

Aboriginal Heritage Act Review Team
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To whom it may concern

Review of the *Aboriginal Heritage Act 1975*

Thank you for your request for comment on the review of the *Aboriginal Heritage Act 1975* and the briefing provided by Simon Wilcox to our officers on 23 September 2019.

As discussed, there are several elements of the *Aboriginal Heritage Act 1975* (the Act) that would benefit from amendment in order to achieve better outcomes for the protection and recognition of Aboriginal heritage in Tasmania, and to provide greater certainty for resource industries and project proponents.

The Department supports further review of the Act, with the aim to provide:

1. Clear definitions for all key terms

- a. Clear criteria to inform management and regulation will provide greater certainty in the interpretation and implementation of the Act.
- b. The Discussion Paper notes that Tasmanian Aboriginal people consider the term 'relic' to be outdated and not relevant.
- c. The concept of 'intangible heritage' needs to be considered and clearly defined. This may be achieved by clearly listing specific items of intangible heritage and specifically excluding unbounded or undefined places.
- d. It would be useful to clearly differentiate the terms 'Protected sites' and 'sites' so that people endeavouring to understand interference issues (with relics) are not confused with the 'Protected sites' provisions.

2. Clear statutory timeframes for the making of an order or issuing a permit

- a. Statutory timeframes would provide a higher level of certainty for land managers and users (developers) and for the protection of Aboriginal heritage.
- b. Any options such as infringement notices and stop-work provisions need to be clearly defined, including a clear process outlining roles and responsibilities, timeframes, authority to issue and appeal rights. Stop work provisions can have significant cost and time implications.

3. An opportunity to remove any outdated language

- a. Examples include:
 - i. 'Ownership': this term could be further clarified and potentially, or more appropriately, termed 'custodianship'.
 - ii. Male pronouns (he/his/him): this tends to reinforce historic gender stereotypes – future drafting of the legislation should adopt the use of gender-neutral language.

4. Clarity in the structure, role and function of the Aboriginal Heritage Council

- a. The Act should clearly specify the make-up of the Aboriginal Heritage Council to ensure representation across regions and interests, as well as providing for gender balance.

5. Clarity on the application of offences under the Act

- a. Further education and awareness on the significance and regulation of Aboriginal heritage would ensure all proponents receive appropriate and consistent advice.
- b. The Department is supportive of the current provision for the forest practices and mineral resources codes of practice to be recognised under the Act and associated guidelines.
- c. Further clarity on defence provisions would ensure associated guidelines and codes of practice afford an appropriate level of protection to operators and to Aboriginal heritage values.

I would welcome ongoing direct consultation between officers of our respective Departments.

Gary Swain
Acting Secretary

27 September 2019