Queensland

Aboriginal Cultural Heritage and Other Legislation (First Nations Repatriation) Amendment Youth Act 2024

A Youth Act to amend the Aboriginal Cultural Heritage Act 2003 and Queensland Museum Act 1970 for particular purposes.

[Assented to 4 November 2024]

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The Youth Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Youth Act may be cited as the *Aboriginal and Torres Strait Islander Cultural Heritage and Other Legislation (First Nations Repatriation) Amendment Youth Bill 2024*.

2 Commencement

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

Part 2 Amendment of Queensland Museum Act 1970

3 Act amended

This part amends the *Queensland Museum Act 1970*.

4 Amendment of section 1B (Guiding principles for achieving the object)

(1) Section 1B(c), after 'respect'—

insert—

and preserve

(2) Section 1B(c), 'Aboriginal and Torres Strait Islander'—

omit, insert—

First Nations

(3) Section 1B—

omit, insert—

(d) ongoing efforts to support First Nations communities in the healing process should be undertaken to ensure all members of those communities receive appropriate spiritual, cultural, social and emotional support;

(4) Section 1B(e), after 'audiences'—

insert—

and perspectives

(5) Section 1B(f)—

omit, insert—

(f) capabilities for life-long learning about Queensland's cultural and natural heritage should be developed to—

(i) create awareness and knowledge about the historical events of cultural and natural heritage;

(ii) foster cultural sensitivity;

(iii) provide opportunity for one to reflect on their own values, attitudes, beliefs, knowledge and experiences and how this may impact their interactions with people of other cultural backgrounds.

(6) Section 1B—

insert—

(i) First Nations ways of knowing, and doing should be respected, prioritising the following—

(i) cultural safety;

(ii) self-determination, including First Nations leadership, expertise and decision making in all processes;

(iii) strengths-based approaches, including—

(A) acknowledging that environments and systems can create power imbalances and therefore can constrain individual and community growth;

(B) capacity building which encourages and promotes self-determination, aptitude and liberty of First Nations peoples.

5 Amendment of s 2 (Definitions)

Section 2—

insert—

cultural authority see the *Aboriginal Cultural Heritage Act 2003*, schedule 2.

First Nations person see the *Aboriginal Cultural Heritage Act 2003*, schedule 2.

First Nations peoples see the *Aboriginal Cultural Heritage Act 2003*, schedule 2.

First Nations Cultural Property see the *Aboriginal Cultural Heritage Act 2003*, schedule 2.

provenanced Cultural Property see the *Aboriginal Cultural Heritage Act 2003*, schedule 2.

repatriation see the *Aboriginal Cultural Heritage Act 2003*, schedule 2.

secret or sacred object means a secret or sacred object within the meaning of the *Aboriginal Heritage Cultural Heritage Act 2003* or the *Torres Strait Islander Cultural Heritage Act 2003*.

6 Amendment of section 6 (Composition of board)

(1A) Section 6—

insert—

(1A) The board must—

(a) have at least one member (each a ***First Nations member***) representing each of the following

(i) Aboriginal communities from regional and remote Queensland;

(ii) Aboriginal communities from south-east Queensland;

(iii) Torres Strait Islander communities; and

(b) as far as reasonably practicable, a balance of genders among First Nations members; and

(1) Section 6—

insert—

(2A) In appointing a member, regard should be had to the views of First Nations persons who hold cultural authority in their communities.

(2B) In appointing a First Nations member, regard must be had to the objective of ensuring the board comprises First Nations members with a diverse range of skills, experiences and qualifications.

(2) Section 6(2A) to (3)—

renumber as section 6(3) to (4).

7 Amendment of section 14 (General powers)

Section 14(1)(c), after 'consultants'—

insert—

, including, for example, First Nations persons who hold cultural authority in their communities

8 Amendment of section 19 (Disposal of specimens accepted by the Board)

(1) Section 19(1)(b), 'ends.'—

omit, insert—

ends; and

(2) Section 19(1)—

insert—

(c) the item does not hold cultural significance to a First Nations people.

9 Amendment of s 21 (Disposal of certain abandoned property)

(1) Section 21(1)—

insert—

(ba) there are reasonable grounds for believing that the property does not hold cultural significance to a First Nations people; and

(2) Section 21(1)(ba) to (c)—

renumber as section 21(1)(c) to (d).

10 Amendment of s 24 (Committees)

(1) Section 24—

insert—

(4A) The board must ensure that, to the greatest extent

possible, First Nations peoples are fairly and authentically represented within each committee.

(2) Section 24(4A) to (5)—

renumber as section 24(5) to (6).

10A Insertion of new div 5A

After section 39—

insert—

Division 5A Chief repatriators

40A Chief repatriators

(1) There is to be a chief repatriator (female) and a chief repatriator (male) for the museum.

(2) The chief repatriator (female) is to—

(a) oversee the handling of all female ancestral remains in custodianship of the board;

(b) oversee the handling of all provenanced Cultural Property in custodian of the board that is associated with Women's Business;

(c) ensuring all repatriations are conducted in accordance with female First Nations ways of being, knowing and doing;

(d) oversee the repatriation of provenanced Cultural Property associated with Women's Business back to the provenanced Cultural Property's Country of origin.

(3) The chief repatriator (male) is to—

(a) oversee the handling all male ancestral remains in custodianship of the board;

(b) oversee the handling all provenanced Cultural Property in custodianship that is associated with Men's Business;

(c) ensuring all repatriations are conducted in accordance with male First Nations ways of being, knowing and doing;

(d) oversee the repatriation of provenanced Cultural Property back associated with Men's Business to the provenanced Cultural Property's Country of origin.

40B Appointment of chief repatriators

(1) The chief repatriators are to be appointed by the Governor in Council for the term, and on the conditions, stated in the instrument of appointment.

(2) The Minister must not recommend the Governor in Council appoint a person as a chief repatriator unless the recommendation has been approved by the Board.

(3) Further, the Minister must not—

(a) recommend the Governor in Council appoint a person as the chief repatriator (female) unless the person is a female; or

(b) recommend the Governor in Council the Governor in Council appoint a person as the chief repatriator (male) unless the person is a male.

(4) The stated term must not be longer than 5 years.

40C Chief repatriators employees of the board

Despite section 40B, the chief repatriators are employees of the board and not of the State.

40D Chief repatriators to attend board meetings

(1) This section applies if a chief repatriator is not a member.

(2) The chief repatriator must attend all meetings of the board unless excused or precluded by the board.

40E Things done by chief repatriators

Anything done in the name of, or for, the board by a chief repatriator is taken to have been done by the board.

40F Delegation by chief repatriators

(1) The director may delegate the director's powers (including a power delegated to the director by the board) to—

(a) an appropriately qualified and gendered employee of a department or another government entity performing work for the board under a work performance arrangement who is respected by First Nations communities who may be affected by the exercise of the powers delegated to the employee; or

(b) an appropriately qualified and gendered employee of the board who is respected by First Nations communities who may be affected by the exercise of the powers delegated to the employee.

(2) Subsection (1) has effect subject to any directions by the board.

11 Amendment of s 51 (Elements of operational plans)

Section 51(g), after 'policies and procedures'—

insert—

, including any unique socio-cultural risks impacting First Nations peoples

12 Amendment of s 55 (Annual report)

(1) Section 55(d), 'year.'—

omit, insert—

year; and

(2) Section 55—

insert—

(e) a statement from the most senior person responsible for repatriations employed by the board, which, without including any confidential information about First Nations Cultural Property or the First Nations communities from which the First Nations Cultural Property originates, must include the following—

(i) a report on the particulars of funds provided to the repatriation programs undertaken by the board;

(ii) an overview of the board's annual repatriation efforts;

(iii) the total number of human remains held by the board;

(iv) the total number of secret and sacred objects held by the board;

(v) the percentage of First Nations Cultural Property that are the percentage of First Nations Cultural Property that are not province Cultural Property and unprovenanced Cultural Property;

(va) the percentage of provenanced First Nations Cultural Property which are being held in custodianship by the Museum with the express permission of leaders or Elders within a First Nations community;

(vb) the number of First Nations Cultural Property which have been surrendered to the board by the public;

(vi) the board's repatriation objectives for the next reporting period.

13 Amendment of s 59 (Application of certain Acts)

Section 59—

insert—

(3) The *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003* set out the principles of repatriation which the board must comply with and give effect to, including in its strategic and operational plans.

Part 3 Amendment of Aboriginal Cultural Heritage Act 2003

14 Act amended

This part amends the *Aboriginal Cultural Heritage Act 2003*.

15 Amendment of s 16 (Aboriginal human remains in the custody of State)

(1) Section 16—

insert—

(2A) The entity that represents or is the State must

actively seek to do the following—

(a) identify the Traditional Custodians of the human remains;

(b) inform the Traditional Custodians about the human remains and the entity's custodianship of the human remains;

(c) consult directly with the Traditional Custodians and other relevant Aboriginal persons about the human remains;

(d) provide the Traditional Custodians with a framework for the repatriation of the human remains.

(2) Section 16—

insert—

(4A) In complying with a request made under section (2), the entity must continue to—

(a) protect and preserve the human remains to the greatest extent possible;

(b) ensure that any handling, transportation or storage of the human remains is conducted in a manner that is culturally respectful and dignified;

(c) seek advice from the Traditional Custodians and other relevant Aboriginal persons regarding best practice for the handling of the human remains;

(d) ensure the dignity and cultural significance of the human remains is maintained throughout the process;

(e) provide a true and accurate quarterly update to the Traditional Custodians of the human remains outlining the following—

(i) the current state of the human remains;

(ii) any relocation or transportation efforts;

(iii) any actions which have harmed or damaged the remains;

(iv) any conservation and preservation efforts undertaken;

(v) any consultation processes undertaken, including the outcomes of the consultation processes.

16 Amendment of s 19 (Ownership and custody of secret or sacred object)

Section 19—

insert—

(3) The entity must actively seek to do the following—

(a) identify the Traditional Custodians of the Aboriginal secret or sacred object;

(b) inform the Traditional Custodians about the secret or sacred object and the entity's custodianship of the secret or sacred object;

(c) consult directly with the Traditional Custodians and other relevant Aboriginal persons about the secret or sacred object;

(d) provide the Traditional Custodians with a framework for the repatriation of the secret or sacred objects;

(e) inform the Queensland Museum of all Aboriginal secret and sacred objects.

17 Insertion of new pt 2, divs 6-8

After section 22—

insert—

Division 6 Support for repatriation of certain Cultural Property

22A Support for repatriation of Aboriginal human remains

(1) The State must provide support to the Queensland Museum to ensure that Aboriginal human remains that are provenanced remains are—

(a) in custodianship of the State at the bequest of the relevant Aboriginal Community; and

(b) transported back to their Country of origin when suitable arrangements for repatriation are made; and

(c) provided adequate return to Country commemorations, including the following—

(i) burial processes;

(ii) maintenance of the human remains;

(iii) transportation of persons associated with the Aboriginal human remains;

(iv) climate and humidity controlled facilities to safely hold the human remains;

(v) the resources, such as money or materials, required to perform cultural ceremonial practices.

(2) The State must facilitate the repatriation of Aboriginal human remains that are not provenanced Aboriginal human remains by ensuring that the Queensland Museum is provided sufficient resources for—

(a) the continued protection and conservation of the human remains in accordance with this

Act and the *Queensland Museum Act 1970*; and

(b) culturally safe scientific processes associated with identifying the human remains, where the relevant Aboriginal community deems appropriate.

(3) For subsection (1)(c), return to Country commemorations may be deemed adequate or inadequate by the relevant Aboriginal community.

22B Support for repatriation of Aboriginal secret or sacred objects

(1) The State must provide support to the Queensland Museum to ensure provenance Aboriginal secret and sacred objects that are provenanced objects are—

(a) in custodianship of the State at the bequest of the relevant Aboriginal Community; and

(b) transported back to their Country of origin when suitable arrangements for repatriation are made; and

(c) provided adequate return to Country commemorations which must include the following—

(i) burial processes;

(ii) maintenance of the secret and sacred objects;

(iii) transportation of people associated with the Aboriginal secret or sacred objects from Country to the;

(iv) climate and humidity-controlled facilities to safely hold the secret or sacred objects;

(v) the resources, such as money or materials, required to perform cultural ceremonial practices.

(2) The State must provide support to Aboriginal secret and sacred objects that are not provenanced Aboriginal secret and sacred objects by ensuring the Queensland Museum is provided sufficient resources for continued protection and conservation of the secret and sacred objects in accordance with this Act and the *Queensland Museum Act 1970*.

(3) For subsection (1)(c), return to Country commemorations may be deemed adequate or inadequate by the relevant Aboriginal community.

Division 7 Transporting certain Aboriginal Cultural Property closer to its Country of origin

22E Purpose of division

The purpose of this division is to establish places which will—

(a) store provenanced Aboriginal Cultural Property that is not ready to be repatriated back to its Country of origin; and

(b) assist identified custodians and communities of provenanced Aboriginal Cultural Property with the repatriation process; and

(c) ensure Aboriginal Cultural Property is stored closer to Country to the greatest practicable extent; and

(d) consult with community to ensure strength-based approaches are taken.

22E Establishment of Keeping Places

(1) Within 24 month after the commencement of this section, the Queensland Museum must establish a place (***Keeping Place***) in each local government area, other than the Torres Strait Island Regional Council and Torres Strait Shire Council local government areas, for the storage of Aboriginal Cultural Property.

(2) Before establishing a Keeping Place in a local government area, the Queensland Museum must consult with—

(a) the Traditional Custodians of the land and waters within the local government area; and

(b) the Minister; and

(c) suitably qualified employees of the department; and

(d) the local government for the local government area.

22G Entities to transport provenanced Aboriginal Cultural Property to Keeping Places

(1) This section applies if—

(a) an entity that represents or is the State has provenanced Aboriginal Cultural Property in its possession; and

(b) the entity—

(i) if the entity had the provenanced Aboriginal Cultural Property in its possession before the commencement of this section—has not entered into an

agreement for the repatriation of the provenanced Aboriginal Cultural Property; or

Note—

Under sections 16(2A)(d) and 19(3)(d), an entity must actively seek to provide Traditional Custodians with a framework for repatriation of Aboriginal Cultural Property in its possession

(ii) otherwise—has not agreed to a framework for the repatriation of the provenanced Aboriginal Cultural Property within 6 months after Aboriginal Cultural Property comes in the entity's possession; and

(c) the provenanced Aboriginal Cultural Property is not ready to be returned to the Traditional Custodians of the provenanced Aboriginal Cultural Property.

(2) As soon as reasonably practicable, the entity must transport the provenanced Aboriginal Cultural Property to the Keeping Place closest to the provenanced Aboriginal Cultural Property's Country of origin.

(3) However, the entity must not transport the provenanced Aboriginal Cultural Property until the entity has received the free, prior and informed consent of the Traditional Custodians.

(4) Further, if the entity is not the Queensland Museum, the entity must comply with any directions given by the chief repatriators of the Queensland Museum about—

(a) the transportation of the provenanced Aboriginal Cultural Property; and

(b) obtaining the free, prior and informed consent of the Traditional Custodians.

(5) For subsection (2), the transportation of Cultural

Property may be deemed adequate or inadequate by the relevant Aboriginal community.

22H Operation and management of Keeping Places

(1) Expect to the extent otherwise provided for in an agreement made under subsection (2)—

(a) a Keeping Place is to be operated and managed by the Queensland Museum; and

(b) the Queensland Museum is to, to the greatest extent reasonably practicable—

(i) act in a manner compatible with Aboriginal ways of being, knowing and doing; and

(ii) store Aboriginal Cultural Heritage in climate and humidity-controlled facilities; and

(iii) ensure the privacy and security of the Keeping Place; and

(iv) handle Aboriginal Cultural Property in a culturally safe manner; and

(v) all storage is in accordance with any traditional customs and lores.

Note—

The Queensland Museum has additional obligations to protect and repatriate Aboriginal Cultural under sections 16, 19 and 23.

(2) Within 24 months after the establishment of the Keeping Place, the Queensland Museum is to enter into an agreement with the Traditional Custodians about the operations and management of the Keeping Place.

(3) Nothing within this section limits the Queensland Museum's obligations under sections 16, 19 and

23.

Division 8 Amnesty period for surrender of Aboriginal Cultural Property

22I Amnesty period for surrender of Aboriginal Cultural Property

(1) Despite any other provision of this Act, a person may not be prosecuted for an offence against sections 17 or 26, whether the offence occurred before or after the commencement of this provision, if—

(a) the person surrendered the Cultural Property to the Queensland Museum, the department or a police officer during the amnesty period; or

(b) the person—

(i) has taken steps to return the Cultural Property to the Queensland Museum, the department or a police officer; and

(ii) but for the intervention of the State, the person would have returned the Cultural Property to the Queensland Museum, the department or a police officer.

(2) Nothing in this section prevents a person from being prosecuted for, or provides an excuse from conviction for, another offence against this Act, including, for example, an offence for failing to take all reasonable and practicable measures to protect the Aboriginal Cultural Heritage from harm while transporting the Aboriginal Cultural Heritage.

(3) In this section—

amnesty period means a 24-month period commencing on the commencement of this section or, if a longer period is prescribed by regulation, the longer period.

18 Amendment of s 28 (Cultural heritage duty of care guidelines)

Section 28(2)—

omit, insert—

(2) In formulating cultural heritage duty of care guidelines, the Minister must consult with the following—

(a) Aboriginal communities, including by consulting—

(i) Aboriginal Elders who hold cultural authority;

(ii) regional and remote Aboriginal communities;

(iii) Aboriginal experts in cultural heritage conservation and protection.

(b) industry groups;

(c) relevant local governments, including regional and rural local governments;

(d) other persons the Minister considers appropriate.

19 Amendment of s 45 (Availability of database to researcher)

Section 28—

insert—

(3) However, before the chief executive may give the

research information for the database, the chief executive must obtain the express consent of Elders from the First Nations communities that the information relates to.

20 Insertion of new s 45A

After section 45—

insert—

45A Availability of database to government agencies

(1) This section applies if any of the following seeks information from the database—

(a) a Minister, including a Minister of the Commonwealth or another State;

(b) a department, including the Minister of the Commonwealth or another State;

(c) a local government, including a local government of another State;

(d) a statutory body, including a statutory body established under the legislation of the Commonwealth or another State.

(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.

(3) However, before the chief executive may give the research information for the database, the chief executive must obtain the express consent of Elders from the First Nations communities that the information relates to.

21 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

community, of First Nations persons, means a group of First Nations persons associated with or originating from a particular Country, language group, or clan group.

Country of origin, for Cultural Property, means the Aboriginal or Torres Strait Islander lands where it came from.

cultural authority means a First Nations person's knowledge of First Nations ways of being, doing and knowing that is sourced from an individual's own community.

Aboriginal Cultural Property means First Nations Cultural Property that is owned by an Aboriginal people.

custodianship means the entrusted responsibility for the care, protection and respectful management of Cultural Property, emphasising ethical stewardship without ownership.

Elder means a person figure, leader or member of a First Nations community, who is recognised as an important representative within the First Nations community and holds a position of power and respect within the First Nations community.

First Nations person means an Aboriginal or Torres Strait Islander person.

First Nations peoples means Aboriginal and Torres Strait Islander peoples.

First Nations Cultural Property means First Nations human remains and First Nations secret and sacred objects.

provenanced Cultural Property means cultural property that has been identified by the Cultural Property's Country of origin.

provenanced remains means human remains that

have been identified by their—

(a) Country of origin; or

(b) living or deceased ancestors.

provenanced secret or sacred object means a secret or sacred object that has been identified by the object's Country of origin.

repatriation, of Cultural Property, means the return of the Cultural Property to its Country and community of origin.

return to Country, for Cultural Property, means the return of the Cultural Property to its Country of origin.

Traditional Custodian—

(a) means a First Nations person entrusted with the cultural, spiritual and ecological stewardship of their ancestral lands and waters;

(b) of First Nations Cultural Property—means a First Nations person who belongs to the First Nations people who are the owners of the First Nations Cultural Property.

Part 4 Amendment of Torres Strait Islander Cultural Heritage Act 2003

22 Act amended

This part amends the *Torres Strait Islander Cultural Heritage Act 2003*.

23 Amendment of s 16 (Torres Strait Islander human remains in the custody of State)

(1) Section 16—

insert—

(2A) The entity that represents or is the State must actively seek to do the following—

(a) identify the Traditional Custodians of the human remains;

(b) inform the Traditional Custodians about the human remains and the entity's custodianship of the human remains;

(c) consult directly with the Traditional Custodians and other relevant Torres Strait Islander persons about the human remains;

(d) provide the Traditional Custodians with a framework for the repatriation of the human remains.

(2) Section 16—

insert—

(4A) In complying with a request made under section (2), the entity must continue to—

(a) protect and preserve the human remains to the greatest extent possible;

(b) ensure that any handling, transportation or storage of the human remains is conducted in a manner that is culturally respectful and dignified;

(c) seek advice from the Traditional Custodians and other relevant Torres Strait Islander persons regarding best practice for the handling of the human remains;

(d) ensure the dignity and cultural significance of the human remains is maintained throughout the process;

(e) provide a true and accurate quarterly update to the Traditional Custodians of the human remains outlining the following—

(i) the current state of the human remains;

(ii) any relocation or transportation efforts;

(iii) any actions which have harmed or damaged the remains;

(iv) any conservation and preservation efforts undertaken;

(v) any consultation processes undertaken, including the outcomes of the consultation processes.

24 Amendment of s 19 (Ownership and custody of secret or sacred object)

Section 16—

insert—

(3) The entity must actively seek to do the following—

(a) identify the Traditional Custodians of the Torres Strait Islander secret or sacred object;

(b) inform the Traditional Custodians about the secret or sacred object and the entity's custodianship of the secret or sacred object;

(c) consult directly with the Traditional Custodians and other relevant Torres Strait Islander persons about the secret or sacred object;

(d) provide the Traditional Custodians with a framework for the repatriation of the secret or sacred objects;

(e) inform the Queensland Museum of all Torres Strait Islander secret and sacred objects.

25 Insertion of new pt 2, divs 6 to 8

After section 22—

insert—

Division 6 Support for repatriation of certain Cultural Property

22A Support for repatriation of Torres Strait Islander human remains

(1) The State must provide support to the Queensland Museum to ensure that Torres Strait Islander human remains that are provenanced remains are

(a) in custodianship of the State at the bequest of the relevant Torres Strait Islander Community; and

(b) transported back to their Country of origin when suitable arrangements for repatriation are made; and

(c) provided adequate return to Country commemorations, including the following—

(i) burial processes;

(ii) maintenance of the human remains;

(iii) transportation of persons associated with the Torres Strait Islander human remains;

(iv) climate and humidity-controlled facilities to safely hold the human remains;

(v) the resources, such as money or materials, required to perform cultural ceremonial practices.

(2) The State must facilitate the repatriation of Torres Strait Islander human remains that are not provenanced Torres Strait Islander human remains by ensuring that the Queensland Museum is provided sufficient resources for

(a) the continued protection and conservation of the human remains in accordance with this Act and the *Queensland Museum Act 1970*; and

(b) culturally safe scientific processes associated with identifying the human remains, where the relevant Torres Strait Islander community deems appropriate.

(3) For subsection (1)(c), return to Country commemorations may be deemed adequate or inadequate by the relevant Torres Strait Islander community.

22B Support for repatriation of Torres Strait Islander secret or sacred objects

(1) The State must provide support to the Queensland Museum to ensure Torres Strait Islander secret and sacred objects that are provenanced objects are—

(a) in custodianship of the State at the bequest of the relevant Torres Strait Islander Community;

(b) transported back to their Country of origin when suitable arrangements for repatriation are made; and

(c) provided adequate return to Country commemorations which must include the following—

(i) burial processes;

(ii) maintenance of the secret and sacred objects;

(iii) transportation of people associated with the Torres Strait Islander secret or sacred objects from Country to the;

(iv) climate and humidity-controlled facilities to safely hold the secret or sacred objects;

(v) the resources, such as money or materials, required to perform cultural ceremonial practices.

(2) The State must facilitate the repatriation of Torres Strait Islander secret and sacred objects that are not provenanced Torres Strait Islander secret and sacred objects, by ensuring the Queensland Museum is provided sufficient resources for continued protection and conservation of the secret and sacred objects in accordance with this Act and the *Queensland Museum Act 1970*.

(3) For subsection (1)(c), return to Country commemorations may be deemed adequate or inadequate by the relevant Torres Strait Islander community.

Division 7 Transporting certain Torres Strait Islander

Cultural Property closer to its Country of origin

22C Purpose of division

The purpose of this division is to establish places which will—

(a) store provenanced Torres Strait Islander Cultural Property that is not ready to be repatriated back to its Country of origin; and

(b) assist identified custodians and communities of provenanced Torres Strait Islander Cultural Property with the repatriation process; and

(c) ensure Torres Strait Islander Cultural Property is stored closer to Country to the greatest practicable extent; and

(d) consult with community to ensure strength-based approaches are taken.

22D

(1) Within 24 month after the commencement of this section, the Queensland Museum must establish a place (***Keeping Place***) in each of the Torres Strait Island Regional Council, Torres Strait Shire Council and Northern Peninsula Area Regional Council local government areas, for the storage of Torres Strait Islander Cultural Property.

(2) Before establishing a Keeping Place in a local government area, the Queensland Museum must consult with—

(a) the Traditional Custodians of the land and waters within the local government area; and

(b) the Minister; and

(c) suitably qualified employees of the department; and

(d) the local government for the local government area.

22E Entities to transport provenanced Torres Strait Islander Cultural Property to Keeping Places

(1) This section applies if—

(a) an entity that represents or is the State has provenanced Torres Strait Islander Cultural Property in its possession; and

(b) the entity—

(i) if the entity had the provenanced Torres Strait Islander Cultural Property in its possession before the commencement of this section—has not entered into an agreement for the repatriation of the provenanced Torres Strait Islander Cultural Property; or

Note—

Under sections 16(2A)(d) and 19(3)(d), an entity must actively seek to provide Traditional Custodians with a framework for repatriation of Torres Strait Islander Cultural Property in its possession.

(ii) otherwise—has not agreed to a framework for the repatriation of the provenanced Torres Strait Islander Cultural Property within 6 months after Torres Strait Islander Cultural Property comes in the entity's possession; and

(c) the provenanced Torres Strait Islander Cultural Property is not ready to be returned to the Traditional Custodians of the provenanced Torres Strait Islander Cultural Property.

(2) As soon as reasonably practicable, the entity must transport the provenanced Torres Strait Islander Cultural Property to the Keeping Place closest to the provenanced Torres Strait Islander Cultural Property's Country of origin.

(3) However, the entity must not transport the provenanced Torres Strait Islander Cultural Property until the entity has received the free, prior and informed consent of the Traditional Custodians.

(4) Further, if the entity is not the Queensland Museum, the entity must comply with any directions given by the chief repatriators of the Queensland Museum about—

(a) the transportation of the provenanced Torres Strait Islander Cultural Property; and

(b) obtaining the free, prior and informed consent of the Traditional Custodians.

(5) For subsection (2), the transportation of Cultural Property may be deemed adequate or inadequate by the relevant Torres Strait Islander community.

22F Operation and management of Keeping Places

(1) Expect to the extent otherwise provided for in an agreement made under subsection (2)—

(a) a Keeping Place is to be operated and managed by the Queensland Museum; and

(b) the Queensland Museum is to, to the greatest extent reasonably practicable—

(i) act in a manner compatible with Torres Strait Islander ways of being, knowing and doing; and

(ii) store Torres Strait Islander Cultural Heritage in climate and humidity-controlled facilities; and

(iii) ensure the privacy and security of the Keeping Place; and

(iv) handle Torres Strait Islander Cultural Property in a culturally safe manner; and

(v) all storage is in accordance with any traditional customs and lores.

Note—

The Queensland Museum has additional obligations to protect and repatriate Torres Strait Islander Cultural under sections 16, 19 and 23.

(2) Within 24 months after the establishment of the Keeping Place, the Queensland Museum is to enter into an agreement with the Traditional Custodians about the operations and management of the Keeping Place.

(3) Nothing within this section limits the Queensland Museum's obligations under sections 16, 19 and 23.

Division 8 Amnesty period for surrender of Torres Strait Islander Cultural Property

22G Amnesty period for surrender of Torres Strait Islander Cultural Property

(1) Despite any other provision of this Act, a person may not be prosecuted for an offence against sections 17 or 26, whether the offence occurred

before or after the commencement of this provision, if—

(a) the person surrendered the Cultural Property to the Queensland Museum, the department or a police officer during the amnesty period; or

(b) the person—

(i) has taken steps to return the Cultural Property to the Queensland Museum, the department or a police officer; and

(ii) but for the intervention of the State, the person would have returned the Cultural Property to the Queensland Museum, the department or a police officer.

(2) Nothing in this section prevents a person from being prosecuted for, or provides an excuse from conviction for, another offence against this Act, including, for example, an offence for failing to take all reasonable and practicable measures to protect the Torres Strait Islander Cultural Heritage from harm while transporting the Torres Strait Islander Cultural Heritage.

(3) In this section—

amnesty period means a 24-month period commencing on the commencement of this section or, if a longer period is prescribed by regulation, the longer period.

26 Amendment of s 28 (Cultural heritage duty of care guidelines)

Section 28(2)—

omit, insert—

(2) In formulating cultural heritage duty of care

guidelines, the Minister must consult with the following—

(a) Torres Strait Islander communities, including by consulting—

(i) Torres Strait Islander Elders who hold cultural authority; and

(ii) regional and remote Torres Strait Islander communities;

(iii) Torres Strait Islander experts in cultural heritage conservation and protection.

(b) industry groups;

(c) relevant local governments, including regional and rural local governments;

(d) other persons the Minister considers appropriate.

27 Amendment of s 45 (Availability of database to researcher)

Section 28—

insert—

(3) However, before the chief executive may give the research information for the database, the chief executive must obtain the express consent of Elders from the First Nations communities that the information relates to.

28 Insertion of new s 45A

After Section 45—

insert—

45A Availability of database to government agencies

(1) This section applies if any of the following seeks

information from the database—

(a) a Minister, including a Minister of the Commonwealth or another State;

(b) a department, including the Minister of the Commonwealth or another State;

(c) a local government, including a local government of another State;

(d) a statutory body, including a statutory body established under the legislation of the Commonwealth or another State.

(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.

(3) However, before the chief executive may give the research information for the database, the chief executive must obtain the express consent of Elders from the First Nations communities that the information relates to.

29 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

community, of First Nations persons, means a group of First Nations persons associated with or originating from a particular Country, language group, or clan group.

Country of origin, for Cultural Property, means the Aboriginal or Torres Strait Islander lands where it came from.

cultural authority means a First Nations person's knowledge of First Nations ways of being, doing and knowing that is sourced from an individual's own community.

Cultural Property means First Nations Cultural Property.

Cultural Safety means an environment that is safe for a First Nations person where there is no assault, challenge or denial of their identity and experience.

custodianship means the entrusted responsibility for the care, protection and respectful management of Cultural Property, emphasising ethical stewardship without ownership.

Elder means a person figure, leader or member of a First Nations community, who is recognised as an important representative within the First Nations community and holds a position of power and respect within the First Nations community.

First Nations person means an Aboriginal or Torres Strait Islander person.

First Nations peoples means an Aboriginal and Torres Strait Islander peoples.

First Nations Cultural Property means First Nations human remains and First Nations secret and sacred objects.

provenanced Cultural Property means cultural property that has been identified by the Cultural Property's Country of origin.

provenanced remains means human remains that have been identified by their

(a) Country of origin; or

(b) living or deceased ancestors.

provenanced secret or sacred object means a secret or sacred object that has been identified by the object's Country of origin.

repatriation, of Cultural Property, means the return of the Cultural Property to its Country and community of origin.

return to Country, for Cultural Property, means the return of the Cultural Property to its Country of origin.

Torres Strait Islander Cultural Property means First Nations Cultural Property owned by a Torres Strait Islander people.

***Traditional Custodian*—**

(a) means a First Nations person entrusted with the cultural, spiritual and ecological stewardship of their ancestral lands and waters;

(b) of First Nations Cultural Property—means a First Nations person who belongs to the First Nations people who are the owners of the First Nations Cultural Property.

30 Long title

Long title, 'and the Queensland Museum Act 1970'

omit, insert—

, Queensland Museum Act 1970 and the *Torres Strait Islander Cultural Heritage Act 2003*.