

Engineering Policy 173

Procurement and Payments Policy for Aboriginal or Torres Strait Islander Parties or 3rd Party Providers under the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003*

October 2020

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Part A – Procurement Policy

1 Executive Summary

1.1 Scope

This policy describes the requirements for when the Department of Transport and Main Roads procures and pays Aboriginal or Torres Strait Islander Parties or their 3rd Party Providers for cultural heritage consultation and management services under the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* (the Acts). The department is regularly required to consult with Aboriginal or Torres Strait Islander Parties in order to satisfy the department's cultural heritage duty of care under these Acts, including procuring their services during infrastructure project delivery.

This policy covers instances where the department has conducted an internal Cultural Heritage Risk Assessment for an infrastructure project and has determined that consultation with the Aboriginal or Torres Strait Islander Party/ies is required to satisfy the department's duty of care. In order to conduct this consultation, the Aboriginal or Torres Strait Islander Party/ies must first be procured for their services. The type, scale and duration of services will vary from one project to the next depending on the project scope and risk level. If the Aboriginal or Torres Strait Islander Party/ies is established as a business with the nominated insurance policies, the department should in the first instance attempt to procure the Party/ies directly.

The policy also covers instances where an Aboriginal or Torres Strait Islander Party is not established as a registered business and they act through a nominated 3rd Party Provider that is a registered business. The department can procure the 3rd Party Provider, who employ / subcontract representatives from the Aboriginal or Torres Strait Islander Party to provide the department with services. This policy acknowledges that some Aboriginal or Torres Strait Islander Parties will only work with a preferred 3rd Party Provider due to the cultural sensitivities / confidentiality of heritage and culture, hence the department cannot always reasonably seek competitive tenders for the services of the 3rd Party Provider.

Examples of consultation and management services covered by this policy are provided in Section 3.

Part B of this policy also provides guidance for departmental staff on how to assess a fee proposal / quote from an Aboriginal or Torres Strait Islander Party or 3rd Party Provider and preferred contract terms and conditions.

1.1.1 Out of Scope

This policy **does not** cover the following:

- Procurement of heritage consultants, archaeologists, anthropologists or similar that are not directly involved in consultation with Aboriginal Parties (e.g. engagement of a heritage consultant to conduct a Cultural Heritage Risk Assessment, survey, study or similar where the Aboriginal or Torres Strait Islander Party is not involved).
- Procurement under an existing Memorandum of Understanding (MOU) and / or Deed with an Aboriginal or Torres Strait Islander Party or 3rd Party Provider.

- Legal advice relating to cultural heritage management (Note: Departmental staff must seek legal advice from the department's Legal Services in the first instance, and Aboriginal or Torres Strait Islander Parties and 3rd Party Providers must procure and fund their own legal advice).
- Native Title related procurement.
- Environmental related procurement (e.g. protected flora surveys, ecological assessments, etc).

1.2 Human Rights

Departmental officers are reminded that they are public entities for the purposes of Section 58 (1) of the *Human Rights Act 2019* (Qld) (Human Rights Act).

Implementing this policy may involve acts or decisions that affect human rights. Officers should carefully consider whether any human rights would be engaged by a proposed decision or action under this policy. If any human rights are engaged, the officer must give proper consideration to the right and ensure that the officer's decision or action is compatible with human rights as defined in Sections 8 and 13 of the *Human Rights Act 2019*.

Please note, however, that engaging an Aboriginal or Torres Strait Islander Party or a 3rd Party Provider for the purposes of providing consultation and management services under these Acts does not limit the human rights of any Aboriginal peoples or Torres Strait Islander peoples who have a connection to the project area under Aboriginal tradition or Island custom but who are not an Aboriginal or Torres Strait Islander Party for the area under the Acts.

1.2.1 Contacts

For advice on implementation of this policy please contact:

| | |
|---|---|
| <p>Minky Giger Principal Officer (Infrastructure Procurement) Program Management and Delivery infrastructureproc@tmr.qld.gov.au</p> | <p>James Smith Manager (Cultural Heritage & Native Title) Program Management and Delivery james.a.smith@tmr.qld.gov.au</p> |
|---|---|

2 Definitions

A definition of terms is described in Table 2.

Table 2 – Definitions

| Term | Definition |
|---|--|
| 3rd Party Provider | An entity that has the necessary insurances, financial requirements and all other capabilities to employ representatives from Aboriginal or Torres Strait Islander Party/ies on behalf of the department and in line with departmental purchasing policies and procedures, and workplace health and safety requirements. Important: The Provider must be nominated / preferred by the Aboriginal or Torres Strait Islander Party. |
| Aboriginal Party / Torres Strait Islander Party | The Aboriginal Party or Torres Strait Islander Party for a given geographic area as defined under the Acts. |

| Term | Definition |
|-------------------------------|---|
| MOU | Memorandum of Understanding |
| Native Title | As defined in the <i>Native Title Act 1993</i> (Commonwealth). Native Title means the communal, group of individual rights and interests in relation to land or waters. |
| NLTA | <i>National Land Transport Act 2014</i> (Commonwealth). |
| Payments | Financial reimbursement of an Aboriginal or Torres Strait Islander Party or 3 rd Party Provider in accordance with Part B of this Policy. |
| Project Manager | The department's District Project Manager or Cultural Heritage Officer. |
| Sole Provider Services | These are services which can only be legally undertaken by the relevant Aboriginal or Torres Strait Islander Party or nominated 3 rd Party Provider. |
| The Acts | <i>Aboriginal Cultural Heritage Act 2003</i> and <i>Torres Strait Islander Cultural Heritage Act 2003</i> . |
| The department / departmental | The Queensland Government represented by Department of Transport and Main Roads |

3 Sole Provider Services

Cultural heritage consultation and management services from an Aboriginal or Torres Strait Islander Party or 3rd Party Provider include the below examples – please note, this is not an exhaustive list.

These services are acknowledged as Sole Provider Services as only the relevant Aboriginal or Torres Strait Islander Party or their nominated 3rd Party Provider can provide the department with the services. A competitive tender is not required in these instances:

- Cultural heritage consultation meetings.
- Conducting surveys and desktop studies of areas where the department proposes to undertake one or more projects for the construction or maintenance, upgrade or other works associated with transport infrastructure delivery.
- Provision of advice (e.g. in a written report) addressing:
 - whether or not Aboriginal or Torres Strait Islander cultural heritage could be affected by a departmental project, and / or
 - recommendations that will ensure that the departmental project will comply with relevant obligations under the Acts.
- Activities such as a walkthrough of a project area.
- Archaeological excavation / other salvage undertaken to comply with the cultural heritage duty of care.
- Cultural heritage inductions.
- Repatriation of cultural materials.
- Cultural heritage monitoring.
- Any other work/s carried out to ensure compliance with the Acts.

4 Tender Exemption for Federally funded projects

Under the *National Land Transport Act 2014* (NLTA) (Commonwealth), infrastructure projects that are fully or partially Federally funded are required to ensure all engagements for the project are tendered competitively irrespective of the contract value.

As a State authority and funding recipient, the department is required to seek a written tender exemption from the Federal Minister of Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) for the non-contestable procurement process of engaging an Aboriginal or Torres Strait Islander Party or 3rd Party Provider.

All exemption requests to DITRDC for all departmental projects are managed by the office of Director (National Programs) in the Policy, Planning and Investment Division of Transport and Main Roads. (PIP_National_Programs@tmr.qld.gov.au).

A template letter to request the exemption is provided as part of the associated documents to this Policy.

5 Conflict of Interest

Consultants must fully disclose any conflict of interest or conflict of duty that exists or may arise in connection with the performance of the services. Where a conflict of interest or conflict of duty exists or may arise, the consultant will not participate in any decision that relates to the matter which gives rise to the conflict without the consent of the Principal (contract representative from Transport and Main Roads).

For the purposes of this policy, a conflict of interest means having an interest (whether personal, financial, or otherwise) which conflicts, or may reasonably be perceived as conflicting with the ability of the consultant to submit a proposal fairly and objectively and undertaking the services. If the consultant fails to notify the Principal or is unable or unwilling to resolve or deal with the conflict as required, the proposal may be excluded from further consideration or the contract cancelled.

6 Contract Conditions

Engagements under this policy must utilise the conditions outlined in Part B, Schedule A.

7 Insurances and Liability

Aboriginal or Torres Strait Islander Parties or 3rd Party Providers are required to have the following insurances and liability for providing works or services to the department:

- Public Liability (PL) \$20 M (this is the standard departmental PL limit applied to contracts. However, in some instances a \$10 M limit can be applied, e.g. for small, low risk contracts of short duration).
- Professional Indemnity \$1 M (Professional Indemnity is only applicable if a professional service is being rendered).
- Liability Limit. Notwithstanding Public Liability and Professional Indemnity, liability could be capped to 125% of contract value.
- Workers Compensation: Contractor's responsibility to cover self and their staff.
- Plant and Equipment: Contractor's responsibility to cover own plant and / or equipment.

- Vehicles: Contractor's responsibility to cover own vehicles.

8 Intellectual Property

There is sensitivity around the Intellectual Property of Aboriginal and Torres Strait Islander people's cultural heritage as most Traditional Owners prefer to retain Intellectual Property rights to their culture.

The department needs to ensure that when it, for example, commissions a cultural heritage survey and recommendations report, that the department receives the full report and includes Intellectual Property details in the contract.

The Intellectual Property rights of material created from engagements under this policy vests mutually with both the department and the Aboriginal or Torres Strait Islander Party/ies or 3rd Party Provider, unless negotiated otherwise.

In settling any contractual terms relating to ownership and control of Intellectual Property, departmental officers should have regard to Section 28(2)(a) and (b) of the *Human Rights Act 2019* (Qld), which provides that Aboriginal peoples and Torres Strait Islander peoples '.... must not be denied the right, with other members of the community—

- a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and
- b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions.

Departmental officers should also give consideration to section 24(2) of the *Human Rights Act 2019* (Qld), which provides that '... a person must not be arbitrarily deprived of the person's property'.

9 Procurement Process

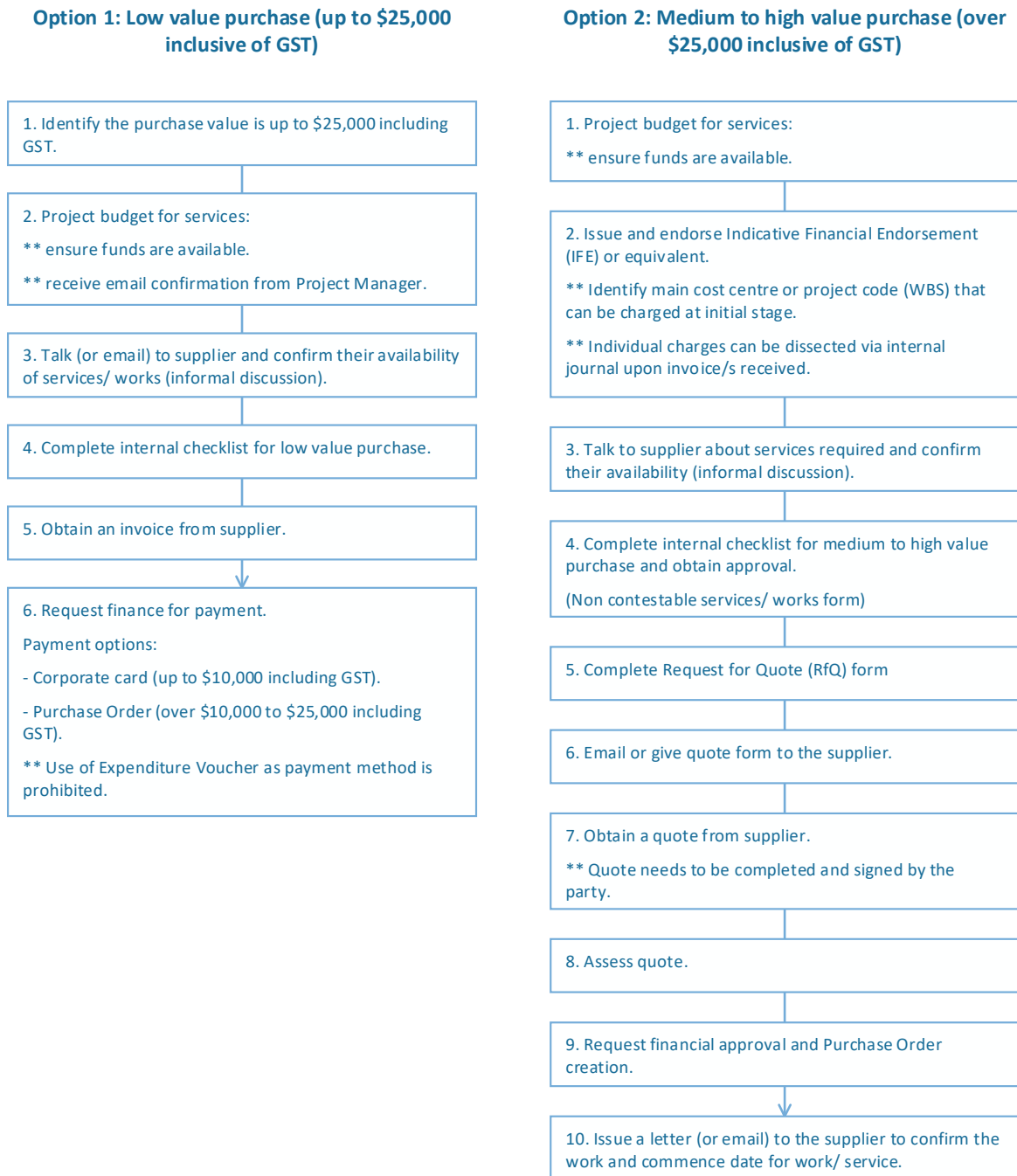
This policy endorses two options for procuring an Aboriginal or Torres Strait Islander Party or 3rd Party Provider:

- **Option 1:** Low Value Purchase (up to \$25,000 inclusive of GST), or
- **Option 2:** Medium to High Value Purchase (over \$25,000 inclusive of GST).

Refer to Figure 9 below for mandatory process of Option 1 and 2.

Figure 9 – Procurement process flowchart

Procurement process for Aboriginal or Torres Strait Islander Party / 3rd Party Provider for cultural heritage consultation and management services



Part B – Payment Policy

1 Statement

- a) This part:
 - i. outlines the notional payments and fees for Aboriginal or Torres Strait Islander Parties or 3rd Party Providers delivering cultural heritage services for the department, and
 - ii. identifies the preferred conditions for these services.
- b) Cultural Heritage Workers from an Aboriginal or Torres Strait Islander Party or 3rd Party Provider may be engaged to perform cultural heritage services at the rates specified in Schedule A.
- c) Payment is only due by the department after receipt of a Correctly Rendered Invoice.
- d) Where requests are received by the department for variations to the fees listed in Schedule A, justification must be provided for increased payments. The General Manager (Program Delivery and Operations) will make the final decision on any variations from the rates in Schedule A. This responsibility is delegated to the Manager (Cultural Heritage & Native Title).
- e) Any requests made for a variation to the fees listed in Schedule A must be considered having regard to the department's statutory obligation to meet its cultural heritage duty of care. That is, the department must take all reasonable and practical measures to ensure there is no harm to Aboriginal or Torres Strait Islander cultural heritage.
- f) Where strict adherence to this part risks the department's ability to meet its cultural heritage duty of care, the Manager (Cultural Heritage & Native Title), working with the departmental District officers, will assess whether it is reasonable and practicable to vary the fees in the particular circumstances. Decisions of this kind will be made on a case by case basis and will be at the discretion of the Manager (Cultural Heritage & Native Title).
- g) Variations are to be documented in an agreement between the department and the Aboriginal or Torres Strait Islander Party or 3rd Party Provider. The agreement evidencing the variation to the rates is to be executed by the Manager (Cultural Heritage & Native Title).
- h) The Manager (Cultural Heritage & Native Title) will give notice of the variations to all other Districts whose boundaries include any areas relating to the Aboriginal or Torres Strait Islander Party who has been granted a variation.
- i) Where there is an existing agreement in place between the department and Aboriginal or Torres Strait parties or 3rd Party Providers which varies from the attached schedules, that agreement continues until such time as the agreement expires. Any subsequent negotiations must be conducted in accordance with this policy.

2 Applicability

This part applies to all departmental staff engaging Cultural Heritage Workers from an Aboriginal or Torres Strait Islander Party or 3rd Party Provider on departmental projects to assist in managing cultural heritage. It also applies to contractors to the extent that a contractor engages Cultural Heritage Workers from an Aboriginal or Torres Strait Islander Party or 3rd Party Provider on behalf of the department for departmental projects.

Other rates of payment may apply for Aboriginal or Torres Strait Islander people engaged by the department in other circumstances, e.g. undertaking training programs.

3 Context

This policy is guided by the department's *Indigenous and Historical Cultural Heritage Organisational Policy*, a high-level policy statement relating to the management of these values by the department, and the department's *Cultural Heritage Process Manual*.

The management of the impact of departmental operations on cultural heritage values is consistent with relevant Queensland Government legislation. This policy supports the statutory requirements of the *Aboriginal Cultural Heritage Act 2003*, the *Torres Strait Islander Cultural Heritage Act 2003* and whole-of-government priorities.

4 Objectives and Benefits

The objectives of this part are:

- a) Establish a schedule of payments for use by the department across the state for the engagement of Cultural Heritage Workers from Aboriginal or Torres Strait Islander Parties or 3rd Party Providers.
- b) Ensure that the department is consistent and fair in its approach to the engagement of Cultural Heritage Workers across the state.
- c) Provide assistance in the practical implementation of the policy to help ensure that the department meets its statutory requirements for cultural heritage.

5 Evaluation

A review of this policy will be conducted every three years, or earlier if legislative changes occur, and a review of Schedule A will be conducted annually by the Manager (Cultural Heritage & Native Title) in regard to Consumer Price Index (CPI) increases.

6 Definitions

Correctly Rendered Invoice means an invoice:

- a) In which the amount claimed is due for payment for the Cultural Heritage Work.
- b) In which the amount claimed is correctly calculated in accordance with this policy, or any agreement varying this policy.
- c) Which correctly identifies and particularises the good and services provided.
- d) Which, if GST applies, is a valid tax invoice under the *A New Tax System (Goods and Services Tax) Act 1999*.
- e) Identifies the Order number and specific details pertaining to the Order (if applicable).
- f) Includes sufficient details to allow the Department to assess progress against any milestones.
- g) For services carried out on a time basis, that is supported by records of time spent by individuals involved in the provision of the goods and / or services, and
- h) That itemises all expenses, disbursements and other money claimed under the invoice.

Cultural Heritage Worker means any person chosen by an Aboriginal or Torres Strait Islander Party or 3rd Party Provider to represent the interests of that party and undertake work on their behalf. The representative can be a person of Aboriginal or Torres Strait Islander descent, but need not be.

Cultural Heritage Services means the same as the definition in Part A.

Aboriginal or Torres Strait Islander Party means the same as definition in Part A.

3rd Party Provider means the same as definition in Part A.

Schedule A – Payment Rates and Terms & Conditions

Please note: Rates given below are baselines on which to negotiate actual rates with Aboriginal or Torres Strait Islander Parties or 3rd Party Providers. Variations to rates are permissible, however justification and approval from Manager (Cultural Heritage & Native Title) is required as per Section 1 in this part, above.

| Activity | Payment Schedule | Supplementary Information on Payments | Transport and Main Roads Terms & Conditions | Aboriginal and / or Torres Strait Islander Terms & Conditions | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|--|---|---|-------|--|----------|-------------------|---------|---------------|--|--------------------|---------|------------------|---------|----------------------------------|-----------------------|--|---------|--------------------------------|---------|--------------------------------------|--------|------------------|--------|----------------------------------|-----------------------|--|---------|------------------------------------|---------|---------------------------------------|--|--|
| Cultural Heritage Worker for Aboriginal and / or Torres Strait Islander Party | \$509 Cultural Heritage Worker daily rate (exc. GST) | <p>This rate assumes that engagements are directly with the Aboriginal or Torres Strait Islander Party and no 3rd Party Provider is involved.</p> <table border="1" data-bbox="789 499 1365 850"> <thead> <tr> <th colspan="2">Daily Rate (2019-20)</th> </tr> </thead> <tbody> <tr> <td>\$509</td> <td>Total daily rate per day exc. GST consists of:</td> </tr> <tr> <td>\$429.45</td> <td>Current Base Rate</td> </tr> <tr> <td>\$22.96</td> <td>+ Incidentals</td> </tr> <tr> <td></td> <td>Statutory Charges:</td> </tr> <tr> <td>\$42.98</td> <td>+ Superannuation</td> </tr> <tr> <td>\$13.56</td> <td>+ Workers Compensation Provision</td> </tr> </tbody> </table> <table border="1" data-bbox="789 892 1365 1180"> <thead> <tr> <th colspan="2">Hourly Rate (2019-20)</th> </tr> </thead> <tbody> <tr> <td>\$60.73</td> <td>per hour exc. GST consists of:</td> </tr> <tr> <td>\$53.68</td> <td>Current Base Rate ÷ 8 (hrs. per day)</td> </tr> <tr> <td>\$5.36</td> <td>+ Superannuation</td> </tr> <tr> <td>\$1.69</td> <td>+ Workers Compensation Provision</td> </tr> </tbody> </table> <table border="1" data-bbox="789 1222 1365 1396"> <thead> <tr> <th colspan="2">Other Rates (2019-20)</th> </tr> </thead> <tbody> <tr> <td>\$91.11</td> <td>Penalty Rate (150% of hourly rate)</td> </tr> <tr> <td>\$254.5</td> <td>Half-day payment (50% of daily rate).</td> </tr> </tbody> </table> | Daily Rate (2019-20) | | \$509 | Total daily rate per day exc. GST consists of: | \$429.45 | Current Base Rate | \$22.96 | + Incidentals | | Statutory Charges: | \$42.98 | + Superannuation | \$13.56 | + Workers Compensation Provision | Hourly Rate (2019-20) | | \$60.73 | per hour exc. GST consists of: | \$53.68 | Current Base Rate ÷ 8 (hrs. per day) | \$5.36 | + Superannuation | \$1.69 | + Workers Compensation Provision | Other Rates (2019-20) | | \$91.11 | Penalty Rate (150% of hourly rate) | \$254.5 | Half-day payment (50% of daily rate). | <p>Cultural Heritage Workers will be 18 years or older and must have a WH&S General Safety Induction card (aka. Blue / White Construction Card).</p> <p>Numbers for Cultural Heritage Workers will be determined on a project by project basis. For the majority of projects it is expected that two Cultural Heritage Workers per Party will be sufficient, however, this may vary depending on the nature of the project and the potential for cultural heritage.</p> <p>No payment will be made for non-attendance and work may proceed as set out in an agreement / Cultural Heritage Management Plan (CHMP), if applicable.</p> <p>The department will engage Cultural Heritage Workers who can demonstrate extensive cultural heritage knowledge and authority. At least one worker attending the site must have the vested and authority from the Party to be able to make decisions on-site to finalise cultural heritage finds and so on.</p> <p>If the rate for statutory charges is inadequate to support statutory charges, the department may approve additional provision for oncost reimbursement on a case-by-case basis. Supporting evidence will be required to the satisfaction of the Department.</p> <p>A day is eight hours working time. Hours less than eight will be paid at the hourly rate. If more than eight hours are to be worked the hourly rate will commence after the initial eight hours.</p> <p>Penalty rates only apply on Sundays or public holidays.</p> | <p>The Cultural Heritage Worker/s will:</p> <ul style="list-style-type: none"> • Be available to participate in cultural heritage activities during such periods as are nominated by the department and attend the department's project site when required. • Commence work at the time designated for the commencement of each cultural heritage activity and continue to participate in such cultural heritage activity until it concludes. • Work cooperatively with other Cultural Heritage Workers and any departmental personnel. • Behave in a professional manner and must not behave in an offensive, intimidating, threatening or otherwise prejudicial manner to any other person participating in the cultural heritage activities or other departmental personnel, and • Comply with all reasonable requirements or directions of staff members of the department when performing activities for the department. <p>Role of the Cultural Heritage Worker</p> <p>The Cultural Heritage Worker/s will participate in the following activities cultural heritage activities:</p> <ul style="list-style-type: none"> • cultural heritage survey, research and reporting • excavations • artefact collection • monitoring of areas to be impacted upon • monitoring of construction machinery • cultural heritage awareness training • consultation if required • assisting with, preparing or providing cultural heritage advice <p>Survey</p> <p>On each survey day, the Cultural Heritage Worker/s participating in the survey will:</p> <ul style="list-style-type: none"> • Undertake a visual ground inspection of the survey area, for evidence of cultural heritage. • Inform the department's on-site project manager of the location and nature of any discovered cultural heritage. • Provide information to the department's on-site project manager regarding the significance of any cultural heritage identified. • Provide recommendations and solutions to the department about what options there are for the delivery of the infrastructure or performance of the activities, having regard to any identified matters. <p>Artefact collection</p> <p>Cultural Heritage Workers participating in mitigation activities will:</p> <ul style="list-style-type: none"> • Collect all cultural heritage identified in the area to be mitigated. • Bag and label all cultural heritage collected, and / or • Relocate or remove all collected cultural heritage from the area as agreed in the CHMP, and • Catalogue all cultural heritage relocated. <p>Monitoring</p> <p>Cultural Heritage Workers participating in monitoring will:</p> <p><i>Monitoring of areas to be impacted upon</i></p> |
| Daily Rate (2019-20) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$509 | Total daily rate per day exc. GST consists of: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$429.45 | Current Base Rate | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$22.96 | + Incidentals | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Statutory Charges: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$42.98 | + Superannuation | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$13.56 | + Workers Compensation Provision | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Hourly Rate (2019-20) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$60.73 | per hour exc. GST consists of: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$53.68 | Current Base Rate ÷ 8 (hrs. per day) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$5.36 | + Superannuation | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$1.69 | + Workers Compensation Provision | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Other Rates (2019-20) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$91.11 | Penalty Rate (150% of hourly rate) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$254.5 | Half-day payment (50% of daily rate). | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| Activity | Payment Schedule | Supplementary Information on Payments | Transport and Main Roads Terms & Conditions | Aboriginal and / or Torres Strait Islander Terms & Conditions |
|-------------------------------|------------------|---|--|---|
| | | | | <ul style="list-style-type: none"> • Following clearing and grubbing of the vegetation from the area to be monitored, inspect the area that has been cleared for evidence of cultural heritage. • Following stripping of [X]mm of topsoil from the area to be monitored, inspect the area that has been excavated for evidence of cultural heritage. • Collect all cultural heritage identified through this process. • Bag and label all cultural heritage collected, and / or • Relocate or remove all collected cultural heritage from the area, and • Catalogue all cultural heritage relocated. <p><i>Monitoring of machinery</i></p> <ul style="list-style-type: none"> • Observe the clearing and grubbing and stripping of topsoil by machinery. • Collect all cultural heritage identified through this process. • Bag and label all cultural heritage collected, and / or • Relocate or remove all collected cultural heritage from the area, and • Catalogue all cultural heritage relocated. <p>Suspected Significant Cultural Heritage Finds</p> <p>Cultural Heritage Workers participating in assessment of suspected cultural heritage finds will assist the department's on-site project manager to:</p> <ul style="list-style-type: none"> • Inspect the suspected find to determine whether it is cultural heritage. • Provide advice to the department identifying whether or not it is cultural heritage. • If the find is cultural heritage: <ul style="list-style-type: none"> – collect the cultural heritage – bag and label the cultural heritage collected – relocate or remove the collected cultural heritage from the area, and – catalogue all cultural heritage relocated. <p>Provision of Expert Advice</p> <p>With respect to cultural heritage identified during any cultural heritage activity, the Cultural Heritage Worker will:</p> <ul style="list-style-type: none"> • Oversee the assessment of the cultural heritage. • Provide authoritative advice on the nature and significance of the cultural heritage. • Record the GPS location of the cultural heritage and photograph such cultural heritage in-situ, and • Provide advice on the management of the find, including recommendations and options for the management of the cultural heritage in delivering the infrastructure or performing the activities. <p>Sign-off at Completion of Monitoring</p> <p>At the conclusion of all cultural heritage monitoring in a particular area, the Cultural Heritage Worker will:</p> <ul style="list-style-type: none"> • Assist the department to map and record the area that has been monitored, and • Provide the department with written confirmation that the area that has been fully monitored using the "sign-off" pro forma attached to the agreement / CHMP. |
| Contract / Administration Fee | 20% | <p>Where an Aboriginal or Torres Strait Islander Party is not established as a business and they act through a nominated 3rd Party Provider that is a registered business, a contract management fee is payable to the Provider.</p> <p>Where an Aboriginal or Torres Strait Islander Party is an established as a business, an administration fee is payable to the party.</p> | The department will only work with 3rd Party Providers that are registered businesses and have proper insurances in place for the required work. | <p>The Aboriginal or Torres Strait Islander Party or the 3rd Party Provider that is acting for parties must be a registered business and have proper insurances.</p> <p>In instances where the Provider is not meeting expectations of either the department or the Provider, the Party, the department and the Provider must openly discuss these concerns and attempt to resolve in a fair manner. Nomination of a new Provider by the department or the Party is permissible and should be considered, particularly if the issues are impacting the department's duty of care.</p> |

| Activity | Payment Schedule | Supplementary Information on Payments | Transport and Main Roads Terms & Conditions | Aboriginal and / or Torres Strait Islander Terms & Conditions |
|---|------------------------------|--|--|--|
| | | <p>The fee will be 20% of the total rates payable to the Cultural Heritage Workers, including but not limited to any:</p> <ul style="list-style-type: none"> • accommodation • travel (e.g. mileage charges) and / or flights • meal allowances | | |
| Contact Officer for Aboriginal or Torres Strait Islander Party | \$60.73 per hour (excl. GST) | If the Contact Officer is contacted by the department on a Sunday or public holiday, a penalty rate of 150% will apply. | The department is entitled to rely upon advice provided by the Contact Officer as the decision of the Aboriginal or Torres Strait Islander Party and any advice provided by the Contact Officer will bind the parties to act in accordance with the terms of such advice. | <p>The Contact Officer will:</p> <ul style="list-style-type: none"> • Ensure that they remain available to communicate with the departmental contact officer at all times that the cultural heritage activities are being planned and / or carried out. • Liaise with each of the parties he / she represents, with respect to any communications or decisions required under the agreement / CHMP and represent the decisions of the parties he / she represents to the department. • Ensure that the Cultural Heritage Workers correctly fill out their daily timesheets and provide verified copies of such time sheets to the department. • Work cooperatively with other Cultural Heritage Workers and any departmental personnel, and • Behave in a manner that complies with the State Government's Code of Conduct and any reasonable requirement or direction given by departmental officers. <p>Scenario 1 – Cultural Heritage Workers engaged via Aboriginal or Torres Strait Islander Party</p> <p>Upon request by the department, the Contact Officer will:</p> <ul style="list-style-type: none"> • Provide the department with the names of the Cultural Heritage Workers who will participate in each cultural heritage activity and the dates of their participation, and • Provide logistical and other support to those Cultural Heritage Workers to assist the Cultural Heritage Workers to attend and participate in the cultural heritage activities. <p>Scenario 2 – Cultural Heritage Workers engaged via 3rd Party Provider</p> <p>Upon request by the 3rd Party Provider, the Contact Officer will provide the Provider with the names and contact details of the Cultural Heritage Workers and the dates they are available to participate in each cultural heritage activity.</p> |
| Meeting Rates | \$60.73 per hour (excl. GST) | 2 hours minimum fee for meetings. The number of people attending meetings will be agreed between the parties in advance. | <p>The department will only pay for the agreed attendees.</p> <p>The department understands that Aboriginal or Torres Strait Islander Parties have elders who have a traditional right to at least be initially involved in any process that affects their cultural heritage. The department will pay for their travel, attendance and time at initial meetings.</p> <p>The department expects that in subsequent meetings the number of representatives per Party should be limited to two and that they have the authority to discuss and enter into an agreement with the department.</p> | Nominate attendees who have authority to speak for the Party and enter into binding agreements with the department. |
| Cultural Heritage Inductions conducted by Aboriginal / Torres Strait Islander Party | \$62.32 per hour (excl. GST) | | <p>If Parties provide inductions (typically one per project) on-site, the department will pay two hours minimum fee and an hourly rate payment for a negotiated preparation time.</p> <p>The department reserves the right to determine who trains and how this induction will be undertaken.</p> | Parties and / or the 3rd Party Providers may be asked to develop and deliver an induction program that will assist departmental staff and contractors to identify cultural heritage that may be located at the project site. |
| Working weekends & public holidays. | | Penalty rates only apply on Sundays or public holidays. Rates are as per above. | | |

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| Wet days | 4 hours minimum fee | If the department has previously agreed to pay for travel, meals, accommodation and allowances then these will be paid if the Workers have travelled to site and booked into accommodation prior to work being ceased. | The department will attempt to give 24 hours notice for cessation of work, however, if this is not achievable the minimum four hours will be payable. The department will advise when duties are to recommence. | |
| Cancellation fee | 5% | If the department cancels work that has been quoted and booked in by and Aboriginal or Torres Strait Islander Party or the 3rd Party Provider without 48 hours' notice, a 5% fee payable to the party or provider will apply. This does not apply to rescheduling of works where the work commences with 7 calendar days of original start date. | Pay cancellation fee | |
| Meals, accommodation and allowances for an overnight stay | As per current financial year ATO travel allowances rates | 2019-20 ATO Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2019-20 income year? | The department will state in advance whether accommodation is required | The Aboriginal or Torres Strait Islander Party or the 3rd Party Provider will book accommodation. |
| Travel | ATO rates | Where someone's personal vehicle is used to travel to a departmental site, the vehicle owner will be reimbursed as per the following: <ul style="list-style-type: none"> A single rate is used: 68 cents per kilometre from 1 July 2018 (or 66 cents per kilometre for the 2017-18 income year). You can claim a maximum of 5,000 business kilometres per car. You may need to provide written evidence to show how you worked out your business kilometres (for example, by producing diary records of work-related trips). Where you and another joint owner use the car for separate income-producing purposes, you can each claim up to a maximum of 5,000 business kilometres. https://www.ato.gov.au/individuals/income-and-deductions/deductions-you-can-claim/vehicle-and-travel-expenses/car-expenses/#centsperkm | Economy public transport will be paid for at cost as agreed. If driving the department will direct the most practical direct route to the worksite. The department will use the RACQ Trip Planner as a guide to determining mileage and so on. www.racq.com.au | Car travel will be paid on provision the following requirements are met: <ul style="list-style-type: none"> mileage is recorded car is insured type of vehicle, and current driver's license. The claiming person must provide the department the information required by the Australian Taxation Office for claiming reimbursement when submitting timesheets and invoices. The matters the Australian Taxation Office requires for this item are: <ul style="list-style-type: none"> Make, model, registration number and engine capacity of the vehicle. Diary entries identifying the date, odometer readings and number of kilometres travelled on the day claimed. An execution clause where the person claiming the reimbursement confirms that the particulars claimed are true, accurate and were actually driven by that person for business purposes. |
| Legal advisors | No legal fees | Respective parties will pay their own legal fees, if they deem such advice necessary. | The department will pay own their legal fees. | Aboriginal or Torres Strait Islander Parties or 3rd Party Providers will pay their own legal fees. |
| Suitably qualified experts (e.g. archaeologists) | Market rate | Will be paid in accordance with pre-approved quote. | The department reserves the right to choose a suitably qualified expert for a project, however may use one preferred by an Aboriginal or Torres Strait Islander Party if agreeable. | May subcontract a suitably qualified expert, however agreement for payment by the department must be obtained in advance. The department reserves the right to not pay for the expert. |
| Review and sign-off of CHMAs and CHMPs | \$918.60 per group per CHMP | The department will pay for a review of Cultural Heritage Management Agreements (CHMAs) and CHMPs at the flat rate of \$918.60 per Aboriginal or Torres Strait Islander Party. The rate covers the process of getting the agreement or plan signed-off by the relevant signatories. | Payment will be made on completion of the review and sign-off of the agreement or plan within the time period set. | Provide prompt reviews and sign-off of CHMAs or CHMPs in accordance with the department's timeframes. |
| WH&S Inductions (General Construction Induction) | Pay for course and travel | In the first instance the Aboriginal or Torres Strait Islander Party or 3rd Party Provider must nominate Cultural Heritage Workers who already hold a White or Blue Card (General Construction Induction). If the Party or Provider has no inducted workers, and if the department does not provide General Construction Induction (White Card) training in-house, then the department will pay for the cost of the course and travel only for the required workers. | Site Induction Prior to participating in any cultural heritage activities, all Cultural Heritage Workers will: <ul style="list-style-type: none"> Attend the department's site-specific induction program, and Hold a White Card. The Party or Provider is responsible for Work Cover claims. | Cultural Heritage Workers' Responsibilities At all times they are attending the department's project site, each Cultural Heritage Worker will: <ul style="list-style-type: none"> Observe all directions given by departmental personnel with respect to health and safety issues. Take all reasonable precautions to ensure that they and all other persons participating in the cultural heritage activities remain free from injury. |

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| | | | | <ul style="list-style-type: none"> • Remain completely free of the effects of illegal drugs and alcohol and submit to any drug and / or alcohol tests carried out by the department in accordance with its established drug and alcohol policies. • Be of a level of fitness required to enable them to participate in the required cultural heritage activities. • Ensure that they are aware of and comply with any project site specific health and safety risk controls, and • Keep the department informed of the details of all prescription drugs being used by any Cultural Heritage Workers. |
| Personal Protective Equipment | Costs to be agreed by the department on a case-by-case basis | Must meet Workplace Health and Safety and site-specific requirements. | Where appropriate, hard hat and / or wide brimmed hat, safety glasses, hearing protection, vest and sunscreen will be provided by the department. | Wear personal protective clothing, including 100% cotton long sleeved shirt, 100% cotton long pants and steel capped boots. |

Other Conditions

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| Execution of Works | The Contractor shall undertake the Works in accordance with the Contract. Unless otherwise provided, the Contractor is responsible for all things, including minor items not expressly mentioned in the contract documentation, necessary for satisfactory completion of the Works. The contract documentation is mutually explanatory, and anything contained in one but not in another is equally binding as if contained in all. The Contractor shall comply with the requirements of legislation and public or other authorities, and unless otherwise specified pay all fees, give all notices and obtain necessary consents. |
| Time for Completion | The Contractor shall execute the Works to Practical Completion within the time stated on the offer form or within any extended time agreed in writing by the department. The Contractor is not entitled to an extension of time for delays caused by it at any time, nor for delays due to inclement weather or industrial conditions occurring after the time for Practical Completion. The department may extend the time for completion for any reason. |
| Variations | The Superintendent may direct in writing a variation. The Contractor shall submit the price to the department within 14 days. The variation shall be valued by agreement between the Contractor and the department, or failing agreement, by the department, and the Contract price adjusted accordingly. The valuation shall include an amount for the Contractor's profit and attendance of 12.5%. No payment shall be made unless the variation is authorised in writing. |
| Payment | Each month up to Practical Completion, or as otherwise agreed, the Contractor shall give the Superintendent a payment claim supported by information the Superintendent may reasonably require. Payment shall take into account the deduction of retention moneys (if any) and any other amount which the Principal may be entitled to deduct, or which is due and payable by the Contractor to the Principal whether under the Contract, any other contract or independent of contract. If the moneys to be deducted are insufficient to discharge the liability of the Contractor, the Principal may have recourse to retention moneys. Payment will be made within 28 business days of receipt of the claim. Payment is not evidence of the value of work done or that it has been done satisfactorily or an admission of liability but is payment on account only. Nothing in this Contract shall oblige the Principal to pay for work that is not in accordance with the Contract, or for plant or materials not incorporated in the Works on site. For the purposes of the <i>Building and Construction Industry Payments Act 2004</i> , the Superintendent is authorised to receive payment claims and to issue payment schedules on behalf of the Principal. |
| Default | <ul style="list-style-type: none"> • If the Contractor fails to commence the work under the Contract within the time stated for commencement in the tender, or fails to proceed with the work at a reasonable rate of progress, or commits any substantial breach of the Contract, the Principal may, by written notice, require the Contractor to show cause by the date specified in the notice why the Principal should not exercise a right. • If the Contractor fails to show reasonable cause by the date specified by the Principal, then the Principal shall have the power upon notice in writing to the Contractor to terminate the Contract or suspend payment and take the work remaining to be completed wholly or partly out of the hands of the Contractor without prejudice to any rights of the Principal under the Contract or at common law. • If the Contractor: <ul style="list-style-type: none"> – fails to hold a current licence required to perform the work under the Contract, or – becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation, or – enters into a debt agreement, a deed of assignment or a deed of arrangement under the <i>Bankruptcy Act 1966</i>, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed, or |

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| | <p>– has a receiver or a receiver and manager appointed, or a mortgagee goes into possession of any of its assets.</p> <p>The Principal may, without giving a notice to show cause, exercise a right:</p> <p>In the event that the Principal takes the work out of the hands of the Contractor, the Principal may itself or by means of other persons, complete the whole or any part of that work and may without payment of compensation take possession of the constructional plant and other things on or in the vicinity of the site as are owned by the Contractor. If the cost incurred by the Principal in completing the work is greater than the amount which would have been paid to the Contractor if the Contractor had completed the work, the difference shall be a debt due from the Contractor to the Principal, otherwise any difference shall be a debt due from the Principal to the Contractor.</p> |
| Dispute | <p>Within 14 days of a dispute arising either party may refer it to the Superintendent. Within 28 days of receiving notice of dispute the Superintendent shall give its written decision. If the Superintendent fails to give the decision, or if either party is dissatisfied with it, the parties shall within 14 days of receipt of the decision, or the date upon which it should have been given, confer to resolve the dispute.</p> |
| Anti-Competitive Conduct, Conflict of Interest and Criminal Organisations | <p>The Contractor warrants that neither it, nor its Personnel* have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated tender or any actual or potential contract with any entity for the Works. In addition to any other remedies available to it under Law or contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has engaged in collusive or anti-competitive conduct. The Contractor warrants that it and its personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest** is created, or might appear to be created, in conflict with its obligations under this Contract, except as disclosed. If the Principal requests, the Contractor must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Principal.</p> <p>The Contractor warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of Section 161P of the <i>Penalties and Sentences Act 1992</i> (Qld).</p> <p>The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Contractor warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this clause was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.</p> <p>In addition to any other remedies available to it under Law or contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has breached any warranty in this clause.</p> <p>*Personnel means officers, directors, employees, agents and subcontractors; **Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.</p> |
| Work, Health and Safety | |
| <i>Work Health and Safety Act 2011</i> | <p>For the purposes of this clause:</p> <p>‘Act’ means the <i>Work Health and Safety Act 2011</i> (Qld), as amended from time to time.</p> <p>‘Regulation’ means the <i>Work Health and Safety Regulation 2011</i> (Qld), as amended from time to time.</p> <p>‘workplace’, ‘inspector’, ‘notifiable incident’, ‘principal contractor’, ‘structure’ and ‘regulator’ have the same meaning as in the Act.</p> <p>In relation to the work under the Contract, the Contractor will:</p> <ul style="list-style-type: none"> • Comply with and discharge all obligations imposed on the Contractor by the Act, the Regulation and any other regulation in connection with health and safety including without limitation on a person who conducts a business or undertaking. |

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| | <ul style="list-style-type: none"> • Accept that it is the person having management and control of the workplace at which the work under the Contract is being undertaken, and • Discharge the duties of a person who conducts a business or undertaking under the Regulation. <p>The Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:</p> <ul style="list-style-type: none"> • Any breach of this clause by the Contractor. • Any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety, and • Any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulations. <p>If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Contractor must:</p> <ul style="list-style-type: none"> • Immediately notify the regulator and the department of the notifiable incident, and • Take all reasonably practicable steps to secure the area where the notifiable incident occurred until an inspector arrives at the area or any earlier time that an inspector directs. <p>Without limiting any other obligation of the Contractor under this Contract, the Act, the Regulation or any other regulation, if material which might contain asbestos or other hazardous substance is discovered, the Contractor must:</p> <ul style="list-style-type: none"> • Immediately notify the department, and • Comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other relevant regulation. <p>Where the value of the Contract is greater than \$250,000, the Principal engages the Contractor to be the principal contractor under the Regulation in relation to the work under the Contract and authorises the Contractor to have management and control of the workplace at which the work under the Contract is being undertaken and to discharge the duties of a principal contractor under the Regulation.</p> |
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Part C – Other Information

1 Internal Documents

- *Transport and Main Roads Environmental Management System*
- *Transport and Main Roads Indigenous and Historical Cultural Heritage Organisational Policy*
- *Transport and Main Roads Cultural Heritage Process Manual*

To request a copy of an internal document please email TMR.Heritage@tmr.qld.gov.au.

2 Relevant Legislation

- *Aboriginal Cultural Heritage Act 2003*
(<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-079>)
- *Torres Strait Islander Cultural Heritage Act 2003*
(<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-080>)
- *National Land Transport Act 2014*
(<https://www.legislation.gov.au/Details/C2018C00226>)

