

Our Ref: QPA Cultural Heritage submission

31 March 2022

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP)

To whom it may concern,

QLD Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Cultural heritage Act 2003.

Thank you for the opportunity to provide feedback in relation to the *Options Paper: Finalising the review of Queensland's Cultural Heritage Acts*, December 2021.

The options paper identifies 10 proposals to ensure the continued protection of Aboriginal and Torres Strait Islander cultural heritage. Queensland Ports Association (QPA) is largely supportive of the proposals to reshape the Cultural Heritage Acts. Overall, greater involvement by Traditional Owners is required in cultural heritage management. The specific recognition of intangible cultural heritage is considered necessary and is welcomed. Similarly, an increased level of reporting, monitoring and compliance work is considered necessary to ensure the effective operation of the Acts.

Our submission focuses on the following two (2) proposals as they relate to Queensland Ports:

- Replacing the Duty of Care Guidelines with a New Framework.
- Integrating cultural heritage protection and mapping into planning processes.

Given the complexity of the proposed new framework it is considered that active involvement of Aboriginal and Torres Strait Islander peoples is essential to achieve the desired outcomes for the inform the New Framework and proposed mapping processes.

Replacing the Duty of Care Guidelines with a New Framework

The review proposes a new framework to replace the current Duty of Care Guidelines with the aim of providing requirements for early engagement, consultation and agreement-making with the relevant Aboriginal or Torres Strait Islander Party. Whilst it is agreed that a new framework is required, the proposed changes do not appear to address the matter of 'self-assessment' and implementation of the framework is contingent upon two key elements:

- the mapping of the whole of Queensland to identify high-risk cultural heritage areas; and
- the definition of a prescribed activity and an excluded activity.

Both of these elements, represent significant challenges. The Options Paper identifies that government would be responsible for organising and carrying out the mapping of country, but it is unclear how this would be undertaken. Given the scale of the exercise it is unlikely that mapping could be achieved in a

timely manner and is most likely to be undertaken at the very broad scale across large parts of the State. Given their coastal location, the operational lands of ports, are often within areas which would be included in the “high-risk” area definition. In the absence of detailed mapping, it is expected that large areas of coastal land would be mapped as high-risk areas without stakeholder consultation. Additionally, it is unclear how the mapping process may apply to areas of sea country. Many Queensland ports have a long history of working with Traditional Owners and have detailed archaeological surveys of lands. It is unclear how this information would be incorporated into any mapping for more accurate representation of areas of cultural heritage, as the cultural sensitivity of information often constrains the appetite for making such info publicly available and is a well understood management issue when dealing with cultural heritage.

Overall, it is considered that the proposed mapping has the potential to result in significant delays to potential future development should areas not be mapped.

The example definitions of a prescribed activity and excluded activity are very broad and appear to require a level of interpretation to determine the appropriate definition for a proposed activity. Having just two definitions is limiting, where virtually all activities apart from minor maintenance, are likely to fall into the “prescribed activity” definition. This is likely to result in an overwhelming volume of consultations being required. As recognised in the Options Paper, this would represent a significant burden for Traditional Owner parties, as well as ports.

Overall, it is not clear how the proposed new definitions will deliver the desired outcomes, particularly given the challenges in applying definitions and the onerous consultation requirements. Again, this has the potential to result in significant delays to potential future development of Queensland’s ports.

Integrating cultural heritage protection and mapping into planning processes

Queensland ports are required to have Land Use Plans (LUP) in place for all ports. Incorporation of mapping into these documents would require a full review of all plans. The review process, under the *Transport Infrastructure Act 1994*, is lengthy and a number of ports are currently undertaking reviews relating to the *Sustainable Ports Act 2015*. It is unclear what benefit would be achieved through the inclusions of cultural heritage mapping outcomes in local LUP’s. It is considered that a more appropriate approach would be via state level mapping incorporating cultural heritage as an overlay of State Significance.

QPA acknowledges the Ports role to play in contributing to the successful outcomes of these proposed changes and commits to providing productive feedback throughout consultation processes. We invite further discussions and involvement, including specific meetings with the Department if requested.

Yours sincerely,



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QPA Environment Planning and Sustainability Working Group Chair

