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Submission from Circular Head Aboriginal Corporation

Aboriginal Heritage Act Review

Discussion Paper: Statutory Review of the Aboriginal Heritage Act 1975

Tasmanian Aboriginal connections to country and culture is vitally important and very distinct. The geographical area of Tasmanian Aboriginal culture and heritage is widespread and separate from mainland Australia. Tasmania is visited from cultures across the world to view the magnificent landscape and beauty of Tasmanian Aboriginal heritage. Our heritage landscape needs to be nurtured carefully as it cannot be rebuilt.

Circular Head Aboriginal Corporation (CHAC) acknowledges the necessity of the review and the following content of the submission is from the heart of members of the community. There are many concerns regarding Tasmanian Aboriginal heritage, lack of adequate protection being the most important. Communities such as Circular Head have been shut out of important decision making that affect local heritage issues within the community. CHAC is about transparency and positive consultation, but many decisions in the past have been made by hierarchy groups that have never consulted with the local Aboriginal community members.

CHAC is a not for profit Aboriginal Community Controlled Organisation (ACCO) that services the health and wellbeing needs of the Circular Head Aboriginal community. CHAC emphasises and promotes positive education in all areas of culture and heritage, but also understands the vital need to protect areas to ensure damage does not occur to our precious sites. Once lost they can never be rebuilt. Education needs to be the priority clause within the Act to protect the sites but not to close them off. How can Aboriginal people educate if they are locked out of specific areas? All communities and other key stakeholders need to work together to ensure education and protection of Tasmania's heritage areas are a priority within the Act.

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

How clear is the Act regarding what it is trying to achieve? Could this be improved, and if so, how?

The Act needs to clarify the purpose and objectives and be much clearer in what needs to be achieved in Tasmania. The protection of Tasmania's Aboriginal heritage and culture needs to be thought through carefully and not dismiss the fact of promoting education as well as respect for the culture. In the current Act there is no clarification on the objectives or the purpose.

CHAC recommends that the Act needs to include the purpose and objectives to fall in line with other Aboriginal Heritage Acts across the nation.

Section 2: What is Aboriginal heritage?

How well does the Act define Aboriginal heritage? Could this be improved, and how?

In comparison to other Acts across the nation, the Tasmanian Aboriginal Heritage Act does not provide enough detail on the definition of Aboriginal heritage. There needs to be more specific detail on the definition which should include all the meanings of Aboriginal heritage, therefore include Aboriginal places, objects and ancestral remains. By noting these within the Act would align Tasmania with other Aboriginal heritage Acts across the nation.

Does the definition of 'relic', adequately capture all elements of Aboriginal heritage that should be protected and managed?

Definitely not. The term "relic" refers to a surviving memorial of something past, an object having interest by reason of its age or association with the past. The term relic does not capture the true essence of Aboriginal heritage. The wording of intangible cultural heritage fits better, as this title represents cultural practices, Aboriginal festivals storytelling, language, representations, expressions, knowledge and skills as well as instruments, objects, artefacts and cultural spaces associated with communities, groups and in some cases individuals that recognise this as a part of their cultural heritage.

Should the use of the term 'relic', and the way Aboriginal heritage is recognised and defined, be changed?

The response to this question is as stated above. CHAC believe the word 'relic' should be replaced to better reflect Aboriginal places, objects, ancestral remains and Aboriginal Intangible Heritage which includes all of the above mentioned which should be defined separately.

Section 3: Ownership of Aboriginal heritage

How clearly does the Act describe ownership of Aboriginal heritage?

CHAC stands by and believes that Aboriginal heritage, that is situated within the landscape of the Circular Head region should be owned by and returned to the traditional owners within the local

community to manage, caretake and maintain. The Act does not allow any clarity in reference to ownership of Aboriginal heritage. We believe the Act is lacking in clarity regarding ownership of Aboriginal heritage.

Are provisions in the Act providing for ownership reasonable?

CHAC finds the statement in section 11 in the Act (1)(a) a relic that is found by any person or (b) is abandoned by any person on any Crown land becomes the property of the Crown is totally unreasonable. CHAC recommend an inclusion into the Act ,that if any Aboriginal cultural heritage is found on Crown land it needs to be transferred to the traditional owners of the area in which the cultural heritage is believed to have originated.

Who should own Aboriginal heritage?

In CHAC's view the Tasmanian Aboriginal people should be the owners of Aboriginal heritage, especially owning the significant areas of their respective community. The problem to date is that many Aboriginal communities across Tasmania haven't had a voice in the past as to the management, caretaking and maintenance of their individual local cultural heritage areas. The Act needs to reflect that there are many Aboriginal communities across Tasmania and their voices need to be counted in the decision-making processes, especially where Aboriginal cultural heritage is concerned. This would enhance reconciliation amongst all Aboriginal groups across the state.

Is the concept of 'ownership' the right way to think about who is responsible for Aboriginal heritage?

CHAC support the concept of ownership rather than custodianship. Ownership is the state or fact of exclusive rights and control over property. Property meaning land or object or intellectual property. The term ownership needs to reflect owning the responsibility to fully care for Aboriginal cultural heritage in all aspects including the flora and fauna.

Should the 'rules' in the Act apply to everyone in every situation?

CHAC believe the "rules" in the Act should apply to everyone in every situation. There would need to be a clause written in the Act to allow for specific reasons that excuse or justify actions.

Should land tenure on which Aboriginal heritage exists make any difference to who owns/how the heritage is to be managed?

The Act must address and provide clarity We do however believe the Act must address the issue of privately owned or leased land in order to provide clarity and certainty for all Tasmanians, in particular around the issues of ownership, access, responsibility and management of the privately owned land. The owner would still have rights to use and enjoy the land, but not to harm or damage any of the cultural heritage that is present on the land.

Section 4: Making decisions about what happens to Aboriginal heritage

Is the way the Act describes who makes decisions, and how decisions must be made, adequate and reasonable? How can decision-making be improved?

CHAC believe the decision making can be improved immensely. The Aboriginal Heritage Council (AHC) needs to be consulted on decisions that are likely to affect Aboriginal heritage sites etc and the AHC needs to have dialogue with the communities / community the decisions may affect. This process would then allow for transparency and equality and would also allow feedback from the communities

Who should make decisions under the Act?

CHAC believe the AHC should have the powers to make decisions. This needs to be a fair and just process, allowing AHC to have consultation with respective Aboriginal communities would be an ideal process. This process would enhance and strengthen relationships and create empowerment for Tasmanian Aboriginals.

Are there circumstances where different people, or parties, should make decisions about how to manage Aboriginal heritage? How should decisions be made?

As stated above CHAC believe local Aboriginal groups should be encouraged to provide input into decisions affecting Aboriginal cultural heritage in their particular area. By having the AHC as the major decision maker alongside communities would demonstrate transparency.

Section 5: The Aboriginal Heritage Council – what it is and what it does

How should members of the Aboriginal Heritage Council be chosen?

Up until a few years ago there didn't appear to be a transparent process for nomination of members to gain a seat on the AHC. CHAC believe the process to date is a much better process as it has been able to be represented by each of the Aboriginal communities that nominate a member from their individual community across Tasmania. CHAC believe the final decisions comes down to the Minister and this must be acknowledged. CHAC believe that all members of the AHC should identify as Aboriginal.

Should the Act specify criteria for Council membership, and what criteria should apply?

CHAC believe a skills audit would be valuable within the criteria for council membership. Memberships from all geographical areas (North, South, North West) would add value to the AHC membership. This process would allow for representation from across the state.

How clearly does the Act describe the role and function of the AHC?

CHAC believe that any recommendations from the AHC be considered and this should be clearly stated We believe the Act should clearly state that all recommendations from the AHC must be considered by the Minister and any reasons for acceptance or denial of requests or recommendations must be clearly declared and referred back to the AHC.

Is the role of the AHC adequate and appropriate? Could this be improved and if so, how?

CHAC believe if the AHC is granted powers to make decisions then their role will become more adequate and appropriate. The protection of Aboriginal heritage will become more important to the

members of the AHC and the wider community will have more of an appreciation of the transparent process. The AHC should reach out into the Aboriginal communities and communicate to them what their role is in regard to protecting Aboriginal heritage. The AHC should also consult with respective communities to discuss any issues localised to the individual areas, this will also build a better relationship and understanding between the AHC and individual Aboriginal communities across Tasmania. Aboriginal communities across Tasmania find it very disrespectful and unfair when decisions are made for the community, without any consultation with them, in relation to local Aboriginal heritage.

Section 6: Offences under the Act and penalties for doing the wrong thing

How well does the Act describe and manage offences?

In CHAC's view the Act should refer to intangible heritage and not 'relic'.

Are the penalties adequate?

CHAC's view is once the offence is committed and the magistrate hands down the penalty it should be harsh. Harsh penalties with a minimum time frame for payment should be instilled, as this will endeavour to discourage interference with Aboriginal heritage again. When we think about damage to our land and heritage it is not acceptable to just fob it off with light penalties as nothing will be learnt from it.

Could the offences and penalties provisions in the Act be improved, and if so, how?

CHAC believe that education is the vital key. Education will raise awareness and increase an understanding of the importance of Aboriginal heritage in Tasmania. When we talk about education we talk about Information and interpretation centres, signage and outdoor learning centres on country. There are many significant sites across Tasmania that have absolutely no signage or interpretation which identifies Aboriginal heritage exists there. If this was to occur CHAC believe there would be less damage, more protection and positive education for visitors and community. Aboriginal heritage needs to be considered equal to other cultural heritage, therefore when damage is done the penalty needs to be applied. Cultural heritage education is also a key component for all relevant parties that make decisions around the penalty, it is then that they will come to understand the importance of Aboriginal heritage to Tasmanian Aboriginal people

Are there circumstances where the 'rules' of the Act should apply differently to different people?

CHAC believe that when Tasmanian Aboriginal people practice culture on their respective sites, the "rules" of the Act should be differently applied. Unless there is a deliberate act of damage, then there should be a penalty imposed.

Section 7: When can Aboriginal heritage be interfered with?

A Permit to Interfere

CHAC agrees that there is little guidance in the Act for the process which must be followed for seeking a permit to interfere with a "relic". Aboriginal people don't have a voice in regard to authorising interference permits with Aboriginal heritage, therefore if the AHC was given more power within their roles, the Aboriginal communities could be made aware of such applications for permit and have their say. CHAC would like to stress the importance of the AHC having more power in decision making and to communicate freely to communities their intentions on local heritage issues.

Are the defence provisions in the Act adequate and reasonable?

Within the guidelines there is no provision for adequate protection for Aboriginal heritage.

The aspect of the defence provisions with the practice of emergency management teams that consult with Aboriginal groups across Tasmania appears to be working.

Section 8: Enforcement of the legislation

CHAC believes there is more work to be carried out in the form of communication between the Aboriginal community and the non-Aboriginal community. Better communication would improve cooperation and appreciation by both parties. It is vital that the Aboriginal and non-Aboriginal people work together to get best outcomes for Aboriginal heritage

Section 9: Other ways the legislation protects Aboriginal heritage

CHAC believes the current Act should provide better legislation to protect and manage Aboriginal heritage to fully satisfy the Aboriginal communities across the state. There is a lack of appreciation from non-Aboriginal people due to a lack of understanding and also the fact of communication breakdowns across the communities. As already stated the need for education is paramount, if communities of Tasmania want to protect their cultural heritage.

Section 10: Other matters covered by the legislation

Is there anything else you would like to see included in Aboriginal heritage legislation in Tasmania? Are there any other comments that you would like to make with regard to Aboriginal heritage management in Tasmania?

Education

The significance of education is paramount to enable Tasmanian Aboriginal people to move forward in relation to their respective local Aboriginal heritage. The wider community needs to broaden their knowledge on understanding and how to protect our heritage sites to enable them to work alongside Aboriginal people for better outcomes. If this was to occur the support from the communities would strengthen which would then lead to working together to protect our significant sites and instil reconciliation.

Yours sincerely

Tony Smart
General Manager
21/9/2019