

## **Written submission on the *Options Paper: Finalising the Review of Queensland's Cultural Heritage Acts***

### **1. Introduction.**

Thank you for the opportunity to make a submission on the Options Paper. APA is a leading Australian energy infrastructure business. We own and/or operate an extensive network of energy infrastructure in Queensland including a solar farm, gas power stations, a gas storage facility, domestic gas networks and over 2500km of gas transmission pipelines. APA supports the intent of the legislative review to promote leadership by First Nations peoples in relation to their heritage and to strengthen the statutory mechanisms for its protection and management. APA further supports the intent of expanding the definition to recognise a wider variety of heritage values and introducing more flexible compliance measures.

It is appreciated that the Options Paper is designed to generate comment and discussion and much of the detail is yet to be finalised, including definitions of key terms. It is therefore not possible for APA to assess the full implications of the proposed reforms to its operations at this stage, further consultation will be needed once reform options have been refined and detailed draft legislative proposals are released for comment. The key matters of interest to APA are grouped under appropriate headings below.

### **2. Maintenance of existing facilities**

APA operates a range of energy infrastructure in Queensland including linear gas pipelines constructed within easements. This infrastructure needs to be maintained and repaired as necessary, which can include activities such as vehicle patrols, 'dig-ups' to repair the pipe, erosion repairs and vegetation clearing to maintain the right of way. These works can require heavier equipment to access the sites along existing tracks and paths. Such maintenance works are covered under the existing Duty of Care, but the Options Paper proposes the replacement of the Duty of Care with risk mapping and activity based triggers. There are provisions for excluded activities within high-risk areas, but the examples used under the definition of excluded works focus on clearing around infrastructure. The definition of prescribed activities includes works "*...to the ground below the level of disturbance that currently exists*". While the entire pipeline easement has been highly disturbed and the top 20cm removed as part of the construction process, the actual pipeline

trenches are only slightly wider than the pipe. During the pipeline repair dig-ups, a slightly larger trench must be dug immediately around the pipe (but still within the disturbed easement) to enable safe access by personnel and to facilitate repairs. Pipeline easements are typically surveyed for cultural heritage values prior to construction and are generally designed to avoid heritage values as much as possible. While there could be uncommon instances of higher risk based on previous finds, the potential of subsurface finds is generally low and the blanket classification of such works as a 'prescribed activity' could appreciably affect operations with little additional protection for heritage values.

It is important that APA is able to maintain and operate its infrastructure within previously disturbed areas without additional or retrospective approval requirements. This approach is consistent with the approach in other states and territories where maintenance activities in areas of previous disturbance do not require further approvals. In those instances, disturbance is based on surface disturbance and identified risks rather than an arbitrary approach based on the comparative depth of works. All pipelines operate under regulatory approvals and APA has developed 'operational management plans' for its assets, which include cultural heritage. These plans are living documents that are periodically reviewed along with the associated on-ground practices. One option may be to make pipeline maintenance work undertaken in accordance with an approved plan excluded activities. Alternatively the situation could be addressed in the bill/Act itself through an outcomes focussed provision that emphasises maintenance activities must not cause additional disturbance or harm to heritage values, rather than relying on a blanket approach that could overwhelm the administration of the Act.

### **3. Activity Triggers**

The application of activity triggers based on the level of previous disturbance is often hard to define, determine or apply. A risk based system similar to the Victorian model would be more effective as it has a two part trigger linked to the activity and the risk mapping. This approach provides a high level of heritage protection but also balances risk with cost and the capacity of all parties to manage the increased number of resulting referrals. A system that overlays activities with risk will also be more realistic if the system is integrated into land planning.

#### **4. Integrated Planning**

Full integration of risk mapping into planning requirements is supported in principle but is lacking in detail. The current heritage system affords a degree of flexibility to manage issues through agreements with First Nation people, how would agreements be incorporated and recognised under the planning system? It is important that flexible agreement options are maintained in Queensland; a single agreement/approval model can be problematic as the scope and scale of agreements should be 'fit for purpose' and not overwhelm the administration of the Act.

#### **5. Intangibles Heritage**

Intangible heritage is increasingly recognised within the discipline and via legislative reforms in other jurisdictions; its explicit recognition in Queensland is supported in principle subject to further details. Consideration will need to be given to how expanded definitions would be recognised under existing agreements and approvals, and in previously disturbed areas.

#### **6. Dispute resolution mechanisms**

The options paper only specifies a dispute resolution mechanism and the options are listed without analysis. There should be a range of options for dispute resolution depending on the nature and seriousness of the dispute.

#### **7. Mandatory reporting of agreements and compliance**

Reporting and enhanced compliance tools are supported in principle, but some controls need to be considered. The current system has worked well because there is flexibility in the type of agreements that can be reached and form the basis of approvals - a 'fit for purpose' approach. At present the only agreements that need to be reported and mapped are cultural heritage management plans. If the proposed reporting of all agreements were implemented, how would they be categorised and what details would be made public? Reporting of agreements should not limit the nature and form of acceptable agreements between land users and the Aboriginal or Torres Strait Islander party. Agreements under the current system can allow for compliance inspections and reporting if that is what the parties want. Most agreements also address common grievance issues and agreed processes and solutions. How would the introduction of broader compliance and grievance resolution mechanisms be reconciled with those under an agreement? Resourcing

would need to be adequate to give meaning and effect to any enhanced statutory measures.

Power generation facilities are necessarily secure and visitors are required to undertake inductions and follow safety protocols. The proposed non-consensual power of entry by authorised officers under 'reasonable circumstances' could potentially place the facility, personnel and the authorised officer at risk. This could also potentially apply to audits of agreements depending upon the terms of how such audits are conducted.

The introduction of infringement notices and new educational measures are supported in principle subject to further details, but infringements should still have natural justice mechanisms such as the option to legally appeal.

#### **8. Definitions of Aboriginal and Torres Strait Islander Parties**

These are primarily issues for First Nations people to decide, but from an industry perspective, who the party/ies are and the required consultation processes need to be clear from the outset of a project. APA operates numerous pieces of linear infrastructure and already liaises with multiple Aboriginal parties on many projects. A change in approach that further complicated this process without adequate clarity and support could lead to unresolvable disputes and put entire projects at risk.

From an industry perspective, Option 2 for the proposed reframing of the definitions of an Aboriginal or Torres Strait Islander party is preferred as it provides the greatest level of certainty across Queensland. Any process for the identification of Aboriginal or Torres Strait Islander parties should be clearly defined with timeframes set out.

#### **9. Establishing a First Nations Body or advisory group and recognising historic connection.**

These are primarily issues for First Nations people to decide. The scope of a First Nations Body or Advisory Group will be important i.e. is it just limited to cultural heritage or do the 'educational' measures also start to cross over into broader First Nations issues (e.g. employment and supply chain agreements), which may have implications for partnership agreements developed by industry and Traditional Owners. From an industry perspective, the roles and functions of bodies or advisory groups must be clear and should not prevent agreements directly with the Aboriginal

or Torres Strait Islander party/ies. Triggers for the referral of matters to a peak body or group should be clear and be the exception rather than the norm.

Where historic connections are recognised, industry will need clear guidance on how these requirements and views will be identified, and then balanced/reconciled with those of Traditional Owners; this is one area where dispute resolution mechanisms could be critical for industry.

Sincerely,

**Luke Bonnor**  
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Health, Safety, Environment and Heritage.

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