



nbn-Confidential: Commercial

30 March 2022

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

## [nbn Submission on Options Paper – Finalising the review of Qld’s Cultural Heritage Acts](#)

### [Introduction](#)

**NBN Co (nbn)** welcomes the opportunity to provide a submission as part of the Department’s review of the Options Paper, released in December 2021.

**nbn**’s purpose is to lift the digital capability of Australia, allowing Australians to have access to a fast, reliable broadband network, at least possible cost to the taxpayer. The nature and scale of our purpose means that **nbn** often undertakes land inspection, facilities installation, subscriber connections and maintenance activities on land that is or may be of Indigenous cultural heritage value. As such, the Options Paper, and the Department’s review process are of particular relevance to **nbn** and our Delivery Partners (contractors).

Set out below are **nbn**’s responses to proposals one (1), five (5) and six (6) raised in the Department’s Options Paper. **nbn** requests that the Department consider **nbn**’s replies as part of its review of the Options Paper.

### [Replies to Proposals Raised in the Options Paper](#)

#### **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.**

1. Do you support this proposal and option? Why or why not?

**nbn** would seek to retain the current Duty of Care Guidelines which we regard as achieving a suitable balance between providing critical infrastructure providers with certainty and a self-assessable compliance pathway and appropriate protection of cultural heritage. With regard to the proposed replacement "Cultural Heritage Assessment Framework", **nbn** does have concerns relating particularly to, the practicalities around the proposed pro-active mapping exercise to be undertaken, the relevant definitions and the workability of this proposal in those areas where there is no native title party.



2. Are there any improvements that could be made?

With regard to the proposed framework, **nbn** would suggest the integration of the (existing, non-interactive) register mapping with the proposed high risk area mapping to make it more accessible.

3. Should consultation occur for all activities in high-risk areas so there is no excluded activity?

**nbn** are apprehensive regarding the potential impact of oversimplified definitions. Given the importance of the definitions of "Prescribed Activity" "Excluded Activity" and "High-Risk Area" in the new Cultural Heritage Assessment Framework, **nbn** would urge the Department to undertake further, detailed and targeted consultation on this specific aspect.

**nbn** would broadly recommend, regard be had for the Victorian *Aboriginal Heritage Regulations 2018*. **nbn's** observation is that the fundamental difference between the Queensland proposal and the Victorian Regulations is that the scope of "area of cultural heritage sensitivity" does not include areas where there has been "significant ground disturbance". Under the Victorian Regulations, the reach of a mandatory Cultural Heritage Management Plan is limited by the scope of "exempt activity" and by what is not covered by the definition of "high impact activity" and by the exclusion of areas of "significant ground disturbance" from the definition of "area of cultural heritage sensitivity".

An approach, similar to the Victorian Regulations would ensure that **nbn** can continue to keep the Queensland community connected with a reliable, essential, broadband network (telecommunications) service. The adoption of a "traffic light" system for consultation, linked to activity could also be a useful tool for all parties.

4. What are your thoughts on proactively mapping cultural heritage areas?

**nbn** note the lack of detail provided in the Options Paper about this proposal and highlight a number of concerns, not limited to, for example – how will the mapping be updated, can the mapping be "ground-truthed"/verified, will there be any ability for land-users to provide input into this mapping exercise, will there be dispute resolution processes where the views of the relevant Aboriginal party/s regarding an area are not unified.

**nbn** reiterates that we would request the Department undertake further and targeted, consultation regarding the definitions, if the new Cultural Heritage Assessment Framework is to be adopted.

Should such mapping be adopted, **nbn** would encourage that access to the data be free and access be made to defined polygons instead of drop points.

5. What types of activities and areas should be included in the definitions?

As outlined above, **nbn** would urge the Department to undertake further, targeted consultation process regarding the definitions if the new Cultural Heritage Assessment Framework is to be adopted. **nbn** provides the following specific comments:

- Prescribed activity? No further comment to example nominated within Options Paper, page 13. We would seek that "ground disturbance" be defined, in a similar to manner to "significant ground disturbance" under the Victorian *Aboriginal Heritage Regulations 2018* and associated "Practice Note - Significant Ground Disturbance", published by Aboriginal Victoria.



- high-risk area? No further comment to example nominated within Options Paper, page 13
- excluded activity? **nbn** nominates the following content to be considered for inclusion in excluded activity: *activities to maintain and operate existing network, installation activities within existing infrastructure corridors where the ground has been previously disturbed, or to the ground to the level of disturbance that currently exists*. Moving away from the existing categories under the Duty of Care from 5 to 2 proposed new terms, does imply that a proposed activity will fall under one of the two terms. If the definitions are not written in an exhaustive or prescribed way, there is possibility that works could be assumed 'prescribed' based on an inability to safely conclude that works are otherwise 'excluded'. The proposed framework is silent on how to act in such instances.
- significant Aboriginal or Torres Strait Islander area or object? No further comment to example nominated within Options Paper, page 13

6. Should consultation protocols be developed for each Aboriginal party and Torres Strait Islander party?

**nbn** would welcome consultation protocols with clearly defined statutory timeframes for all parties. **nbn** is concerned about the lack of detail provided in the Options Paper relating to timeframes that will apply to any mandatory consultation processes and the potential impact that this could have on the delivery of our activities.

Nomination of the types of matters that could "stop the clock" of these timeframes would also be useful. **nbn** would seek for the protocols to define who should be consulted and provide guidance for triggers for arbitration, should agreement not be reached. Protocols for non-responsiveness would also assist, for example an escalation point of contact or recommendations as to how to proceed.

7. How should Aboriginal and Torres Strait Islander parties be supported to manage increased consultation about cultural heritage protection?

Aboriginal and Torres Strait Islander parties would need to be provided with ongoing financial support to facilitate increased consultation. Standard fees for parties, applying state-wide or in regions, for example, consultation, document review, site monitoring etc could be nominated. This would assist as a funding source for parties and provide consistency for all stakeholders. The nomination of timeframes for phases of consultation would also be of assistance for all parties to assist in scheduling and managing of workloads.

8. Should the development of a new assessment framework be led by a First Nations advisory group (with other experts as required)?

**nbn** would support the development of a new assessment framework by a First Nations advisory group, provided with appropriate budgetary and administrative support.



### Proposal 5

#### Require mandatory reporting of compliance to capture data and support auditing of the system.

1. Do you support this proposal and option? Why or why not?

There was a lack of detail provided in the Options Paper about the extent to which data will need to be recorded and provided to Government. For example, if the new legislation requires all documents relating to consultation to be provided to the Government that would be an onerous administrative burden to **nbn**, which we are unsure would result in better cultural heritage compliance outcomes.

**nbn** would support mandatory reporting for actual cultural heritage agreements (as opposed to all other documents associated with any "consultation"). We note a potential to remove the complexity and time from the process if standard templates and forms could be utilised. However, we would request further clarity on this proposal.

2. Are there any improvements that could be made?

The establishment of an organisation that could facilitate efficient direction to relevant First Peoples contacts and be responsible for the maintenance of these records.

### Proposal 6

#### Provide for greater capacity to monitor and enforce compliance.

2. Do you support these options? Why or why not?

**nbn** would support the majority of the options nominated in the Options Paper to monitor and enforce compliance. We would request that for actions such as education orders and compulsory training, that parameters be nominated that ensure they are "fit for purpose" and consider scope, audience, participation etc and matters such as who provides the education/training.

### Other matters

Due to the extensive changes proposed, **nbn** would seek appropriate transitional provisions be considered for any new legislation, supporting statutory guidelines and the recognition of existing agreements.

### Further Discussions with the Department

**nbn** would be happy to discuss the issues raised in this submission with the Department if this would assist. If the Department has any questions or requires any further information in relation to the issues raised in this submission, please contact Janine Stablum via email [janinestablum@nbnco.com.au](mailto:janinestablum@nbnco.com.au).

Yours sincerely,

**Lisa Berrie**

A/General Manager

Land Access & Stakeholder Engagement, **nbn**