

**Legal Compliance Matrix**

	<b>Cultural Heritage</b> <b>Aboriginal Cultural Heritage Act 2003</b>	<b>Native Title</b> <b>Native Title Act 1993</b>
<b>What does the law protect?</b>	<p><b>‘Aboriginal Cultural Heritage’</b> – physical objects, areas or evidence of Indigenous occupation comprising land or waters, which is culturally or historically significant to Indigenous people.</p> <p>Notes:</p> <ul style="list-style-type: none"> <li>• Involves something physical</li> <li>• May have been historically ‘destroyed’ but it is not ‘extinguished’</li> <li>• Current and historical tenure of land is irrelevant</li> </ul>	<p><b>‘Native Title’</b> – rights and interests over land and waters comprising the traditional laws and customs of Indigenous people who have continued to maintain a sufficient connection with the land and waters.</p> <p>Notes:</p> <p>Involves something intangible</p> <ul style="list-style-type: none"> <li>• May have been historically ‘extinguished’ but if it survives can now only be removed by surrender, compulsory acquisition or by s24JA public works</li> <li>• Current and historical tenures are very relevant (extinguishment)</li> </ul>
<b>How does the law protect it?</b>	<p>Blanket Protection by creating ‘offences’ where:</p> <ul style="list-style-type: none"> <li>• Person breaches statutory duty of care which requires all persons to take reasonable and practical measures to ensure their activities do not harm cultural heritage.</li> <li>• Person harms, excavates, relocates, takes away or has possession of what they know, or ought to reasonably know, is cultural heritage.</li> </ul>	<p>Blanket protection by rendering ‘invalid’ any activity which affects native title, where native title continues to exist.</p>
<b>How can you comply?</b>	<p>1. By taking sufficient measures to satisfy the duty of care in each case (risk management decision required).</p> <p>Or</p> <p>2. Strict protection against liability (even where cultural heritage is</p>	<p>1. By obtaining consent of the relevant native title party for the activity under an ILUA</p> <p>Or</p> <p>2. By ensuring the activity is covered by</p> <ul style="list-style-type: none"> <li>• Section 24F (non-claimant</li> </ul>

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	<p>harmed by:</p> <ul style="list-style-type: none"> <li>• Acting under another provision in the Aboriginal Cultural Heritage Act</li> <li>• Acting under the Cultural Heritage Duty of Care Guidelines</li> <li>• Acting under an approved Cultural Heritage Management Plan (CHMP)</li> <li>• Acting under Indigenous Land Use Agreement (ILUA)</li> <li>• Acting in compliance with native title protection conditions</li> <li>• Acting with the agreement of the owner of the cultural heritage (usually State of Queensland)</li> <li>• Activity necessary because of an emergency</li> </ul>	<p>application establishes the absence of native title)</p> <ul style="list-style-type: none"> <li>• Section 24GB (acts permitting primary production on non-exclusive agricultural or pastoral leases)</li> <li>• Section 24GD (acts permitting off-farm activities directly connected to primary production activities)</li> <li>• Section 24GE (granting rights to third party etc on non-exclusive agricultural or pastoral leases)</li> <li>• Section 24HA (management of water and airspace)</li> <li>• Section 24IA (acts involving reservations, leases etc)</li> <li>• Section 24JAA (public housing and some government infrastructure on Indigenous land)</li> <li>• Section 24KA (acts involving facilities for services to the public – including electricity distribution and transmission facilities)</li> <li>• Section 24LA (low impact future acts)</li> <li>• Section 24MD (acts that pass the freehold test – including compulsory acquisition of native title)</li> <li>• Section 24NA (acts affecting offshore places)</li> </ul>