

# Native Title and Indigenous Cultural Heritage

# Standard

QH-IMP-353-1:2015

## 1. Statement

The Department of Health (DoH) acknowledges that under the traditional laws and customs of Aboriginal and Torres Strait Islander people, particular areas and objects hold significance for the people with whom they are connected.

All dealings that may affect Indigenous cultural heritage or native title shall be referred to the Cultural Heritage Contact Officer (CHCO) or Native Title Contact Officer (NTCO) for assessment, enabling a consistent departmental approach ensuring compliance with the *Native Title Act 1993* and Cultural Heritage duty of care responsibilities.

## 2. Scope

Compliance with the requirements in this standard is mandatory.

This standard applies to all employees, contractors and consultants within the DoH divisions and commercialised business units.

This standard can be used by Hospital and Health Services either as is, by re-branding or as a base for a Hospital and Health Service specific policy.

## 3. Principles

Compliance with this standard will ensure all dealings with land are consistent, follow good practice standards and meet statutory duty of care requirements.

## 4. Requirements

Any officer who intends to undertake any land dealings or infrastructure activity that may harm Indigenous cultural heritage shall ensure both native title and indigenous cultural heritage are considered in line with legislative requirements.

If an officer is unsure whether or not a dealing impacts/requires cultural heritage/requires native title assessment, they shall seek advice by forwarding a Cultural Heritage Assessment Form/Native Title Assessment Form to Health Infrastructure Branch for assessment by the CHCO/ NTCO.

The CHCO/NTCO shall refer all negotiation and consultation to address cultural heritage by means of an Indigenous Land Use Agreement and native title to Crown Law, in compliance with the state government's Tied Work arrangements.

For further information regarding the process to be followed please refer to the Real Property Management Guideline.

### 4.1 Native Title Requirements

- 4.1.1 Native title shall be assessed for any dealings for land held by or on behalf of the DoH, or any statutory body administered by the department. This applies to all DoH owned land as well as land on which DoH property interests are located or are to be located, and is not

limited to those sites over which a native title claim has been lodged, nor is it limited to reserve land.

4.1.2 In line with the Queensland Government Native Title Work Procedures, the NTCO is the departmental contact point for all matters relating to native title.

4.1.3 Examples of dealings that require formal native title assessment include:

- acquisition/purchase of land
- disposal/sale of land
- subdivision of land
- conversion of title to land (e.g. reserve to freehold)
- granting of a lease, license or permit to enter land (e.g. DoH leasing to another party)
- extension of an existing building
- redevelopment of a site
- building of a new structure
- fencing where previously unfenced
- clearing or excavation of a site.

4.1.4 Exemptions to this requirement include the following property dealings:

- maintenance of existing valid structures
- creation or maintenance of a fire break to protect life, property or the environment
- any emergency action required to protect life, property or the environment
- renewal of valid tenures, but only on the same terms and conditions and in certain limited circumstances:
  - a. where the renewal creates an interest in:
    - the same person
    - another person who has acquired the interests of the first person (by assignment, succession or otherwise) and
    - in relation to the whole part of the land or waters to which the earlier act relates and
  - b. where the renewal commences before or immediately after the interests created by the earlier dealing cease and
  - c. where the renewal allows activities of a similar kind to those permitted by the earlier dealing.

4.1.5 If an officer is unsure whether or not a dealing requires native title assessment, they shall seek advice from the NTCO, Health Infrastructure Branch, Office of the Director-General.

4.1.6 Assessment of native title shall be requested before a dealing is finalised and before any other approvals are sought.

4.1.7 It cannot be assumed because other approvals have been granted that native title has been assessed, or that if a previous assessment has been made, it is correct or remains valid.

## 4.2 Cultural Heritage Requirements

- 4.2.1 Any infrastructure activity on land owned by or managed on behalf of the DoH, or any statutory body administered by the department shall comply with the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld). The requesting area's divisional head shall endorse the request.
- 4.2.2 The DoH's Cultural Heritage Officer shall undertake a Cultural Heritage Assessment in line with the requirements of the Queensland Government Cultural Heritage Duty of Care Guidelines.
- 4.2.3 Infrastructure activity shall include, but is not limited to:
- extension of an existing building
  - redevelopment of a hospital site
  - building of a new structure
  - fencing where previously unfenced
  - clearing or excavation of a site.
- 4.2.4 All reasonable and practicable measures shall be taken by responsible officers to ensure infrastructure activity does not harm Aboriginal and Torres Strait Islander cultural heritage.
- 4.2.5 Compliance is necessary for any activity conducted on any land regardless of who is doing the activity, the nature of tenure or whether or not native title exists.
- 4.2.6 An assessment of extent on how cultural heritage has to be addressed, shall be undertaken at the initial/preliminary/investigations phase of infrastructure planning for any infrastructure activity that may harm Indigenous cultural heritage. The infrastructure activity shall only progress once the assessment has been completed.
- 4.2.7 All infrastructure activity shall be undertaken in accordance with the assessment.
- 4.2.8 There is no definitive list of Indigenous cultural heritage indicators as it is very much a subjective decision of the relevant Indigenous party as to whether they consider an area or object to be significant. Sites of Indigenous significance are likely to amount to Indigenous cultural heritage. Those sites include scarred or carved trees, rock art, middens, ceremonial places, burial sites, fish traps and weirs, occupation sites, quarries and artefact scatters, grinding groves and wells.
- 4.2.9 The circumstances in which Indigenous cultural heritage may be harmed are potentially very wide, and include:
- any activities involving ground disturbance, including vegetation clearing
  - activities that do not involve ground disturbance, but may still harm sites of Indigenous significance.
- 4.2.10 Activities that are unlikely to harm Indigenous cultural heritage include:
- walking over an area
  - driving along existing roads and tracks
  - conducting aerial surveys of an area
  - navigating through water
  - cadastral, engineering, environmental or geological surveys using methods (such as GPS systems) which do not cause surface disturbance

- photographing an area.
- 4.2.11 It cannot be assumed because other approvals have been granted that cultural heritage has been assessed, or that if a previous assessment has been made, it is correct or remains valid.

### 4.3 Indigenous Land Use Agreement

- 4.3.1 The negotiation of Indigenous Land Use Agreements is governed in Queensland by the Department of Natural Resources and Mines' Guidelines for negotiating an Indigenous Land Use Agreement (the Guidelines), in line with the provisions of the *Native Title Act 1993* (Cth) (The Act). The Act and Guidelines provide for payment of monetary and non-monetary compensation to native title parties in exchange for entering into an Indigenous Land Use Agreements.
- 4.3.2 A requesting officer shall inform, in writing, the NTCO, Health Infrastructure Branch, Office of the Director General of any instances where an Indigenous Land Use Agreement may be required.

## 5. Related legislation and documents

### Legislation/whole of government policy

- Aboriginal and Torres Strait Islander Land Holding Bill 2011 (Qld)
- *Aboriginal Land Act 1991* (Cth)
- *Aboriginal Cultural Heritage Act 2003* (Qld)
- Guidelines for Negotiation of an Indigenous Land Use Agreement
- *Native Title Act 1993* (Cth)
- *Native Title Amendment Act 2007* (Cth)
- *Native Title (Technical Amendments) Act 2007* (Cth)
- *Native Title (Queensland) Act 1993* (Qld)
- *Native Title (Queensland) Act 1993* (Qld)
- Native Title (Queensland) Regulation 1996 (Qld)
- Queensland Government Cultural Heritage Duty of Care Guidelines (2004)
- Queensland Government Native Title Work Procedures
- *Torres Strait Islander Heritage Act 2003* (Qld)

### Policy

- Queensland Health Corporate Real Property Delegations

## 6. Definitions

Term	Definition
Cultural Heritage	Anything that is: <ul style="list-style-type: none"> <li>• a significant Aboriginal or Torres Strait Islander area in Queensland</li> <li>• a significant Aboriginal or Torres Strait Islander object</li> <li>• evidence, of archaeological or historical significance, of Aboriginal or Torres Strait Islander occupation of an area of Queensland.</li> </ul>
Dealings	A 'future act' as defined by the Native Title Act 1993, i.e. a grant of an interest, the doing of an activity or carrying out development on land/waters that affects native title (i.e. interferes with its enjoyment or exercise).
Extinguishment	This term is used when Australian law does not recognise native title rights and interests because some things governments did, or allowed others to do, in the past have made recognition legally impossible.
Major Capital Works	Major capital works are capital works that: <ul style="list-style-type: none"> <li>• are structural works of a building; or</li> <li>• involve alterations to the building envelope; or</li> <li>• result in additional recurrent operational expenditure; or</li> <li>• result in the need for regulatory compliance certification of the building structure or with building service standards, including building and information technology standards.</li> </ul>
Native Title	The communal, group or individual rights and interests of Aboriginal peoples and Torres Strait Islanders in relation to land and waters, possessed under traditional law and custom, by which those people have a connection with an area which is recognised under Australian law.
Procedural rights	The Native Title Act 1993 (Cth) gives native title holders and registered native title claimants procedural rights in relation to certain future acts. Depending on the type of future act these rights range from being notified, to being given an opportunity to comment, through to the right to negotiate, to object and to be heard by an independent umpire. For some future acts, for example the renewal of certain interests over the same area on the same terms, there are no procedural rights.

## Version Control

Date	Comments	Version No.
14 May 2012	Indigenous Land Use Agreement Policy drafted and approved	Version 1.0
18 May 2012	Cultural Heritage Assessment Policy drafted and approved	Version 1.0
26 May 2012	Native Title Agreements Policy drafted and approved	Version 1.0
31 May 2013	Native Title Agreements Implementation Standard Review Approved	Version 1.1
4 July 2014	Version 1.1: Cultural Heritage Assessment Implementation Standard Review Approved	Version 1.1

14 April 2015

Version 2: Policy Rationalisation Project consolidation  
and Cultural Heritage and Indigenous Native Title  
Standard drafted

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Version 2