

Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
Locked Bag 2506 Perth WA 6001

23 May 2019

Dear Sir/Madam

ABORIGINAL HERITAGE ACT CONSULTATION PAPER

Thank you for the opportunity for ARTC to provide feedback on the Aboriginal heritage legislation reforms currently taking place within Western Australia, including the 'Review of the *Aboriginal Heritage Act 1972* Consultation Paper'.

By way of background, ARTC is the rail infrastructure manager for the Defined Interstate Rail Network and Hunter Valley Coal Network, providing a one stop shop for freight rail transport across Australia.

In this role, ARTC delivers a range of rail infrastructure projects and manages the operation of rail infrastructure. ARTC has responsibility for the management of over 8,500 kilometres of standard gauge track in New South Wales, Queensland, Victoria, South Australia, and Western Australia.

ARTC recognise the importance of this legislative reform to the Aboriginal people of Western Australia and the need to drive certainty for both them and ARTC and believe that connection to country and management of ARTC rail assets should be a harmonious and constructive partnership.

Given the regular and ongoing maintenance of existing rail infrastructure that ARTC undertakes, the implications of new Aboriginal heritage legislation must not only respect "country", but deliver pragmatic and productive outcomes, particularly with regard to existing infrastructure corridors where there are essential maintenance requirements.

ARTC provides the following comments on the 'Review of the *Aboriginal Heritage Act 1972* Consultation Paper'.

Proposal 1 and 2 New Aboriginal heritage legislation and updated definitions and scope

ARTC is supportive of the proposal to repeal the *Aboriginal Heritage Act 1972* and replace it with modern legislation that provides a clear framework for the protection, conservation and management of Aboriginal cultural heritage.

Proposal 3(A) Local Aboriginal Heritage Services

ARTC is supportive of the establishment of Local Aboriginal Heritage Services (LAHS), which would provide for decision making by Aboriginal people at a local level. Having a point of contact for consultation purposes and management advice would be beneficial, as the current approach often means consultation with several parties or groups, and at times conflicting information on the management of Aboriginal cultural heritage is received.

Conversely, ARTC foresees the process of establishing LAHS as a significant challenge for the WA Government, particularly if LAHS's are to be a first point of contact for advice prior to seeking an approval for a proposal. On this basis, ARTC queries not only the timeframe in which the LAHS's will be established, but how the WA Government intends on transitioning from the current Aboriginal heritage legislation to the proposed legislative framework. As such, a transparent and well-structured transition process provided by the WA Government will likely be well received by land users and industry representatives such as ARTC.

In terms of heritage management agreements to be negotiated with LAHS's, ARTC suggests that mandatory timeframes or maximum review periods be detailed in the Regulation or supporting guidance documents. Heritage management agreements would also likely require a level of guidance within the legislation but should also be flexible in terms of land use application.

Proposal 3(b) Aboriginal Heritage Council

ARTC queries whether the role of the Aboriginal Heritage Council (AHC) will include approval of all land use proposals that impact on Aboriginal Cultural Heritage, or whether the AHC will also be approving heritage management agreements made with LAHS's. The preference would be to limit the timeframe on the approval process, as well as avoid the duplication of conditions between heritage management agreements and approvals. ARTC's preference would be to work with the LAHS, and drive solutions-based outcomes, however, a process for conflict resolution should also be provided within the new legislation and timelines for LAHS approvals.

Proposal 3(C) The Minister Role

Clarification should be provided on when the Minister would be involved in the decision-making process for proposals that are of state significance (i.e. EES or EIS high level only for major projects > \$10 million) or that may have a significant impact. Consideration should occur as to whether guidance documents or the legislation defines what a significant impact may be, and the subsequent triggers for Minister involvement.

Proposal 4 Aboriginal Heritage Register

ARTC is supportive of the proposed Aboriginal Heritage Register being updated and maintained to assist with planning and land management, and the continuation of this register being publicly accessible. However, ARTC queries the proposal for a place to be registered with no assessment, and whether the landowner (such as ARTC if that place was within the rail corridor) would be notified of this registration and have the opportunity to support or contest the registration.

ARTC also suggests that if predictive modelling will be used to highlight areas of likely Aboriginal heritage sensitivity, that infrastructure corridors such as the ARTC rail corridor be excluded from modelling or alternatively assessed as low likelihood/sensitivity based on the history of disturbance and management. ARTC would be agreeable to further discussion or guidance on this.

Proposal 5 Introduce a referral mechanism to facilitate tiered assessments of proposed land uses

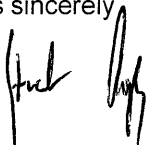
ARTC would be supportive of a referral process that provides greater certainty for land users but suggests that further detail will be required in guidance documents, such as the referral and approval pathway for low impact activities. As it would be time and resource prohibitive for ARTC to meet and consult with a local LAHS for every rail infrastructure activity (with the exception of new construction projects), ARTC would be supportive of "low impact activities" that will not be subject to the ACH

assessment pathway. ARTC would be happy to provide a list of rail maintenance activities for consideration as a low impact activity, or alternatively have further discussion regarding exemptions that may be applicable to railways, such as maintenance and minor improvement works, and areas identified as being previously subject to significant ground disturbance.

We trust this submission will contribute to the progression of Aboriginal heritage legislative reform in WA.

If you have any questions regarding this submission, please contact Kim Hardy on 02 4941 9633.

Yours sincerely



Stuart Ross
Environment Manager