

30 March 2022

Cultural Heritage Review Team  
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships  
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Dear Cultural Heritage Review Team

Cement, Concrete and Aggregates Australia (**CCAA**) is the peak industry body representing the \$15 billion-a-year heavy construction materials industry in Australia. CCAA thanks you for the opportunity to provide feedback on the ***Options paper – Finalising the review of Queensland’s Cultural Heritage Acts*** (draft Options Paper).

### ***About our industry***

Our members are involved in the extraction and processing of quarry product and cement raw material products, as well as the production and supply of cement, pre-mixed concrete and supplementary materials. Collectively known as the heavy construction materials industry, our members range from large global companies, to SMEs, and family operated businesses. Employing more than 8,000 people directly, and 18,000 indirectly, our industry is based in all parts of the State, producing approximately 45 million tonnes of sand, stone and gravel (ie aggregates); 7.2 million cubic metres of pre-mixed concrete; and 2.2 million tonnes of cementitious material (eg cement, flyash) each year.

CCAA members work with Traditional Owners through Cultural Heritage Management Plans and support actions to avoid harm to significant values of Cultural Heritage in the construction and operation of their sites. Where this cannot be avoided, CCAA members actively work with local Traditional Owners to minimise and manage such impacts.

### **Feedback on Cultural Heritage Review Options Paper**

#### **Part 3.3 Proposals to improve cultural heritage protection (pg.11)**

***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.***

**Further discussion and clarification required: CCAA members note that while there are positive aspects to Proposal 1, concerns have been raised regarding the overall Proposal as outlined below:**

- Publicly available mapping of potential cultural heritage areas in Queensland will assist in providing industry with certainty regarding how projects may impact on cultural heritage and allow this to be identified far earlier in the project planning phase. However, any mapping needs to be coupled with guidelines which explain that the mapping is only a trigger map for potential further detailed assessment rather than prohibitions for development.

- The consultation pathways described appear to provide clear pathways to manage cultural heritage for industry proponents based on the specific location and activity proposed; and
- A formal dispute resolution process will provide a pathway to resolution for projects where required, although robust processes and timeframes would need to be developed.

CCAA members have also indicated that the inclusion of the local cultural heritage party in the mapping would be of benefit so that consultation could occur with the most appropriate party.

However, CCAA members are concerned that the proposed system will generate significant workload – for example – the new mapping system, revised definitions) and additional burden on Aboriginal and Torres Strait Parties' resources to assess and manage the additional requirements. CCAA believes that the Department should undertake a project to model the amount of work that this Proposal will generate, taking into consideration the resources of Aboriginal and Torres Strait Island Parties for further consideration before implementing this Proposal.

CCAA members have also raised concerns regarding the terms & definitions of 'High Risk Area/Mapping' given that the mapping does not involve detailed site survey (rather, it will be completed as a desktop assessment at a State-wide level, and used as a 'trigger map' for further assessment). Therefore, it is not appropriate to describe it as 'High Risk' when there has been no detailed validation works, and CCAA members recommend that the term be changed to 'Potential Aboriginal and Torres Strait Cultural Heritage Area'. The definition would also need to be changed on pg. 13 '*due to the area having ~~known~~ potential cultural significance to Aboriginal and Torres Strait Islander peoples*'.

Any adoption of this proposal should include timeframes around consultation, and when formal dispute resolution is sought, and clear process/timeframes for resolution to be finalised to provide clarity and certainty to all parties involved. CCAA members have also noted that the Cultural Heritage Assessment Framework removes reference to the role of the archaeologists and suitably qualified persons (previously referenced in the Duty of Care Guideline); and believes that it is important that these experts continue to be referenced as having an important role. For example, in determining whether the activity impacts a Significant Aboriginal or Torres Strait Islander area or object (dot point 1, pg. 12), consideration is to be given to existence, extent, and value of the cultural heritage by the Aboriginal or Torres Strait Island party. This is where suitably qualified persons need to be engaged to provide expertise. In addition, dot point 2 (pg. 12) should also reference plans to avoid harm, mitigate harm or offset harm.

**Proposal 2 - Integrate cultural heritage protection and mapping into land planning to enable identification of cultural heritage at an early stage and consideration of its protection.**

**Supported in principle:** CCAA members support Proposal 2 in principle, as it is logical and would be highly beneficial for cultural heritage considerations to inform development from the earliest stage of land use planning through to site-by-site development. However, further discussion regarding the proposed integration of protection controls into Queensland Planning Schemes and the Planning Act is required due to potential delays in the planning determination process.

**Proposal 3 - Amend the Cultural Heritage Acts to expressly recognise intangible elements of cultural heritage.**

**Not supported:** CCAA members acknowledge the importance of intangible cultural heritage, however, the inclusion of 'intangible elements' in the definition of cultural heritage is a significant change from the current approach in Queensland and broadens the application of the legislation.

CCAA members believe that the inclusion of the term will create an element of uncertainty as cultural heritage won't be limited to physical (tangible) elements that are more easily identified, however, will rely on engagement with the relevant parties for an area to determine the presence of cultural heritage (this concern is also reflected in the Options Paper in section 1.4). Any consideration of 'intangible elements' should include the requirement to provide evidence to validate the element.

**Proposal 4 - Provide a mechanism to resolve and deal with issues arising under the Cultural Heritage Acts.**

**Supported in principle:** CCAA members support Proposal 4 in principle, however further details on how each option presented would operate (processes, timeframes, etc.) would need to be considered.

**Proposal 5 - Require mandatory reporting of compliance to capture data and support auditing of the system.**

**Not supported:** CCAA members believe that while having the potential to provide greater certainty and transparency for industry to demonstrate compliance with agreements, the proposed changes would result in additional administrative burden for industry and significant resourcing requirements for Government.

**Proposal 6 - Provide for greater capacity to monitor and enforce compliance.**

**Not supported.** CCAA members have raised concerns that the administrative burden for all parties under this proposal would be extensive. Furthermore, greater clarity regarding how this would operate in practice is needed for industry to fully consider and provide feedback. The information provided indicates this proposal would follow a similar regulatory/compliance framework as non-compliances under the *Environmental Protection Act 1994* which requires significant resourcing from both Government and industry.

**Section 4.3 – Proposal to reframe definitions – Option 2 (pg. 22)**

CCAA members support **Option 2** which proposes:

- Cultural Heritage Acts are changed so that a previously registered native title claimant subject to a negative determination (native title does not exist) is not a native title party.
- Section 35(7) of the Act applies.

CCAA members have noted that Option 2 is supported as:

- It provides a higher degree of certainty for industry as operators can work with a single defined Aboriginal or Torres Strait Island party rather than multiple groups.
- The previous registered native title holder should be acknowledged as the Aboriginal or Torres Strait Island Party.
- All Cultural Heritage Management Plans made with the previous native title party (i.e. before the amendments come into force) would continue to be recognised.

With regards to Dispute resolution (pg. 21), CCAA members support the establishment of a First Nations body or advisory group to assist with disputes arising under the Cultural Heritage Acts (including to help the parties when there is a disagreement), and appointing a suitable mediator, or other appropriate form of alternate dispute resolution, when required. CCAA members also recommend that decisions are required for each area within 24 months of commencement of the new legislation so that certainty on the party status is well established prior to cultural heritage assessments being required.

CCAA and its' members thank you for the opportunity to provide comment on the proposed Cultural Heritage Review Options Paper and if you would like to discuss any of the matters raised in the submission, I can be contacted on 0439 955 020 or [aaron.johnstone@cca.com.au](mailto:aaron.johnstone@cca.com.au)

Yours sincerely



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