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Cultural Heritage Acts Review
Department of Seniors, Disability Services and
Aboriginal and Torres Strait Islander Partnerships
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CITY EAST QLD 4002

The logo for Ashurst, featuring the word "ashurst" in a lowercase, bold, sans-serif font.

By email: CHA_Review@dstatsip.qld.gov.au

Dear Sir/Madam

ASHURST SUBMISSION ON QUEENSLAND GOVERNMENT'S OPTIONS PAPER – FINALISING THE REVIEW OF QUEENSLAND'S CULTURAL HERITAGE ACTS

Ashurst welcomes the opportunity to provide a brief submission in response to the Department's Options Paper released in December 2021.

At this stage, Ashurst does not wish to make a submission in relation to the substantive proposals outlined in the Options Paper. Instead, Ashurst wishes to comment on the requirement to provide notices to owners and occupiers under s 91(1)(b) of the *Aboriginal Cultural Heritage Act 2003* (Qld) (**ACHA**).

While this issue is not addressed in the Options Paper, we are strongly of the view that if there is to be any legislative reform to the ACHA following this consultation process, it would present an opportune time to also repeal this burdensome requirement.

Currently, if a sponsor wishes to develop a Cultural Heritage Management Plan (**CHMP**) under Part 7 of the ACHA, s 91 of the ACHA requires the sponsor to provide written notice to certain persons, including the chief executive, the relevant Aboriginal cultural heritage body, and each person who is an owner or occupier of a part of the plan area. The written notice must contain certain prescribed information relating to the project.

The notices serve no obvious purpose, and certainly do not contribute to better cultural heritage protection outcomes. In fact, in some instances, the notices can be alarming to owners and occupiers who do not understand the context in which the notices are required to be provided. There is no requirement for owners and occupiers to take any action following receipt of a notice.

Ashurst submits that there is an unnecessary administrative burden associated with issuing a s 91 notice to each owner and occupier of a part of the plan area. In some instances, a sponsor may need to generate hundreds, or even thousands, of these notices which are posted to the relevant owners and occupiers.

For any project that a sponsor is undertaking, it has legislative requirements to engage with relevant owners and occupiers to deal with a range of issues relating to land access. It is not appropriate for

a sponsor to have to advise owners and occupiers of their intention to enter into a CHMP with the relevant Aboriginal party for an area. This requirement is particularly problematic when a sponsor progresses its cultural heritage arrangements before its land access arrangements, meaning that the first time an owner or occupier may hear of a new project is by receiving a s 91 notice dealing with cultural heritage matters.

We are aware of circumstances where the administrative burden associated with issuing these notices has in fact deterred proponents and Aboriginal parties from entering into CHMPs under Part 7 of the ACHA. We are aware of a number of entities that have wished to enter into "claim-wide" CHMPs with relevant Aboriginal parties, but have been unable to do so because of the administrative burden of having to issue hundreds of thousands of s 91 notices to owners and occupiers.

We are otherwise supportive of retaining the notice requirement in s 91 of the ACHA, but consider that the requirement to issue these notices to owners and occupiers in accordance with s 91(1)(b) should be repealed.

Having regard to *Fundamental Legislative Principles: The OQPC Notebook*, published by the Office of the Queensland Parliamentary Counsel, Ashurst notes that, "Legislation should be as simple as possible and should only contain the degree of complexity necessary to achieve desired policy objectives in a legally effective way".¹

Currently, s 91(1)(b) is not effective in achieving the policy objectives established by the ACHA.

Ashurst would welcome the opportunity to discuss any of the matters raised in this submission. The Ashurst contacts are Tony Denholder, Partner and Libby McKillop, Senior Associate.

Yours sincerely



Ashurst

¹ *Fundamental Legislative Principles: The OQPC Notebook*, p 88.