

Friday, July 26, 2019

CHA Review – Department of Aboriginal and Torres Strait Islander Partnerships
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Submission on Review of the Cultural Heritage Acts

Queensland Rail appreciates the opportunity to provide a submission in relation to the "Consultation Paper: Review of the Cultural Heritage Acts", Department of Aboriginal and Torres Strait Islander Partnerships.

Section 7 Ownership and defining cultural heritage

The discussion points within this section are the:

- Recognition of the significance of broader cultural landscapes in assessing the impacts on cultural heritage arising from land use activities; and
- Defining 'intangible heritage' and including it in the assessment and management processes e.g. adopting the United Nations Educational, Scientific and Cultural Organisation's convention definition that includes oral traditions, performing arts, rituals, festivals and traditional crafts.

The definition of 'cultural heritage' contained within the Act appears to be sufficient to cover the differing types of cultural heritage envisaged by the Consultation Paper. That is, from practical experience on projects, 'cultural heritage' has included objects, areas, areas without markings and intangible heritage identified through cultural heritage surveys resulting in the adoption of recommendations to protect the various degrees of cultural heritage. From the definition perspective, it is unlikely there is a need for it to be revisited as current practice currently allows for the protection of the above varying types of cultural heritage.

As to 'cultural heritage' identified on DATSIP website, it is a good source to refer to but it would be a more valuable tool if there was a link or a 'site card' providing for a description of the nature of the 'cultural heritage', whether the 'cultural heritage' is in situ, or if relocated 'where to'. Further, ensuring that the database is kept up to date with the responsibility of the parties to submit the data and for DATSIP to upload into the system.

Section 8 Identifying Aboriginal and Torres Strait Islander parties

The current link between the *Aboriginal Cultural Heritage Act 2003* and the *Native Title Act 1993* appears to be sufficient for the identification of Aboriginal and Torres Strait Islander parties. If there is any uncertainty as to the identification of the parties, the matter could always be referred to Court for review and a final decision made.

Section 9 Land user obligations

From a practical perspective, the current process of assessment and management within the *Aboriginal Cultural Heritage Act 2003* is effective in placing an obligation on land users to take all reasonable and practicable measures to ensure their activities do not harm Aboriginal or Torres Strait Islander cultural heritage. The self-assessment process is well informed, prescriptive and decisions are based and support through the collation of thorough detail e.g. project works, photos, previous significant disturbance, etc. From this, there is no need to

reconsider the threshold for formal cultural heritage assessments as the current process for assessment under the Act is well defined and understandable, and assists in the successful protection of cultural heritage. The duty of care guidelines and mechanisms under the Act provide high level detail and assistance to understand the nature of, and to manage, the responsibility for the protection of cultural heritage; e.g., a threshold for formal cultural heritage assessments will not add value to the mechanisms already prescribed under the Act.

Further, voluntary agreements should be drafted to ensure that there are dispute resolution procedures available to the parties if disagreement arises, e.g. formal mediation and resolution of the conflict by an independent mediator. This would allow the ongoing relationship to be managed by the parties to the agreement.

10 Compliance mechanisms

The compliance mechanisms under the Act appear to be effective. As to prosecuting non-compliance or the review of stop work orders, further resources are needed to support these actions.

As to the potential for penalties paid for breaches going to the Aboriginal parties, will this have an impact on the budget for the administration and prosecution under the Act? If so, penalties paid could still go to the Department but there could be a compensation amount payable directly to the party/community for the infringement of their interests in the land being the cultural heritage.

11 Recording cultural heritage

The register and database are important research and planning tools that assist in assessing and managing duty of care responsibilities under the Act. It is therefore important for the database to provide a complete picture of cultural heritage in Queensland. That potentially involves:

- Making the submission of cultural heritage surveys and data available to be uploaded into the database.
- As mentioned previously, the creation of a 'site card' providing for a description of the nature of the 'cultural heritage', whether the 'cultural heritage' is in situ, or if relocated 'where to'; and
- Ensuring that the database is kept up to date, with responsibility imposed on the parties to submit the data and for DATSIP to upload into the system. If there are sensitive sites as to the type of data to be displayed the representative Aboriginal and Torres Strait parties should be involved in the process.

Thank you once again for providing opportunity to comment on the Aboriginal Cultural Heritage Act review.

Kind regards



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On behalf of Queensland Rail