



**TELSTRA CORPORATION LIMITED**

**Department of Seniors, Disability Services, and  
Aboriginal and Torres Strait Islander Partnerships**

***Reshaping Queensland's cultural heritage laws***

**31 March 2022**



## Introduction

Telstra Corporation Limited (**Telstra**) welcomes the opportunity to respond to the Department of Seniors, Disability Services, and Aboriginal and Torres Strait Islander Partnerships' (the **Department**) *Options paper: Finalising the review of Queensland's Cultural Heritage Acts (Options Paper)*.

Telstra, as Australia's largest and longest-serving telecommunications provider, is in a unique position to offer a considered and constructive perspective to this discussion. Telstra has an extensive property and infrastructure portfolio that ranges across the country, as well as various statutory obligations and requirements in relation to its status as a telecommunications service provider.

Telstra supports legislation that protects Aboriginal and Torres Strait Islander cultural heritage and considers that, for the benefit of all parties involved, any proposed changes to the current processes take into account all potential consequences and impacts. Telstra's submissions below address only those aspects of the Department's Options Paper that are of particular interest or concern to Telstra and our customers.

### PROPOSAL 1

- Replace the current Duty of Care Guidelines with a new framework that requires greater engagement, consultation and agreement making with the Aboriginal party or Torres Strait Islander party to protect cultural heritage.

Telstra has reviewed the Options Paper and has set out its submission in relation to the aspects which may have an impact on Telstra's activities, as follows:

- a) timeframes for consultation;
- b) consultation requirements;
- c) definition of 'prescribed activity';
- d) definition of 'excluded activity';
- e) definition of 'other land use activity';
- f) mapping; and
- g) mandatory reporting of compliance.

Please see below for a detailed discussion of each issue.

### Timeframes for consultation

Telstra is subject to requirements under the *Telecommunications Act 1997 (Cth)* (**Telecommunications Act**), including statutory timeframes for maintenance work. Some of these requirements may be difficult to meet if Telstra is also subject to increased consultation requirements under the Cultural Heritage Acts.

In addition to statutory requirements under the Telecommunications Act, Telstra has additional obligations under the Australian Government's Universal Service Guarantee (**USG**) and the Customer Service Guarantee (**CSG**) (together, the **Guarantees**). Under the Guarantees, Telstra is required to comply with particular timeframes for the provisioning, connection and repair of telephone services. These timeframes vary depending on the service location. For instance, in an urban area where infrastructure and spare capacity exists, Telstra must set up a new connection within five working days of the request. This timeframe extends to 20 working days where no such infrastructure or spare capacity



exists, but can also be reduced to two working days where there already exists a connection (e.g. where a previously working service has been disconnected and now requires reconnection).<sup>1</sup>

While no specific timeframes for consultation with the relevant Aboriginal or Torres Strait Islander party have been suggested in the Options Paper, Telstra notes that timeframes for consultation would be prescribed. In any event, consultation can be a time intensive process. Telstra considers any consultation requirements, including prescribed timeframes for consultation, need to take into account or prescribe dispensations such that Telstra is able to continue to fulfil its statutory duties to provide connection and repairs to its network across the country.

## Consultation requirements

Telstra has a significant portfolio of small-scale infrastructure (such as copper and optic fibre cables) that covers a large footprint. Projects may take place on areas of more than one Aboriginal or Torres Strait Islander party. Due to this, increased consultation requirements may be particularly onerous for Telstra in some circumstances.

Telstra, like other carriers, is afforded powers under the Telecommunications Act for the purpose of activities relating to survey and inspection, installation of low-impact facilities, and maintenance of those facilities. These powers allow Telstra to proceed with any of the above activities after giving notice of its intention to affected landowners and occupiers no less than 10 business days before commencing the activity. The process does not require planning approval nor landowner/occupier consent.

Notwithstanding the carrier rights under Telecommunications Act, Telstra has been able to develop a process that enables compliance with the current consultation process as required by the Cultural Heritage Duty of Care Guidelines (**Duty of Care Guidelines**). However, Telstra is concerned that the introduction of more onerous consultation requirements will conflict with its obligations and powers set out in the Telecommunications Act and will significantly affect Telstra's ability to carry out its provisioning and maintenance services in Queensland.

Under the Duty of Care Guidelines, Telstra consults with applicable Aboriginal and Torres Strait Islander parties where the Duty of Care Guidelines indicate a significant risk of encountering cultural heritage in the planned works area. In the Options Paper, the proposed definitions of 'prescribed activity' and 'excluded activity' may capture a significant array of carrier activities (including connections and repairs to infrastructure), which could result in Telstra being required to comply with additional consultation requirements. As discussed further below, Telstra proposes that activities related to the provisioning, connection and repair duties of telecommunications carriers be excluded from the definition of 'prescribed activity'.

## Definition of 'prescribed activity'

The example definition of 'prescribed activity', for which consultation would be required regardless of whether or not the activity is in a high-risk area, will capture significantly more activities than what are currently captured under the Duty of Care Guidelines. Under categories 3 and 4 of the Duty of Care Guidelines, the use and maintenance of services and utilities (including telecommunications) on an area where such services and utilities are currently being provided or in areas subject to Significant Ground Disturbance can generally proceed without further assessment.

Importantly, the Duty of Care Guidelines do not guide a proponent to further assessment where additional disturbance may occur in the immediate vicinity of existing infrastructure (Developed Areas), nor where additional disturbance to the ground below the level of existing disturbance may occur in

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<sup>1</sup> Customer Service Guarantee, Telstra. Available here: <<https://www.telstra.com.au/consumer-advice/customer-service/customer-service-guarantee>>.



areas subject to Significant Ground Disturbance. As currently presented, the new proposed definition for 'prescribed activity' and the proposed consultation requirements will require a proponent to consult in both those circumstances. This is a significant change and, from Telstra's perspective, is likely to include installation and maintenance activities in both rural and urban developed areas (whether or not the applicable area is mapped as high-risk).

Telstra is concerned with the proposed definition of 'prescribed activity' and suggests that the Department consider expressly excluding telecommunications activities as described above from the definition.

### Definition of 'excluded activity'

There are 'maintenance' provisions in the Telecommunications Act, which include an ability to undertake for 'like for like' replacement of a telecommunications facility in certain circumstances. This work may require ground disturbance, including of areas not previously disturbed. Telstra considers it would be of benefit for the proposed definition of 'excluded activities' to extend to such maintenance activities taking place within existing infrastructure footprints, or at least in the immediate vicinity of existing infrastructure. For example:

- **Mobile or radio tower sites:** Where these are located in national parks (i.e. a high-risk area), these may or may not be in a fenced compound, but are located in an area clear of trees and consist of several carriers' huts and towers. With the exception of the ground underneath the huts and towers, it may not be clear that the ground has been significantly disturbed. Telstra queries whether it is practical to force consultation in these circumstances in order to conduct necessary maintenance works to such a site, particularly if there are no obvious risks to cultural heritage (i.e. the site is clear of any physical indicators of cultural heritage).
- **Underground cable/conduit:** Underground cables or conduit can be located in national parks and road reserves that pass through national parks. When the roads reserves are created (often by the removal of surface and vegetation by bulldozers), the cable is then buried within the road reserve. Repairing the cable may involve disturbing previously undisturbed ground underneath the existing disturbance in order to reach the cable. Such activities may not fall within the proposed definition of 'excluded activities'.

### Definition of 'other land use activity'

The Options Paper proposes prescribed consultation requirements for 'any other land use activity' in a high-risk area. Telstra suggests that the definition of 'any other land use activity' should exclude non-soil disturbing activities such as those involved with the maintenance of its network so that such activities do not require consultation.

### Mapping

Telstra supports the proposed mapping to enable engagement, but queries the level of detail on the maps. It would be helpful if the maps were sufficiently detailed so as to include existing infrastructure sites on the maps and have these sites excluded from high-risk areas.

Areas that have been significantly disturbed due to activities such as road clearing, infrastructure installations, and other types of developments should be excised from the mapped high-risk areas wherever possible. Telstra suggests that the exception to these exclusions could include areas where known cultural heritage items are located, which must be brought to the attention of proponents via searches of the cultural heritage database. This would remove the need for unnecessary consultation in circumstances where there is objectively a low risk of harm to cultural heritage.



### **Mandatory reporting of compliance**

Telstra queries whether the proposed mandatory reporting of compliance is intended to be used to assist in reducing the number of repeated heritage surveys over the same area of land. If so, Telstra supports the proposal and considers it would be beneficial. However, if proponents have no access to information concerning previous consultations and/or surveys and are required to consult again, Telstra considers there may be little benefit in recording much more information than the Aboriginal or Torres Strait Islander party's consent on any given consultation. Telstra is cognisant of the fact that additional reporting requirements will require further resourcing.