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**Aboriginal Heritage Act Review**

**STATUTORY REVIEW OF THE ABORIGINAL HERITAGE ACT 1975: DISCUSSION  
PAPER**

Thank you for the opportunity to contribute to the Statutory Review of the *Aboriginal Heritage Act 1975* Discussion Paper. Please see responses to some of the listed key topics below.

**1. What is the Aboriginal Heritage Act 1975 trying to achieve?**

According to the Long Title of the Act, it is trying “to make provision for the preservation of aboriginal relics”. This statement is extremely reductive, restrictive and uninspiring.

First, the use of the word ‘relic’ is problematic as it perpetuates the power imbalance of colonial dispossession and the perception of an extinct culture.

*The term, ‘relic’, has for us the strong connotation that items of Aboriginal cultural property so defined have no connection or significance to Aboriginal people today, that they belong to a dead past. (Fourmile 1989, p.50, cited in Jackson, Porter & Johnson 2018)*

Instead, such sacred sites or objects are *living* aspects of contemporary and continuing Aboriginal existence in Tasmanian society, and avenues of postcolonial governance must strive to accord them better acknowledgement and regulatory protection.

*Further, the term relic also emphasises the physicality of Aboriginal heritage and works to deny non-material aspects of cultural heritage. What ultimately is being protected by these acts is archaeological data and not Aboriginal ‘heritage’ as such. (Smith 2000, p.112)*

The use of the verb ‘preserve’ should also be changed for the same reason. The continuation of use of a site or tool by a member of an Indigenous community may be the appropriate cultural use but not strictly fit within the word ‘preserve’ and therefore conflict with the wording of the Act. The sole use of this verb is too restrictive.



The intentions of the Act should be clearly stated, wider in scope and more inclusive of current Aboriginal culture. The purposes of the equivalent Victorian Act (*Aboriginal Heritage Act 2006*, s1) are much preferred and could be used as a starting point in this review:

- a) *to provide for the protection of Aboriginal cultural heritage and Aboriginal intangible heritage in Victoria; and*
- b) *to empower traditional owners as protectors of their cultural heritage on behalf of Aboriginal people and all other peoples; and*
- c) *to strengthen the ongoing right to maintain the distinctive spiritual, cultural, material and economic relationship of traditional owners with the land and waters and other resources with which they have a connection under traditional laws and customs; and*
- d) *to promote respect for Aboriginal cultural heritage, contributing to its protection as part of the common heritage of all peoples and to the sustainable development and management of land and of the environment.*

Also note two of stated objectives of the Victorian Act (*Aboriginal Heritage Act 2006*) below:

- a) *to recognise, protect and conserve Aboriginal cultural heritage in Victoria in ways that are based on respect for Aboriginal knowledge and cultural and traditional practices;*
- b) *to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage;*

The Act should provide for acknowledgement and avenues of protection for aspects of Aboriginal culture that are spatially and temporally difficult to account for within structures of postcolonial governance. This is a great opportunity to better do that.



## 2. What is Aboriginal heritage?

The Act considers some aspects of Aboriginal heritage (s2[3]):

- (3) For the purposes of this Act, but subject to the following provisions of this section, a relic is –
- (a) any artefact, painting, carving, engraving, arrangement of stones, midden, or other object, made or created by any of the original inhabitants of Australia or the descendants of any such inhabitants, which is of significance to the Aboriginal people of Tasmania; or
  - (b) any object, site, or place that bears signs of the activities of any such original inhabitants or their descendants, which is of significance to the Aboriginal people of Tasmania; or
  - (c) the remains of the body of such an original inhabitant or of a descendant of such an inhabitant that are not interred in–
    - (i) any land that is or has been held, set aside, reserved, or used for the purposes of a burial-ground or cemetery pursuant to any Act, deed, or other instrument; or
    - (ii) a marked grave in any other land.

First, why must a sacred site or place bear signs of activity to merit value and protection? This narrow aspect of the clause should be removed.

Traditional categorical constrains of white Australian heritage management and archeological science need to reverse the traditional prioritising of materiality over meaning if it is to truly support contemporary Aboriginal culture. Isolating sacred sites to preserve a physical past may be an appropriate way to respect and manage European heritage but it is not for Aboriginal heritage. Take this example about Mootwingee:

*To us, the history and spirituality of a place is more important than the art itself. If the art is destroyed by natural processes, this does not destroy the importance of the place to us, only to white people. We feel it is more important to protect the surrounding landscape and associated sites than to preserve the art by ugly gridding etc. This is why we find it so sad that there is no shortage of funds for white people to painstaking[ly] record the art or date it, but where is the money to record what our old people know about Mootwingee? (Bates 1993 in Ross 1996, p.19.))*

The temporal and ongoing nature of Aboriginal heritage needs to be explicitly acknowledged in this legislation if it is to be of true value. Explicitly, to acknowledge “the agency of the living Aboriginal actor not only as receiver and transmitter but as interpreter and modifier of the Dreaming” (Bryne 1996, p.86).

Consider an equivalent to objective s3(k) of the Victorian *Aboriginal Heritage Act 2006*:

*(k) to recognise, protect and conserve Aboriginal intangible heritage by recording it on the Victorian Aboriginal Heritage Register.*

Traditional categorical constrains of white Australian heritage management and archeological science need to creatively updated in the process. This Review needs to genuinely investigate how the Act can facilitate this in practice.



## 8. Enforcement of the legislation.

Prosecutions or penalties under heritage legislation are not the only compliance option. The following measures have been identified as being equally or more effective in some cases:

- caveats on developers undertaking further development
- reservation of significant areas
- protection through State ownership
- restrictions on trade or sale of items
- warning signs at sites
- access restrictions to sites (Rowland, Ulm & Reid 2014)

## 9. Other ways the legislation protects Aboriginal heritage

Aboriginal heritage management should be incorporated into the Tasmanian statutory planning system if it is to be meaningfully effective. This is already recognized in the Southern Tasmanian Regional Land Use Strategy (STRLUS) under policy 9.3 CV1 as shown below:

- CV 1**      *Recognise, retain and protect Aboriginal heritage values within the region for their character, culture, sense of place, contribution to our understanding history and contribution to the region's competitive advantage.*
- CV 1.1**      *Support the completion of the review of the Aboriginal Relics Act 1975 including the assimilation of new Aboriginal heritage legislation with the RMPS.*
- CV 1.2**      *Improve our knowledge of Aboriginal heritage places to a level equal to that for European cultural heritage, in partnership with the Aboriginal community,*
- CV 1.3**      *Avoid the allocation of land use growth opportunities in areas where Aboriginal cultural heritage values are known to exist.*
- CV 1.4**      *Support the use of predictive modelling to assist in identifying the likely presence of Aboriginal heritage values that can then be taken into account in specific strategic land use planning processes.*



The current practice of aboriginal heritage being identified after the planning approval process can be extremely frustrating for all involved. If works have already begun it becomes problematic to alter the design to avoid or mitigate the impact on aboriginal heritage and puts unnecessary pressure on the Aboriginal Heritage Council. These issues could be avoided if aboriginal heritage was considered at the planning and design phase of a project.

A referral process, similar to that for European heritage under the *Historic Cultural Act 1995*, could be worth pursuing. This is likely to require significantly more resources to manage the referral process. However, the cost and complexity of integrating aboriginal heritage into the planning system is warranted.

#### **10. Other matters covered by the legislation.**

- Consider adding a stated objective of promoting public awareness and understanding of Tasmanian Aboriginal culture.
- Consider adding avenues of protection for Aboriginal intellectual property rights.
- Consider adding a Treaty pathway as called for by the Aboriginal Land Council of Tasmania<sup>1</sup>.

#### **Conclusion**

2017's Uluru Statement from the Heart states that *with substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.*

This Act has the power to bridge some of the huge gap in the power and recognition that currently exists in Tasmania between non-Aboriginal and Aboriginal people and culture.

Current largely self-assessable Australian legislation is weak in terms of best practice cultural heritage management (Rowland, Ulm & Reid 2014) and this is particularly true in Tasmania (Jackson, Porter & Johnson 2017). The Act must become wider in scope and more proactive rather than reactive, and Aboriginal heritage management must be incorporated into the Tasmanian planning system as part of the State Planning Provisions of the Tasmanian Planning Scheme.

Regardless of what form it takes, the legislation must be imaginative, genuinely guided by Tasmanian Aboriginal people and be better funded and resourced in order to be effective. If this is not done Tasmania will continue to inadequately respect Tasmanian Aboriginal culture and peoples.

<sup>1</sup> <https://www.abc.net.au/news/2019-08-08/tas-daily-briefing-8th-august/11393760>

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If you have any queries relating to any of the above, please do not hesitate to contact

Yours faithfully

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*going places*



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