9th September, 2019

CHA Review
Department of Aboriginal and Torres Strait Islander Partnerships
PO Box 15397, City East QLD 4002

By Email to: cultural.heritage@datsip.qld.gov.au

POWERLINK QUEENSLAND
Response to Consultation Paper - Cultural Heritage Acts Review

Dear Sir/Madam,

Thank you for the opportunity to provide a response to your Consultation Paper into the review of the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Heritage Protection Act 2003* (the Acts).
Powerlink is committed to engagement with government to improve legislative effectiveness, for traditional owners and proponents. Powerlink would appreciate being included on all future communications regarding review of the Acts.

1. *Introduction*

   1.1. This response is made on behalf of the Queensland Electricity Transmission Corporation Limited (Powerlink).

   1.2. Powerlink is a government owned corporation (GOC) that owns, operates, develops and maintains Queensland's high voltage electricity transmission network.

   1.3. Powerlink is an essential community infrastructure provider with the primary role of providing a safe and reliable network to transport high-voltage electricity from generators to electricity distributers such as Ergon Energy and Energex to Queensland customers. Powerlink also transports electricity directly to large Queensland customers such as aluminium smelters and to New South Wales via the NSW/Qld Interconnector.

2. *Summary*

   2.1. Powerlink is committed to providing effective recognition, protection and conservation of Aboriginal and Torres Strait Islander cultural heritage, in line with the *Aboriginal Cultural Heritage Acts 2003* and the *Torres Strait Islander Cultural Heritage Acts 2003* (the Acts) through open and honest consultation and the respectful and cooperative engagement of

33 Harold Street, Virginia
PO Box 1193, Virginia, Queensland 4014, Australia
Telephone: (07) 3860 2111 Facsimile: (07) 3860 2100
www.powerlink.com.au

Traditional Owners in Powerlink's processes for the identification and management of Aboriginal and Torres Strait Islander cultural heritage.

2.2. Powerlink supports the aims of the current Acts and welcomes the opportunity to provide input into their review.

2.3. We would support changes to the Acts that provide greater certainty of process and compliance options for proponents combined with improved processes that promote greater engagement and inclusion of Traditional Owners in cultural heritage management.

3. *Ownership and defining cultural heritage*
Question: Is there a need to revisit the definitions of cultural heritage - if yes, what definitions should be considered? What additional assessment and management processes should be considered?

3.1. Powerlink notes the current definition of Cultural Heritage under the Acts which include significant Aboriginal/Torres Strait Islander objects, material evidence of occupation as well as significant Aboriginal/Torres Strait Islander areas, including those without marking or physical evidence. Powerlink supports the retention of a broad and inclusive definition.

3.2. With regard to the question of recognising the significance of broader cultural landscapes, the Acts would need to contain processes for the identification of such landscapes and defining the values that are recognised. If cultural landscapes were to be included, consideration should be given to a process for 'registration' by DATSIP of a cultural landscape and a threshold of activity, e.g. based on the nature, scale and cost of a project, that triggers consideration of impact of activities on a cultural landscape.

3.3. We note that whilst the current Cultural Heritage Study might be one means of documenting a cultural landscape, this is beyond the scope of smaller, low cost or low impact activities.

4. *Identifying Aboriginal and Torres Strait Islander parties*
Questions: Is there a need to revisit the 'last claim standing' provision – if yes, what alternatives should be considered?
Is there a need to revisit the identification of Aboriginal and Torres Strait Islander parties – if yes, who should be involved and what roles, responsibilities and powers should they have?
Should there be a process for Aboriginal and Torres Strait Islander parties to apply to be a 'Registered Cultural Heritage Body' to replace the current native title reliant model?

4.1. As noted in your Consultation Paper the Acts currently describe a hierarchy of Native Title application status to determine the Aboriginal/Torres Strait Islander Party. This method works effectively where a Determined or Registered Native Title claim exists or where the

'last claim standing' applies. Where these do not exist, or there's no clear source of advice about the party, the onus of identifying the Party currently falls to the proponent.

4.2. It should not be the role of the proponent to make judgement as to who the relevant party is (nor enter into disagreement between parties). In the absence of a Determined or Registered Native Title claim there needs to be clarity and definitive advice on the party and clear advice about whom to contact. In all cases it is essential that up to date, accurate details of parties' contact person/s is available and can be relied upon.

4.3. Consideration should be given to a single source of advice (whether by Registered Cultural Heritage Body *cf.* Victoria, regulating body, or other means). This should maintain the current reference to registered Native Title claims whilst providing certainty to proponents and to Aboriginal/Torres Strait Islander Parties where no registered claim exists.

4.4. Consideration should be given to clarifying the functions of an Aboriginal/Torres Strait Islander Party (or other alternative body). For infrastructure constructors such as Powerlink, where activities are often determined by the requirements of other legislation or safety imperatives, it is essential that streamlined processes exist, especially for urgent, minor and low cost works. Timely identification of the appropriate party and clarity of process is essential for businesses as well as for Traditional Owners.

4.5. The Acts, whist allowing for agreements with the Aboriginal/Torres Strait Islander Party, does not specify the form of such agreements or the means of obtaining it. It is suggested that without limiting the scope of agreement or CHMP making, provision be available in the Acts for proscribed formats, consultation process and timeframes for reaching agreements for urgent, minor and low cost works. This would not only assist business with clarity and certainty, but provide confidence for Aboriginal/Torres Strait Islander parties.

5. *Land user obligations*
Questions: Is there a need to bolster the oversight mechanisms for self-assessment and voluntary processes – if yes, what should this entail?

5.1. The Acts should promote sound objective assessments of proposed activities and *substantive* risk of harming cultural heritage. Accordingly, it is essential that both proponents and Traditional Owners can have confidence in any self-assessment process; especially where assessment determines that an activity is unlikely to cause harm to cultural heritage.

5.2. Currently there is no requirement or recommended method for recording the basis of assessment under the Duty of Care Guidelines, nor of agreements with Aboriginal or Torres Strait Islander parties. Consideration should be given to making available under the Acts a standard, accepted means for recording the basis of decisions and the evidence relied upon

to determine whether to proceed with an activity (i.e. reliance on categories 1 to 4, should these or similar guidelines be retained) or other measures taken to meet the Duty of Care.

Is there a need to reconsider the threshold for formal cultural heritage assessments– if yes, what assessment and management processes should be considered?

5.3. The Acts currently allow for self-assessment using the categories under the Guidelines. These do not promote a role for Aboriginal parties to be engaged to assist in this assessment of lower category i.e. that land is sufficiently subject to significant prior surface disturbance or development (Categories 3 or 4). Whilst seeking agreement by the Aboriginal Party is already possible under the Acts, there is no prescribed role that promotes the option of inclusion of Aboriginal/Torres Strait Islander Parties at assessment stage - only after self-assessment.

5.4. Consideration should be given to include a the possibility of an optional staged approach to assessment where an Aboriginal/Torres Strait Islander party can procedurally provide agreement or otherwise that the proposed activity is consistent with prior activities and disturbance and only proceed to further assessment measures where there is evidence of a *substantive* risk to cultural heritage is found.

6. *Compliance mechanisms*

Question: Is there a need to bolster the compliance mechanisms designed to protect cultural heritage – if yes, what needs to be improved and what additional measures should be put in place?

6.1. Powerlink offers no comment on the penalties for breaches of the Acts. However, it is noted that there is currently limited scope in the Acts for a proponent to gain certainty that a Duty of Care has been met. Providing certainty is likely to increase compliance. Consideration should be given to creating a function of the regulating or independent body to review and confirm that the compliance measures taken by a proponent meet the Duty of Care.

7. *Recording cultural heritage*

Question: Is there a need to make improvements to the processes relating to the cultural heritage register and database – if yes, what needs to be improved and what changes should be considered?

7.1. Powerlink supports the retention of a Register and Database under the Acts. However, it is noted that cultural heritage sites entered on the Register and Database derive from a range of sources, with varying degrees of information and accuracy. It is suggested that consistency of records be addressed such that greater reliance can be made on the database as to the nature and extent of heritage to better inform discussion with Aboriginal/Torres Strait Islander parties and protection measures.

[redacted]

Yours Sincerely,

Colin Langton
General Manager, Community and Delivery Services