

*National Trust of Australia (Queensland)*

**Submission in response to “Delivering a fresh start for Queensland’s heritage” Discussion Paper**



**NATIONAL TRUST**  
Queensland



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### Acknowledgement of Country

National Trust of Australia (Queensland) (NTAQ) respects and honours the Traditional Custodians of Country throughout Queensland. NTAQ acknowledges the stories, traditions and living cultures of Aboriginal and Torres Strait Islander peoples across the many traditional lands and language groups of Queensland. We thank them for caring for Country, the lands, waters, and wildlife since time immemorial.



## 1. Background

The National Trust of Australia (Queensland) (NTAQ) welcomes the opportunity to provide a submission to the Department of Environment, Science, Tourism and Innovation (DETSI) in response to what is proposed for the future of Queensland's heritage in the "Delivering a fresh start for Queensland's Heritage" Discussion Paper (Discussion Paper). In particular, we appreciate the opportunity to offer our perspectives on developing a new Queensland Heritage Strategy (Strategy), as well as provide feedback on the proposed amendments to the *Queensland Heritage Act 1992* (the Act).

Founded in 1963 as a member-based charity, NTAQ has evolved into a public company limited by guarantee. We have over 24,000 members and manage a portfolio which includes 11 significant heritage properties across Queensland, ranging from the iconic Currumbin Wildlife Sanctuary in the southeast to Cooktown Museum in the far north.

NTAQ has valued DETSI's time during information sessions held online and in-person for the general Brisbane community, as well as the face-to-face session which was arranged specifically for the NTAQ to talk through some of our main areas of interest relating to the Discussion Paper.

Generally, the NTAQ is supportive of the preparation of a new Queensland Heritage Strategy, as well as the proposing amendments to the Act that are aimed at improving stewardship for the ongoing and future protection and management of heritage places in Queensland.

We believe however, that a 'fresh start' for Queensland's heritage can only be achieved with additional funding for the Queensland Heritage Branch and the DETSI more broadly, as well as the support of grant funding. Ongoing grant funding opportunities in particular play a valuable and important role in supporting the ongoing conservation and promotion of Queensland's heritage for a broad range of stakeholders. This would include grants for supporting heritage asset owners, local government as well as heritage tourism opportunities.

Further feedback in relation to the proposed new Strategy and Act amendments are discussed in further detail below.

NTAQ look forward to continuing to work with the DETSI towards our shared common goal of finding ways to improve the identification, protection and management of heritage places in Queensland into the future.

## **2. Queensland Heritage Strategy**

NTAQ understand that the key role of the current, and any future, Queensland Heritage Strategy, is to provide broad guidance about how we value, protect and celebrate Queensland's heritage into the future.

The NTAQ are supportive of the new Queensland Heritage Strategy focussing on the following five key focus areas, which are aimed at having a positive impact upon how heritage is protected and managed in Queensland:

1. Making heritage accessible;
2. Improving stewardship;
3. Celebrating heritage;
4. Optimising the benefits of heritage; and
5. Enhancing governance.

NTAQ understand that, to date, a significant amount of background work has previously been prepared both internally within the DETSI, as well as by those within the broader heritage industry. This includes work supported by the former Queensland Heritage Advisory Panel and former Queensland Heritage Working Group. For example, one of the projects to have come out of previous Heritage Panels and Working Groups includes the development of a Heritage Pub Trail. A proposal such as this, supported by grant funding, would assist heritage asset owners with undertaking conservation work, as well as help drive the tourism market.

NTAQ believe that it's essential for the research and findings of past studies and projects to be integrated as part of the development of the new Strategy that support the future protection and promotion of Queensland's heritage places.

### 3. Legislative reform proposals

NTAQ understand that the Queensland Heritage Act was introduced in 1992 to protect heritage places from neglect and damage. The Act aims to conserve Queensland's heritage for the community and future generations. It establishes the Queensland Heritage Register (QHR) (a list of significant heritage places) and the Queensland Heritage Council (QHC), which oversees heritage matters. Much of the Act has not been reviewed since it commenced in 1992.

The NTAQ is supportive of the objectives of government action which are proposed to guide the modernisation of the Act, including:

- Objective 1: streamline and clarify processes so that heritage protection is more accessible and easier for members of the public, State and local governments and owners of heritage places.
- Objective 2: provide a modern and fit-for-purpose legislative framework that meets the needs of heritage protection now and into the future.
- Objective 3: update the heritage framework to complement sustainable development aspirations so that these aspirations can co-exist.
- Objective 4: elevate the communication and knowledge of the importance of protecting and managing heritage places and artefacts for future generations.

The NTAQ has two concerns with the proposed amendments that it wishes to highlight:

- NTAQ believe that the ability for nominations to be accepted at any time, which may not necessarily fill a 'gap' in the current QHR, should still be allowed. This should remain separate to the Chief Executive suggesting places to be listed on the QHR, so as to ensure that the QHR continues to uphold its main purpose and remains community driven.
- NTAQ believe that further details about how the removal of Part 11 would maintain or improve the protection of local heritage places, needs to be provided. Further consideration needs to be given about the future implications of these proposed changes on the effective identification, conservation and management of local heritage places in Queensland, particularly from a local government level.

The proposed amendments to the Act are discussed in further detail below, alongside NTAQ's feedback in relation to each of the proposed changes.

<b>Government Legislative Proposal</b>	<b>NTAQ feedback</b>
<i>Administrative improvements</i>	
<p><u>Objects of the Act</u></p> <p>(a) amend the Heritage Act’s objectives to include references to protection and conservation of the State’s heritage places, adaptive and sustainable reuse of places, and high standards of heritage conservation.</p> <p>(b) Introduce an overarching principle of a general heritage duty of care, that provides for a duty to maintain and keep in good repair State and local heritage places.</p>	<p>(a) The addition of the wording to describe the need to conserve the State’s heritage places (which also includes referencing adaptive and sustainable reuse of heritage whilst maintaining high standards of heritage conservation), is a positive change to the current Objects of the Act. However, the NTAQ would recommend that references to ‘adaptive reuse’ and ‘heritage conservation’ need to be dealt with in the context of not only built heritage places, but all types of heritage.</p> <p>(b) Reference to a, “Duty of Care” in the Act is a high level, positive change. However, further detail would assist with understanding how this ‘Duty of Care’ would operate within the Act, particularly in terms of how it will assist with strengthening the Act’s ability to enforce necessary repair and maintenance works to vulnerable heritage places.</p>
<p><u>Queensland Heritage Council processes:</u></p> <p>(a) It is proposed to amend the Heritage Act to reduce the number of QHC members to nine and move to a skills and expertise basis for nominations. It is also proposed to retain representative membership from National Trust of Australia (Queensland) and Local Government Association of Queensland nominations as both organisations have considerable interest in heritage outcomes. The proposed list identifies the required field, skills or expertise</p>	<p>(a) The reduction in the number of QHC members will need to be carefully considered. We strongly support the NTAQ and the LGAQ retaining representation on the QHC. In relation to requiring members of the QHC to have a background in a particular field – this may need to be considered further in terms of the implications of requesting certain skills and expertise. The NTAQ would recommend that further consideration is given to the following:</p> <ul style="list-style-type: none"> <li>- Weight be given to rural and regional representation especially for North and far North Queensland.</li> </ul>

<p>for members, including one or more of the following areas:</p> <ul style="list-style-type: none"> <li>- Aboriginal and Torres Strait Islander history</li> <li>- Archaeology</li> <li>- Architecture</li> <li>- built environment</li> <li>- economic development</li> <li>- heritage conservation and management</li> <li>- history</li> <li>- legal</li> <li>- property development</li> <li>- rural interests; and</li> <li>- urban and regional planning.</li> </ul> <p>(b) Update conflict of interest processes for QHC and Committee members. It is proposed to contemporise these sections to reflect modern processes.</p>	<ul style="list-style-type: none"> <li>- Does someone who has experience in heritage conservation have the same ‘weighting’ as someone who has experience in non-heritage related property development or legal services?</li> <li>- What is the minimum number of years someone needs to have worked in a particular field to be considered to be included as part of the QHC?</li> <li>- What are the minimum qualifications someone will need in a particular field, in order to be considered a part of the QHC?</li> </ul> <p>(b) Updating the COI information in the Act to reflect modern practices is supported generally. It is hoped that the changes proposed to the Act as described in (a) will also assist with managing COI’s. However, further information related to the specific changes to the QHC COI information in the Act needs to be provided and reviewed, before detailed commentary on this proposed change can be made. The NTAQ recognise that COI’s are currently an issue for the QHC, with a number of QHC members having to step out of QHC meetings during key decision making periods, as they have identified, for example, COIs with a number of items up for discussion/decision during a particular QHC meeting.</p>
<p><u>State Heritage Register processes:</u></p> <p>(a) It is proposed to repeal the current application driven register process and replace it with a community nomination process that allows the chief</p>	<p>(a) The NTAQ understand that the DETSI is concerned with the lack of new nominations being received from the public putting forward a place to be considered for listing on the Queensland Heritage Register</p>

<p>executive to identify priority heritage themes (as identified by analyses of register gaps).</p> <p>(b) It is also proposed to simplify the type and amount of information needed to make a nomination. The chief executive would be able to publish nominations received from the public, and a list of the places selected to be assessed as recommendations by the chief executive for consideration by the QHC. The chief executive would then be able to make and publish a priority assessment list, to help inform heritage recommendations to the QHC.</p> <p>(c) It is proposed to amend section 34 to provide a clearer pathway to major changes to register entries by providing that the chief executive prepares a report for QHC consideration if the owner does not consent to the change. A decision-making process that mirrors the decision-making process for an applicant-driven register entry is also proposed, meaning that the chief executive will make a heritage recommendation to the QHC for a decision about the proposed change.</p>	<p>(QHR). Changing the process so that it is based off priority themes which capture the gaps in the current Queensland Heritage Register could assist with resolving this issue. However, further details in terms of how this would be managed, are needed in order to provide further, more detailed comments. Critically, the NTAQ believe that the ability for nominations to be accepted at any time, which may not necessarily fill a 'gap' in the current QHR, should still be allowed. This should remain separate to the Chief Executive suggesting places to be listed on the QHR, so as to ensure that the QHR continues to uphold its main purpose and remains community driven.</p> <p>(b) Depending on the specific changes being proposed, simplifying the type and amount of information needed for a nomination would likely result in positive outcomes and would be supported by the NTAQ. In particular, it may make it easier and more appealing for members of the community to put in a nomination.</p> <p>(c) Allowing changes to be made to register entries, without owner's consent, would assist the Queensland Heritage Branch to better manage work processes within the team, and in turn, streamline processes, so that it is easier for register entries to be updated. The result of this change would likely be more register entries containing up-to-date and current information. This would be a positive change for the identification and promotion of heritage places in Queensland, and is a change that is supported by the NTAQ.</p>
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<p><u>Temporary protection:</u></p> <p>(a) It is proposed to amend the Heritage Act to allow the chief executive or the Minister to issue a temporary protection notice where a place is likely to meet the cultural significance criteria (s35) and could be detrimentally impacted by development. Feedback is sought on whether this should be a chief executive or Ministerial decision. The proposed amendment will provide that temporary protection has the effect of entering a place on the State heritage register or until a Queensland Heritage Council decision is made (a maximum 80 days). This means the heritage values of a place under a temporary protection notice must be considered if a development application is made. The proposed amendment allows for an owner to make a submission about a recommendation to enter the place in the register.</p>	<p>(a) Any changes to the Act which strengthen the ability to afford temporary protection to places which are in need of heritage protection, but have not yet been listed on the Queensland Heritage Register, would be result in a positive outcome for the protection of Queensland’s heritage. Overall, the NTAQ support these changes generally, but like to see more information to better understand how DETSI envisage how the new Temporary Protections will operate, and better understand how these changes are proposed to be articulated in the proposed new Act.</p>
<p><i>Local heritage</i></p>	
<p><u>Identification of local places:</u></p> <p>(a) It is proposed to remove the local heritage register under Part 11 of the Heritage Act and make administrative changes to accelerate the process for making local places under a planning scheme.</p> <p>(b) It is proposed to remove sections 112A and 112B and replace with a new process where the chief executive of DETSI may refer a nomination to a local government. This would</p>	<p>(a) The NTAQ acknowledge that it has been previously identified by the DETSI that the protection of local heritage places differs between local governments across the State, and that the DETSI have a desire to improve this. However, further details about how the removal of Part 11 would maintain or improve the protection of local heritage places, need to be provided. Further consideration needs to be given about the future implications of these proposed changes on the</p>

<p>be where nomination does not meet the threshold of State heritage. It is proposed that the chief executive would need to provide the reasons for the referral, including that the chief executive considers a referred place may be of cultural heritage significance for a local government area.</p>	<p>effective identification, conservation and management of local heritage places in Queensland, particularly from a local government level. In particular, further consideration needs to be given as to whether local heritage places will be afforded the same level of protections under the Planning Act as they are under the Queensland Heritage Act, as well as identifying what falls under the Queensland Heritage Act versus the Planning Act when it comes to the identification, protection and conservation of local heritage places. Overall, the NTAQ would like more information to better understand how DETSI envisage how the removal of Part 11 will support local governments in identifying and protecting places of local heritage significance, particularly in terms of how these changes are proposed to be articulated in the new Act.</p> <p>(b) Allowing the DETSI to refer a nomination to a local government where a nomination does not meet the threshold for state heritage listing, would likely result in a positive outcome for the protection of local heritage places. However, further consideration needs to be given as to whether the complete removal of sections 112A and 112B is the best mechanism to do this.</p>
<p><u>Temporary protection:</u></p> <p>(a) It is proposed to amend the Heritage Act to create a mechanism for local governments to be able to issue a temporary protection order for a local place through a resolution of council. The notice will be similar to that proposed for the State. It is proposed that</p>	<p>(a) Allowing local governments to be able to manage the issuing of temporary protection orders for local heritage places may result in a positive outcome for the protection and management of local heritage places. The NTAQ however would like more information to better understand how DETSI envisage how this new process will operate, and</p>

<p>the local government’s temporary protection order would remain in force for 12 months unless revoked or a council decision was made to include the place as part of the local government’s planning scheme. It is proposed that the local government would be able to make one additional 12 month local temporary protection order.</p>	<p>better understand how these changes are proposed to be articulated in the proposed new Act.</p>
<p><i>Enforcement (State and local heritage)</i></p>	
<p><u>Repair and maintenance:</u></p> <p>(a) It is proposed to amend the Heritage Act to introduce the principle of a general heritage duty of care (Objects), including for repair and maintenance. It is not proposed to attach an offence to this duty, however if the decisionmaker (chief executive of DETSI or chief executive officer of a local government) is satisfied that specific criteria are met with regard to the building, a show cause notice may be issued. Criteria, which may include the building being in disrepair, attach to the place not as an inaction of the owner.</p> <p>(b) It is proposed that the show cause notice would provide a timeframe for a response and is a precursor to issuing a repair and maintenance notice if needed. As part of the notice, the owner may also be required to enter into a conservation management plan for the place. Before making a decision to issue repair and maintenance notice, procedural fairness and consideration of any</p>	<p>(a) Reference to a “Duty of Care” in the Act is a positive change.</p> <p>(b) Enforcing a show cause notice and the ability to issue formal repair and maintenance notices, where required, is a positive outcome. In particular, this proposed change to the Act would ensure the ongoing conservation of significant heritage places within Queensland. The NTAQ would appreciate further detail around how DETSI envisage the issuing of repair and maintenance notices, would operate.</p> <p>(c) Introducing the ability for the CE to seek cost recovery for works that may be undertaken to a heritage place as a result of owner non-compliance, would also result in a positive outcome. In particular, this proposed change to the Act would help reinforce the messaging around owners of heritage properties being stewards of these places. Overall, this proposed change would ensure that the protection of heritage places in Queensland, is strengthened. Allowing owners to Appeal such notices allows for equitable decision-making to occur. Allowing the CE to make such decisions</p>

<p>representations from the owner would be required.</p> <p>(c) Proposed amendments would also introduce the ability for the chief executive to seek cost recovery for works that may be undertaken as a result of owner non-compliance with a repair and maintenance notice.</p> <p>(d) It is proposed that local governments will be provided with greater ability to issue repair and maintenance notices for local heritage places.</p>	<p>would also help streamline processes.</p> <p>(d) Allowing local governments to have greater abilities to issue repair and maintenance notices for local heritage places would be a positive outcome, so long as they have the continued support and backing of State Government to protect and conserve local heritage places via the proposed legislative changes. More information around these changes would assist the NTAQ to better understand how these changes are proposed to be articulated in the proposed new Act.</p>
<p><u>Miscellaneous amendments:</u></p> <p>(a) Combining provisions for protection of artefacts in a single section and simplify the definitions for archaeological artefacts.</p> <p>(b) Simplifying the process for entering a protected area on the heritage register and provide that a protected area may only apply to State land, not private land.</p> <p>(c) Providing for a Native Title holder to be able to enter a listed protected area without requiring a permit.</p> <p>(d) Contemporising the language by removing references to, for example, ‘publication in a newspaper’; ‘copies to be available at DETSI or local government’s head office’.</p> <p>(e) Introducing a new provision after section 74 to introduce procedural fairness for the applicant in relation to an exemption certificate.</p>	<p>(a) Combining the provisions for the protection of artefacts, is likely to allow for more simplified and streamlined processes. Further consideration needs to be given as to the types of artefacts included within this definition. For example, does this account for all types of archaeological artefacts, including maritime archaeology?</p> <p>(b) Further detail needs to be provided, and further consideration needs to be given, as to the long-term impacts of these proposed changes.</p> <p>(c) Further consideration needs to be given in terms of the overlap between the <i>Aboriginal Cultural Heritage Act 2003</i> and the <i>Torres Strait Islander Cultural Heritage Act 2003</i>, with the <i>Queensland Heritage Act 1992</i>, and the implications of these changes on the Cultural Heritage Acts.</p> <p>(d) Removing references to ‘newspapers’ in the Act, will streamline the heritage listing process, and would be considered a positive change to the Act.</p> <p>(e) Further details are required in order to fully comment on this proposed</p>

<p>(f) Removing the liturgical purposes development exemption (sections 77-79).</p>	<p>change. Whilst procedural fairness should be a requirement, further details are needed in terms of how this will be reached by making certain changes to the Act.</p> <p>(f) Further details would be appreciated in terms of whether consultation has occurred with liturgical bodies in relation to this proposed legislative change.</p>
<p><u>State heritage trigger for development – State Code 14:</u></p> <p>(a) To ensure currency and effective stewardship of Queensland’s heritage, the Queensland Government is reviewing the Queensland heritage trigger (State Code 14). As a result of some of the proposed legislative reforms, the review will look at whether the current purpose, concerning development on or adjoining a Queensland heritage place (State heritage place) is still relevant, whether the performance outcomes remain current and ensure the definitions align with proposed changes in legislation. Feedback is sought to help inform the review.</p>	<p>(a) A review of State Code 14, is a good outcome of this Discussion Paper. In particular, the focus of this review should involve:</p> <ul style="list-style-type: none"> <li>- Finding ways to streamline the assessment process under State Code 14; and</li> <li>- ensure State Code 14 is more user-friendly.</li> </ul> <p>However, further detail around the proposed changes needs to be provided, in order to understand what the proposed changes are, and how DETSI envisage they will be articulated in the development of the new Act, recognising that State Code 14 has a more direct relationship with the Planning Act than the Heritage Act. Critically, the NTAQ believe that the trigger relating to, ‘development adjoining a State heritage place’ should remain, in order to ensure the setting of heritage places is retained as part of the planning of any future development which adjoins a State heritage place.</p>