



Aboriginal Heritage Act Review

10/11/15

Discussion Paper: Statutory Review of the Aboriginal Heritage Act 1975

The Tasmanian Chapter of the Australian Institute of Architects (the Institute) has reviewed the Discussion Paper: Statutory Review of the *Aboriginal Heritage Act 1975*, and would like to make the following comments.

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

This is clear and the Institute has no comments on this section.

2. What is Aboriginal Heritage?

The Institute supports the recognition of intangible heritage in the Act, in a similar way to the Victorian model as mentioned in the Discussion Paper. It is important to recognise that Tasmanian Aboriginal people are still practicing culture, which involves not just physical elements. The Act should allow for recognition of living heritage and continuing culture.

The Institute supports the term 'relic' being changed in the Act. It is also important to people.

3. Ownership of Aboriginal heritage

The Institute has no comments on this section.

4. Making decisions about what happens to Aboriginal heritage

While it is acknowledged that the Minister for Aboriginal Affairs and the Director of National Parks and Wildlife do routinely seek advice from the Aboriginal Heritage Council, the Institute suggests that this should be mandated as a requirement of the Act.

The Institute also suggests that Aboriginal heritage be treated in the same manner as European and Colonial heritage within planning processes and planning scheme. This would

enable the Aboriginal Heritage Council to have the same level of decision making as the Tasmanian Heritage Council and allow a mechanism for an appeal of decisions. The Institute recommends that a compliance division or commissioner be required as part of the Tasmanian Heritage Council as best practice. This would require liaising with local councils and the Institute also recommends a stakeholder Aboriginal liaison or Aboriginal education officer role to assist and educate local councils, planning bodies and the public on matters and procedures relating to Aboriginal heritage. This appointment should be made in direct consultation with, or by, the local Aboriginal Community, under the auspices of SETAC, TAC and/or the ALCT for instance.

5. The Aboriginal Heritage Council – what it is and what it does

The Institute suggests that the Aboriginal Heritage Council should be able to appoint committee members independently from the Minister and the Governor.

6. Offences under the Act and penalties for doing the wrong thing

The Institute has no comments on this section.

7. When can Aboriginal heritage be interfered with?

The Institute has no comments on this section.

8. Enforcement of the legislation

The Institute suggests that the Act should be amended to provide for the issue of stop-work notices, as the Historic Cultural Heritage Act 1995, does, along with a provision for infringement notices and associated on-the-spot fines.

9. Other ways that legislation protects Aboriginal heritage

The Institute has no comments on this section.

10. Other matters covered by the legislation

As stated in section 4, the Institute recommends that the Act relate to other Tasmanian planning legislation and should be part of Tasmania's Resource Management and Planning System and in alignment with the *Land Use Planning and Approvals Act* in order to allow the same level of protection to Aboriginal heritage as to European and Colonial heritage.

Another aspect to note is that the Institute understands that a database exists with Aboriginal Heritage Tasmania (AHT). AHT are not recognised by the Aboriginal community (particularly TAC or ALCT) as an appropriate arbiter of Aboriginal heritage. This is why it is necessary to engage *both* an archaeologist *and* independent Aboriginal Heritage Officer (AHO - endorsed by TAC) to undertake Aboriginal Heritage Assessments. The Institute understands this can be a very adversarial process, and the Aboriginal Heritage Officers often feel they are being audited by the archaeologists. The involvement of archaeologists is also seen to perpetuate the idea that Aboriginal Heritage is object-based, and a 'relic'. The process does not take account of factors such as cultural landscapes, or Country. This process results in the living communities and cultural custodians not necessarily being engaged in the determination of heritage (except through the community recognised AHO).

The Institute is supportive of the review of the Aboriginal Heritage Act 1975 and would appreciate being involved in any further stakeholder consultation in the review process.

Yours sincerely,

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