

Aboriginal Heritage Act 1975 Review – South East Tasmanian Aboriginal Corporation’s Response.

The South East Tasmanian Aboriginal Corporation (SETAC) supports full participation by all Aboriginal traditional owners and custodians in each respective area of Tasmania for important matters such as this review.

Local Aboriginal communities must be consulted and recognised as traditional owners and custodians of the land in which we each live. Local communities need to play a larger role in Tasmania with respect to Aboriginal Land, Aboriginal Heritage, its protection and management.

Background

Tasmania has an Aboriginal history spanning more than 40,000 years. Throughout this time our people have lived a rich cultural life and our people's culture continues to be one of the oldest living cultures in the world.

Our history and culture are ancient and unique and extremely important to our people. Land is of great significance to our people and the connection we feel to our country goes beyond just a physical connection. *The land is the mother and we are of the land; we do not own the land rather the land owns us. The land is our food, our culture, our spirit and our identity – Dennis Foley, a Gaimariagal and Wiradjuri man.*

Aboriginal cultural heritage is the tangible and intangible legacy of Tasmania’s Aboriginal people. It refers to those places, objects and traditions that have been passed down to us from generations. Aboriginal heritage is more importantly the landscapes where our people are connected to spiritually and where our people wandered, hunted and traded.

Aboriginal people today need a greater say in the management of our heritage, our country, its resources and its protection for the benefit of our people now and for future generations.

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

SETAC believes the Aboriginal Heritage Act 1975 is outdated and does not provide for the appropriate management of Aboriginal Heritage. The Act is flawed, the enforcement provisions are insufficient and there needs to be a revamp of the entire Act.

While the legislation is designed to protect Aboriginal heritage values it is currently limited to a focus on tangible values and must include intangible values such as arts, landscapes, storylines and areas of spiritual connection/significance.

2. What is Aboriginal Heritage

The Aboriginal Heritage Act does not appropriately define Aboriginal heritage and the definition of 'relic' is old, and outdated. The definition of 'relic' creates a broader community perception that Aboriginal relics are something old and that our heritage is limited to physical objects, it does not adequately capture all aspects of Aboriginal culture. 'Relic' is also considered offensive and implies objects which once belonged to people who no longer exist. The Aboriginal Heritage Act needs to include not only everything physical but also Arts, sites, spiritual places, storylines and landscapes. The concept of Aboriginal heritage goes further than just a 'relic' and must include the landscape surrounding the tangible or non-tangible item which needs to be protected. Additionally, landscapes which may not contain 'relics' are still important places for Aboriginal people as there are many locations where Aboriginal people have a spiritual connection and where our people travelled, hunted and conducted ceremonies.

Aboriginal Heritage as defined in the Act needs to be improved and consideration given to include landscapes, storylines and other intangible Aboriginal Heritage values. As stated in the TRACA submission the definition of Aboriginal heritage needs to be of an international standard and called Aboriginal Cultural Heritage.

3. Ownership of Aboriginal heritage

Aboriginal people are of the land and are caretakers and managers of the land.

The Tasmanian Government currently has the decision-making power over our heritage and therefore, the Tasmanian Government has the authority and power to destroy sites and our heritage. SETAC support the TRACA stance, *'The Act must be inclusive of ownership/custodianship of Aboriginal heritage, and recognise that Tasmanian Aboriginal people are the creators, and rightsholders of Aboriginal heritage in Tasmania, and as such Cultural heritage is at risk of being lost or traded if this part of the Act is not rewritten'*.

The idea of ownership should be removed from the Act and replaced with custodianship/traditional owner and/or ongoing management of Aboriginal Cultural heritage.

This custodianship and management of cultural heritage should be the responsibility of local Aboriginal communities who are in a better position to properly manage Aboriginal Heritage in a culturally appropriate manner.

Local Aboriginal communities should have rightful control over Aboriginal Heritage, and while there is currently an Aboriginal Heritage Council consideration needs to be given as to whether this becomes the body to oversee our heritage, or whether another body need to be established?

The Act specifies that any 'relics' on Crown land are the property of the 'Crown'. If 'relics' are on private land the Crown has provision to acquire the 'relics' from the private landowner for an amount of money. If it is disputed the matter is to be heard and determined by a magistrate implying that 'relics' located on private land is vested in the private landowner. As stated in the TRACA submission this obtuse description of 'relics' mitigates the importance Aboriginal heritage.

The Act does not adequately describe the ownership of Aboriginal Heritage nor does it recognise that Tasmanian Aboriginal people are the true custodians of the land. This is at odds with the Tasmanian constitution, which acknowledges Tasmanian Aboriginal people as being “... *the traditional and original owners of Tasmanian lands and waters...*”. These matters should be addressed in the current review.

4. Making decisions about what happens to Aboriginal Heritage.

Decision making about what happens to Aboriginal heritage should rest with local Aboriginal communities. These communities should be adequately funded and resourced to manage Aboriginal Heritage appropriately. Proper resourcing is mandatory given the increasing need to manage and protect our heritage in a rapidly changing world.

The Aboriginal Heritage Act should provide local Aboriginal communities exemptions regarding working with our sites. Local Aboriginal communities should be responsible for projects aimed at stabilising and protecting Aboriginal sites and should not need a permit to conceal where the intention is to protect a site. i.e. SETAC, as local custodians shouldn't need permits to protect our sites. There needs to be more scope to empower local Aboriginal communities to protect and manage our heritage in a culturally appropriate manner.

World Heritage, National Parks, private landowners are all treated differently. The powers to act on private land are different compared to others and the process for private landowners is not clear.

The Aboriginal Heritage Council or any new representative Aboriginal body should have the power to stop damage to Aboriginal Heritage on private land and have the power to initiate investigations of potential breaches of the Act.

The Aboriginal Heritage Act is very inadequate when it comes to who makes the decisions, how the decisions must be made. Currently the Aboriginal Heritage Act makes recommendations to the Minister. The Minister does not have to accept these recommendations. Any decision making should rest with a new representative body or the Aboriginal Heritage Council.

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

The Aboriginal Heritage Council comprise representatives from most Tasmanian Aboriginal communities. Regional groups must be able to nominate members of their community, or representatives of their community, however some members should be chosen with specific skill sets.

The Heritage Act describes the role and function of the Aboriginal Heritage Council very well, but the Council needs to change. The role of the Aboriginal Heritage Council is inadequate and does not provide Aboriginal communities with any real decision-making power. The Aboriginal Heritage Council needs to be a body that can effectively make decisions and can influence change and its membership should come from regions and Aboriginal people with specific skill sets, e.g. Aboriginal Heritage Officers or Elders. TRACA submission outlines the structure very clearly.

SETAC supports the recommendations listed by TRACA in relation to the structure and role of the AHC:

- *The decision making can be improved by involving Tasmanian Aboriginal people in the decision-making process. This should be a priority factor in all aspects of decisions affecting Aboriginal heritage under the Act, as it is our heritage first and foremost.*
- *The process needs to consider a variety of Aboriginal organisations perspectives and opinions, and a positive outcome will not be achieved if discussions and decisions are dominated by one individual organisation.*
- *It is essential that the legislation mandates that Aboriginal organisations in the local area are part of the decision-making process and have a voice. It should also recognize that there may be other organisations who have a strong cultural attachment to a particular area not in their own backyard e.g. TWWHA*
- *The definition of TWWHA – and as it is so pristine should be given to Aboriginal people to manage and make decisions over.*

Decisions should be made collectively and collaboratively

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

The Aboriginal Heritage Act manages offences poorly and the current penalties are grossly inadequate. The Act needs the penalties to reflect that items cannot be replaced, as once they are gone, they are gone forever. Penalties need to be in line with the seriousness of destroying Aboriginal Heritage. A breach of the historic heritage legislation carries heavier penalties - is our heritage not worthy of protecting?

Breaches under the Act requires both costly and timely investigation as to whether a case can be prosecuted and there is potential or the case to not be prosecuted at all. Clearly, sufficient resourcing to enable investigation and potential prosecution is essential.

There are improvements that could be made to the offences and penalties provisions in the Act including but not limited to the following:

- On the spot infringement notices by wardens/officers. These wardens should come from the local Aboriginal communities.
- Development of a set of standards and guidelines outlining penalties for infringements.
- Penalties should include fines and/or imprisonment depending on the seriousness of the infringement.
- Impact statements should be taken into consideration from either the Aboriginal Heritage Council or a similar body in concert with the local Aboriginal community.
- Monies from fines should be directed back into local Aboriginal communities and used to help with the management and protection of Aboriginal heritage.

7. When can Aboriginal heritage be interfered with?

The rules of the Act should apply differently to different people and any new Act should have exemptions to enable the concealment, management and protection of sites by local Aboriginal communities. If, however, anyone deliberately damages or destroys sites they should be treated equally, including private landowners.

If the Act is amended all defense provisions should be changed in line with these amendments. If the Act is updated, then it is inevitable that the guidelines will need to be updated to reflect this.

Local Aboriginal communities should be resourced and given the appropriate authority to protect sites. Local Aboriginal communities should also be exempt from a permit system where there is an effort to protect and preserve Aboriginal heritage.

Local Aboriginal communities should be resourced to participate in the process whereby a permit is being assessed. This process can drain a local community's resources and often results in inadequate consultation. Developers, or the government, should resource local groups to participate fully in the process of assessing and managing our heritage - this includes consideration of permits.

8. Enforcement of the legislation.

The legislation should empower local Aboriginal communities by providing them with the appropriate authority to work within their regions. Training and resourcing local Aboriginal wardens to enforce the legislation would help ensure local sites and other heritage values are protected. Local wardens should have the authority to issue on the spot fines and enforce stop work provisions. Offences should be categorised for example, as non-minor and minor, and should be at the discretion of a magistrate, taking into account an impact statement from the community.

9. Other ways the legislation protects Aboriginal heritage.

The current Act does not protect or manage Tasmania's Aboriginal Heritage well for the reasons outlined in this document.

Currently there are only three protected sites. The Aboriginal Heritage Act should be strengthened to protect all Aboriginal heritage, then there would be no need for protected sites which at any event are not efficient protective mechanisms.

There should be more local representation in the way Aboriginal Heritage is assessed and managed, including having a fairer, defined and more transparent process for distribution of work conducted by Aboriginal Heritage Officers. SETAC feel that we are not currently being represented appropriately as demonstrated by poor and inadequate consultation with most projects.

There should be stronger, more effective consultation with local Tasmanian Aboriginal communities. Many local Aboriginal communities are under-resourced and in some cases are represented on a volunteer basis - clearly, this is a resourcing issue. The government must ensure the views of all Tasmanian Aboriginal communities are taken into consideration when dealing with Aboriginal heritage.