

8 August 2019



Cultural Heritage Unit  
Department of Aboriginal and Torres Strait Islander Partnerships  
PO Box 15397  
CITY EAST QLD 4002  
(By email: [cultural.heritage@datsip.qld.gov.au](mailto:cultural.heritage@datsip.qld.gov.au) )

Dear Cultural Heritage Unit,

**Consultation Paper – Cultural Heritage Acts Review July 2019**

Thank you for the opportunity to provide feedback on the Consultation Paper on the Cultural Heritage Acts Review (**Consultation Paper**). This submission is made on behalf of Energy Queensland Limited ACN 612 535 583 (**Energy Queensland**).

Energy Queensland is a Government-owned corporation which provides electricity to approximately 4.8 million Queenslanders. Electricity is distributed by its subsidiaries, Ergon Energy Corporation Limited and Energex Limited, via a network ranging from Tweed Heads up to the Torres Strait and from Brisbane across to Birdsville. This network consists of 33 isolated power stations, 72 bulk supply points, 571 zone substations and 205,000km of powerlines (overhead and underground). Energy Queensland's electricity network is the largest in Australia and is recognised in the State Planning Policy as a State interest which drives the economy and provides essential services and facilities to Queenslanders. Energy Queensland has a strong interest in the preservation of cultural heritage as its electricity network intersects many landscapes where cultural heritage may be present.

Energy Queensland supports the current Cultural Heritage Acts (Acts).

**1. Ownership and defining cultural heritage:**

The Cultural Heritage Acts define cultural heritage as being anything that is a significant Aboriginal or Torres Strait Islander object and any area with evidence of archaeological or historic significance. Areas may be of significance due to tradition, history or contemporary history and the Cultural Heritage Acts recognise that it is not necessary for these areas to contain markings or other physical evidence.

Energy Queensland supports the current definition of 'cultural heritage.' The definition is sufficient to cover various types of cultural heritage, including intangible cultural heritage which is undoubtedly important to Aboriginal and Torres Strait Islander peoples.

Extending the protection mechanisms within the Acts to recognise broader cultural landscapes may raise potential implementation difficulties for Proponents including:

- the recognition of broader cultural landscapes in assessing the impacts on cultural heritage arising from land use activities may significantly increase timeframes for connecting electricity to Queensland customers and increase the cost of constructing powerlines and other electrical infrastructure.
- the recognition of cultural landscapes will also raise a number of questions for Proponents - how will cultural landscapes be defined? How will existing infrastructure within a deemed cultural heritage landscape be impacted? What mitigation measures are to be expected when dealing with cultural landscapes?
- Further defining the definition of cultural heritage may result in DATSIP being an arbitrator for what constitutes aboriginal cultural heritage. This has potential for increased consultant involvement which may marginalise Aboriginal People from their cultural heritage.

## **2. Identifying Aboriginal and Torres Strait Islander parties:**

The Acts prescribes a process for identifying the Aboriginal/Torres Strait Islander party by reference to the status of native title claims. This process, including the reliance on the “last man standing” rule, whilst not perfect, arguably provides certainty from both an Aboriginal Parties perspective and Proponent’s perspective.

If there is deviation from the current approach used to identify Aboriginal Parties, DATSIP may create conflict amongst Aboriginal groups and may create uncertainty for Proponents.

## **3. Land User Obligations:**

Any changes to the Acts should include a practical process for proponents to confidently and efficiently be able to undertake activities which are unlikely to cause harm to Aboriginal/Torres Strait Islander cultural heritage. By necessity this will involve at least some level of self-assessment.

The alternative is a requirement to engage with the Aboriginal/Torres Strait Islander party each time activities are undertaken. That is simply not practical or reasonable, in terms of time and cost, in particular given that the Aboriginal/Torres Strait Islander party is often not adequately resourced to engage.

Energy Queensland has a robust cultural heritage assessment process and utilises in house subject matter experts. This process includes the delivery of cultural heritage training to employees and contractors, cultural heritage inductions prior to commencement of works and consultation and engagement with Aboriginal Parties where required. This assessment process should continue to be facilitated in any review of the Acts.

Energy Queensland would support the introduction of dispute resolution assistance for parties negotiating voluntary agreements. Energy Queensland does not offer a view as to who should undertake this role. This process should be a free service and have short timeframes which

take into consideration statutory timeframes. It is recommended that DATSIP consider the following issues in the development of any dispute resolution process:

- The scope of the dispute resolution process. i.e.:
  - Does it apply to just the Guidelines;
  - Will issues relating to remuneration, engagement of technical advisors, use of agreement templates and cultural heritage management be considered;
- The level of skills required of mediators/arbitrators and others involved in the process including mediation skills and cultural heritage management skills;
- The process for triggering dispute resolution for each party;
- The appeal rights and processes in relation to decisions made during the dispute resolution process; and
- Who pays the cost for dispute resolution, when it would be triggered and where would it be undertaken. It is Energy Queensland's opinion that any dispute resolution process should be a free service and that parties are not liable for each other's costs.

Energy Queensland endorses the current legislation regarding cultural heritage management plans. Energy Queensland's preferred option is to develop "other agreements" under the Act due to short statutory timeframes. This means time and costs associated with negotiating is minimal and has less impact to the cost of constructing powerlines and other electrical infrastructure.

#### **4. Compliance Mechanisms**

There are sufficient mechanisms in the Acts to protect Aboriginal/Torres Strait Islander cultural heritage from harm. Significant penalties apply for offences for breaching the duty of care and the other offence provisions.

There are also already existing mechanisms for payment of rehabilitation costs to the Aboriginal/Torres Strait Islander party as was applied in the recent case of *Dunn v Ostwald Construction Materials Pty Ltd* [2018] QMC 23.

#### **5. Recording Cultural Heritage**

There is a need to improve the management and content of the cultural heritage register and database to improve outcomes for Proponents and Aboriginal parties and protect heritage values.

The status of recorded sites on the register and database should be periodically reviewed and updated to identify and reclassify sites that have been completely destroyed or substantially damaged or inaccurately recorded. Sites identified by Proponents or other parties such as landholders or government agencies that no longer exist or have been largely destroyed should be maintained in the register but removed from the active database and placed in an archive folder for reference is required as residual heritage may still exist. This would improve the effectiveness of the database searches by the removal of unnecessary results.

Adoption of a standardised Aboriginal database recording system via an application on a smartphone or tablet as used in NSW and Victoria would help to improve the accuracy and content of field recordings which at present are recorded in an ad hoc manner with different interpretations of what constitutes a site, and incorrect use of GPS recording devices and topographic maps.

Additionally, for Proponent efficiencies in searching the database the dataset could be maintained on a platform which will allow the consumption of the dataset via the representationally state transfer service.

## 6. Improvement Opportunities

It is recommended that the revised Acts continue to allow for self-assessment by a Proponent, or an appropriately 'qualified cultural heritage professional', of cultural heritage risks.

Furthermore, the setting of maximum hourly or daily rates for conducting site inspections, monitoring, attending to finds or other cultural heritage work would significantly reduce disputes between Proponents and Aboriginal and Torres Strait Islander parties. The majority of the disputes that arise between the parties relate to the payment of costs. There have been arguments in the past that this should be left to market/commercial negotiations. However the reality is that there is only one Aboriginal/Torres Strait Islander party that a proponent is required to engage with.

Energy Queensland acknowledges the majority of Proponents will seek self-assessment and the majority of Aboriginal Parties will seek consultation. However, as the Act stands now, Energy Queensland believes it continues to strike an appropriate balance of protecting sites of significance to Aboriginal Parties whilst continuing to allow progress of projects.

Please contact Danny Markey on (07) 4616 2583 or via email address: [danny.markey@energyq.com.au](mailto:danny.markey@energyq.com.au) for any further information in relation to this submission.

Yours Sincerely



Sonya Bryce  
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