

**Quandamooka Yoolooburrabee Aboriginal Corporation RNTBC**

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Parliamentary Submission

Issue:

Proposed State amendments to reinstate the last man standing rule in the *Revenue and other Legislation Amendment Bill 2018*.

Considerations

The proposed amendments to the *Aboriginal Cultural Heritage Act 2003 (Qld)* (Act) by the *Revenue and other Legislation Amendment Bill 2018* unfairly prejudice Native Title Parties that claim, as per the intent of the Act that they are a member of a traditional group of Aboriginal People and therefore own and should be able to *provide effective recognition, protection and conservation of Aboriginal cultural heritage* (Division 4 (2)).

QYAC refers to the recent Supreme Court of Queensland ruling regarding the 'Last Man Standing' in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321.

QYAC submits that amendments should reflect the finding by the Supreme Court, that once an Aboriginal Party has been found to not be able to prove lineal descent and continuity of connection to an area in accordance with the *Native Title Act 1993* (Cth), that it is preferable to allow an Aboriginal group that can show traditional and familial links to an area to be considered as the new Aboriginal and Native Title Party for the area.

QYAC notes that pursuant to s 36(6) of the Act the Minister may cancel the registration of a corporation as the ACHB if she "*is no longer satisfied about the matter in subsection (4) in relation to the corporation*".

QYAC submits that it is appropriate to allow the last man standing rule to apply in circumstances where there has been a finding that the native title test of continuity of law and custom cannot be established, but not in circumstances when the court has found that the previous body cannot establish descent from those persons who occupied the area prior to the date of effective colonisation.

To allow the amendment as currently proposed to pass unchanged would allow people who are not descendants of the original Aboriginal People to manage Aboriginal cultural heritage, in a manner not contemplated or supported by the Act. This would undermine the intent of the Act, and increase conflict with the *Native Title Act 1993* (Cth).

Recommendation:

The reinstatement of the “last claim standing” rule in the *Revenue and other Legislation Amendment Bill 2018*, be limited to the circumstances where the effect of colonisation is such that continuity of law and custom cannot be proven.

Further, QYAC notes that to ensure clarity, the definition of Aboriginal Party should not include persons who have been determined not to have descended from the original inhabitants of an area.