cultural Heritage Acts); or
- A provision of any other Act providing for the protection of Aboriginal or Torres Strait Islander cultural heritage.

However, you may not be aware of the **additional jurisdiction** granted to the LRT by the Cultural Heritage Acts in the areas concerning **Cultural Heritage Studies** under Part 6 and **Cultural Heritage Management Plans** (see Fact Sheet 2) under Part 7 of the Acts.

Part 6 Cultural Heritage Studies

The Land and Resources Tribunal has jurisdiction to hear objections against the chief executive's decision to record or not to record a Heritage Study by s.76 of the Acts. An objection must be filed with the Tribunal within 30 days of the chief executive giving notice of the decision (s.75). An objection may only be lodged by:

- the sponsor;
- an endorsed party;
- an owner or occupier of land in the study area; or
- a local government in the study area.

Upon receiving an objection, the Tribunal will identify all other parties to the objection and advise them of the objection. The Tribunal will keep all parties informed about the objection and when the hearing of the objection is to be held (s.76(7)).

Mediation of the objection will be made available to the parties by the Tribunal. Mediation will be conducted either by a Tribunal member who has no role in the hearing of the matter or by an external mediator (Section 76 *Land and Resources Tribunal Act 1999*). Mediation is confidential and no evidence of what was done or said in mediation is admissible unless all the mediation participants agree (s.75 *Land and Resources Tribunal Act*).

If the objection is not successfully mediated, the Tribunal will hold a hearing (s.77(1)). All parties to the objection have a right to be heard at the hearing and the Tribunal may assist the parties to negotiate changes to the study at any time before it makes a decision (s.78(2)).

After the hearing the Tribunal will make a written recommendation to the Minister (s.78). All parties will receive a copy of the recommendation. If the objection was to the recording of a study, the Tribunal may recommend that the recording be confirmed, that the findings be removed, or that the findings be amended in particular ways. If the objection was to the refusal to record a study, the Tribunal may recommend that the refusal be confirmed, that the findings be recorded, or that the findings be amended and then recorded. The LRT is empowered to order that proceedings be heard in closed court and information not be published, having regard to Aboriginal tradition and Island custom (ss 48, 65 *Land and Resources Tribunal Act*).

In making a recommendation, the Tribunal must have regard to the same statutory criteria which the chief executive was required to consider and will take into account the submissions made by each party (s.78(3)). The Tribunal may include in its considerations the nature and extent of consultations held in carrying out the study.

The Minister makes the final decision about amending or recording the cultural heritage study (s.79). The Minister must have regard to the Tribunal's recommendation but is not bound by it.

For further information

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For feedback on this or any other Fact Sheet or service provided by the Land and Resources Tribunal please complete the client survey overleaf and forward it to the address supplied, send an email to the registry or access the LRT website and complete the client survey on line at www.lrt.qld.gov.au.

