



2 October 2019

Mr Simon Wilcox
Aboriginal Heritage Act Review
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Hobart Tasmania 7001

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Dear Mr Wilcox,

Aboriginal Heritage Act Review

Thank you for the opportunity to provide submissions into the review of the *Aboriginal Heritage Act 1975 (Act)*.

While TasWater is generally supportive of the initiative to review the Act, it does not have any specific input or contribution into the issues and questions raised in the Discussion Paper.

There are, however, two conceptual propositions that TasWater would support and encourage further discussion on as part of the review of the Act. Each of the propositions is relevant to TasWater in its capacity as a developer and Tasmanian statutory authority.

Integration of Aboriginal Heritage Assessment Process into the Planning Framework

The first proposition is to consider the implementation of measures to integrate requirements to consider Aboriginal heritage as part of the general State planning framework process. More particularly, this could be achieved by amending the Act to include an obligation on planning authorities to refer applications for development and use to the relevant body under the Act, in a similar manner to which the *Environmental Management and Pollution Control Act 1994*, the *Historic Cultural Heritage Act 1995*, and the *Water and Sewerage Industry Act 2008* require planning authorities to refer applications for development and use to the Environment Protection Agency, the Heritage Council and TasWater respectively.

The benefit of integrating similar requirements in relation to Aboriginal heritage would be to provide developers with a more streamlined and easy to navigate process for the assessment and approval of development activities.

We note that there are other potential referrals that are currently not similarly directly integrated into the planning framework, such as approvals for connection of electricity and development impacting roads. Further, not all activities that could have the potential to impact upon Aboriginal heritage require planning approval. Accordingly, additional requirements similar to those set out in the existing Act would need to be retained in order to ensure the impact of such activities upon Aboriginal heritage are adequately assessed and considered.



Any decision to implement such measures in the legislative planning framework would of course be dependent upon the support of the State Government.

Implementation of a 'Utilities Code'

The second proposition is to provide further guidance and clarity to TasWater and other utilities in respect of their obligations to properly consider and assess the impact of development activities on Aboriginal heritage. At present, the Guidelines¹ provide rudimentary guidance as to what actions might be taken by a person in order to establish a defence in accordance with section 21 of the Act.

While Codes have been adopted under section 21A(3)(b) of the Act to provide further guidance to proponents in respect of mineral exploration and forestry practice, no such Code has been adopted that is relevant to the construction of linear assets and other activities regularly undertaken by utilities such as TasWater.

TasWater (and other utilities) must rely on the Guidelines and generic Aboriginal Heritage Standards and Procedures² in order to determine what actions should be taken in order to provide a defence in accordance with section 21 of the Act. Accordingly, TasWater suggests that consideration be given to the development and adoption of an additional Code relevant to the construction of linear assets and other activities regularly undertaken by utilities such as TasWater. TasWater would be happy to participate in further discussions with the Department and other utilities in any consultation process for the development of such a Code, should this proposal be accepted.

Please do not hesitate to contact me directly to further discuss these matters or any other matter relevant to your review.

Yours sincerely,

Jeremy Morse
Department Manager Legal Services

¹ Guidelines issued by the Minister for Environment, Parks and Heritage under section 21 A of the *Aboriginal Heritage Act 1975*

² Department of Primary Industries, Parks, Water and Environment, *Aboriginal Heritage Standards and Procedures*, June 2018