

Factsheet 2

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 (see Fact Sheet 1) and **Cultural Heritage Management Plans** under Part 7.

Part 7 Cultural Heritage Management Plans

The Land and Resources Tribunal has jurisdiction to mediate or hear:

- referrals where cultural heritage management plans cannot be agreed upon; and
- objections against the chief executive's decision to record a plan (s.116).

An objection must be filed with the Tribunal within 30 days of the chief executive giving notice of the decision. An objection may only be lodged by the sponsor (s.110 and s.111). A referral may be made to the Tribunal by a sponsor after a failure to successfully mediate (s.112) or a failure to reach agreement (s.113).

Upon receiving an objection or referral, the Tribunal must advise all parties of the objection or referral (s.114) and take all reasonable steps to advise when any hearing may be held (s.115).

Mediation

If after 28 days from commencement of the consultation period it appears there is a dispute substantially delaying development of the plan, a consultation party (either a sponsor or endorsed party) may ask the Tribunal to provide mediation of the dispute (s.106).

Mediation of an objection to the chief executive decision or referral may be ordered by the Tribunal (s.116). 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*).

Hearings

If the objection is not successfully mediated, the Tribunal may hold a hearing. 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 plan at any time before it makes a decision (s.116).

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*).

After a hearing the Tribunal will make a written recommendation to the Minister within 4 months of the objection or referral being filed or as otherwise advised to the Minister (s.119). If the objection is to the refusal to record a plan, the Tribunal may recommend that the refusal be confirmed, that the plan be approved, or that the plan be approved after recommended amendment. For a referral, the Tribunal may recommend the Minister refuse to approve the plan, approve the plan, or approve the plan after amendment (s.118).

In making a recommendation, the Tribunal will take into account the submissions made by each party (s.117). In reaching the recommendation, the Tribunal must consider those matters required by section 118 of the Acts.

The Minister makes the final decision about amending or recording the cultural management plan (s. 120). 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 survey overleaf and forward it to the address supplied or send an email to the registry or access the LRT website and complete the survey on line at www.lrt.qld.gov.au.

