

Cultural Heritage Acts Review
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
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31 March 2022

Dear Sir/Madam

Queensland Cultural Heritage Acts Review – options paper

Thank you for the opportunity to provide feedback on the Cultural Heritage Acts Review – options paper.

By way of background, ARTC is the rail infrastructure manager for the Defined Interstate Rail Network and Hunter Valley Coal Network, providing a one stop shop for freight rail transport across Australia.

ARTC is also the proponent of the Inland Rail Programme – a new 1700km freight rail line between Melbourne and Brisbane that will complete the spine of the national freight rail network. Utilising a faster, more efficient route that will traverse regional Victoria, New South Wales (bypassing the existing Sydney rail network) and southern Queensland, the Inland Rail Programme is intended to provide a road competitive service that will enhance Australia's existing national rail network and serve the interstate freight market.

In these roles, ARTC delivers a range of rail infrastructure projects and manages the operation of rail infrastructure for over 8,500 kilometres of standard gauge track in New South Wales, Queensland, Victoria, South Australia, and Western Australia.

ARTC broadly supports the initiative from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the Department) to review and update the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003*.

While providing in principle support for all proposals, ARTC wishes to offer comment on proposals 1 and 5.

Proposal 1:

Definition of *prescribed activity*

ARTC support the use of *prescribed activities* as a mechanism to determine whether consultation with the relevant Aboriginal or Torres Strait Islander party is required. However, the definition of *prescribed activity* provided within the options paper is not comprehensive and does not provide enough examples of which activities may fall within the definition.

The reference in the new definition of *prescribed activity* to “disturbance that would result in a lasting impact to ground” is clearly intended to import the existing definition of “Surface Disturbance” in the Duty of Care Guidelines (**Guidelines**). However, it is not clear whether “ground that has not been previously disturbed” is also intended to refer to previous “impactful” disturbance, or to *any* previous disturbance. This uncertainty makes it difficult to determine whether all, or only part, of the rail corridor would be considered as ground that has been previously disturbed. In ARTC’s submission, if the Guidelines are to be replaced, the new framework should increase (not reduce) the certainty provided by the existing regime.

A more detailed and expanded definition should be provided by the Department to ensure land users across Queensland can assess whether their activities are likely to be impacted by this change.

Definition of *excluded activity*

ARTC supports the concept of *excluded activities* to determine those classes of activities that are of such low intrinsic risk to cultural heritage that consultation should not be mandated. However, it is difficult to discern the policy reasons behind, or the basis for, the current (and very limited) definition of *excluded activity*. The limited nature of the definition also makes it difficult to be sure what might be covered within the ambit of *excluded activities*. For example, it is unclear whether routine rail maintenance activities or emergency activities would be considered *excluded activities*.

With the proposed gap between *prescribed activity* and *excluded activity*, detailed guidance is required for proponents to determine what types of activities are intended to trigger the need to assess and to consult, and whether their activities fit within which definition.

ARTC proposes that as rail maintenance activities are routine and low environmental impact, they should be specifically or obviously captured under the definition of *excluded activity*. Emergency activities should also be considered for inclusion in the definition of *excluded activity*.

Definition of *high-risk areas*

ARTC generally supports the introduction of a definition of *high-risk areas* and the proposed approach for mapping tangible and intangible cultural heritage, but holds concerns regarding how the mapping will be generated and how complete or effective such mapping is likely to be given the confidentiality many Aboriginal parties attach to their cultural heritage. This is particularly the case given the proposal to mandate consultation/ agreement in these areas, even for non-*prescribed activities*.

ARTC considers that there should be further detailed consultation regarding all of the above definitions. ARTC hold concerns that there could be an oversimplified approach adopted where all activities to be undertaken in or in the vicinity of a rail corridor are included in the definition of *prescribed activity*, which would not be appropriate.

ARTC suggests that consideration should be given to continuing to allow proponents to assess for themselves, and exclude from the need for consultation, areas that have previously been subject to significant ground disturbance. This would align with the approach taken by the Victorian State Government and provide additional clarity to proponents on when consultation is required. As the Duty of Care Guidelines currently recognise, the carrying out of activities that are not additional to, or inconsistent with, existing significant ground disturbance are generally unlikely to increase potential for harm to cultural heritage.

Consultation

ARTC supports the requirement for consultation with the relevant Aboriginal or Torres Strait Islander party for activities that have increased potential to harm cultural heritage, but holds concerns about the uncertainty that might be created under the new regime in areas where relevant parties are currently identified pursuant to the last claim standing rule. Further guidance from the Department would be required on what is involved in consultation including timeframes for responses and decisions, and whether consultation will be the same for “prescribed activities” and activities in “high risk areas”.

Replacement of Duty of Care Guidelines

The options paper does not outline how evidence of due diligence should be provided if the existing Duty of Care Guidelines were replaced. The Department should provide more clarity on what would be expected to be documented as part of Environmental Impact Assessment processes, particularly for development classified as an “excluded activity”.

Proposal 5:

Clarification on the proposed reporting system

Proposal 5 in the options paper does not make clear what information and documents will need to be submitted to the proposed reporting system, or how it is proposed that “consultation” will be registered. More clarity should also be provided on whether this system will be required to be used for all activities or only those requiring consultation or agreement with the relevant Aboriginal or Torres Strait Islander party. Additionally, further detail should be provided on what information will be required to be reported on for different activities, what timeframes are for reporting, what process will be in place for accepting, following up, or rejecting reports submitted to the system and the consequences of any failure to report (or delay in reporting).

Please contact (BMcDougall@artc.com.au or 0438 790 544) for any further correspondence relating to the options paper and future stages of the review.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Leah', written in a cursive style.

Leah Cook
Corporate Environment Manager