

Trish Hodge – notes for Tasmanian Aboriginal Heritage Act Review

Background – I have read through current Aboriginal Heritage acts which are in place in Western Australia, South Australia and Victoria. Noting all have relevant information in relation to Tasmania, in particular the Victorian and Western Australian Acts.

1. What is the Aboriginal Heritage Act 1975 trying to achieve?
 - a. Is it clear? Yes
 - b. Can it be improved? Yes, after looking at the Victorian and WA acts, they are more thorough in the explanations of individual sections
2. What is Aboriginal heritage?
 - a. How well does the act define Aboriginal heritage? The inclusion on intangible heritage is vital.
 - b. Could this be improved and how? Yes, look at current Victorian and WA acts/legislation
 - c. Does the definition of a 'relic' adequately capture all elements of Aboriginal heritage that should be protected and managed? No – a relic in definition is something that is over 100 years old. The Victorian Act uses terminology such as 'secret or sacred objects'
 - i. Should the term 'relic' and the way Aboriginal heritage is recognised and defined be changed? – yes, the act does not clarify in terms of a relic, if cultural items are made by today's Aboriginal community
3. Ownership of Aboriginal heritage
 - a. How clearly does the act describe ownership of Aboriginal heritage? The act need to clearly define the difference between Aboriginal and non-Aboriginal ownership – for example – aboriginal people do not own the land or part thereof, the land and all that is, owns us, we have a responsibility to care for the Country (land, plants, animals, mountains, rivers, rocks etc) If we do not care for the country, then we will get sick because everything in and on country is not being looked after. Aboriginal and non- Aboriginal people have a responsibility for caring for Aboriginal heritage.
 - b. Are provisions in the act providing for ownership reasonable? Need access to the full act to comment
 - c. Who should own Aboriginal heritage? Ownership is not an Aboriginal concept, Aboriginal people have a responsibility for Aboriginal Heritage, but so does everyone.
 - d. Is the concept of 'ownership' the right way to think about who is responsible for Aboriginal heritage? No
 - e. Should the rules in the act apply to everyone in every situation? The Victorian and WA acts clearly state when/where Aboriginal people have separate obligations/exemptions
 - f. Should land tenure on which Aboriginal heritage exists make a difference to who owns/how the heritage is to be managed? Private land holders should have cultural awareness training/caring for country etc
4. Making decisions about what happens to Aboriginal heritage
 - a. Is the way the act describes who makes decisions, and how decisions must be made adequate and reasonable? It should be mandatory for the Minister and the PWS Director to seek advice and recommendations.
 - b. How can decision making be improved? Mandatory consultations with the Aboriginal heritage council.
 - c. Who should make decisions under the act? Aboriginal heritage Council, the minister and the PWS Director
 - d. Are there circumstances where different people or parties should make decisions about how to manage Aboriginal heritage? How should decisions be made? Question: Does the Aboriginal Heritage Council include Aboriginal community representatives from across Tasmania and from across all the Aboriginal ORIC organisations and individual Aboriginal

- representatives? When making decisions, the process must go through the council, and have enough time allowed for community to respond
5. The Aboriginal Heritage Council – what it is and what it does
 - a. How should members for the council be chosen? Aboriginal community representatives from across Tasmania and from across all the Aboriginal ORIC organisations and individual Aboriginal representatives
 - b. Should the act specify criteria for Council membership, and what criteria should apply? Yes, criteria should include work and personal experience
 - c. Is the role of the Council adequate and appropriate? No, more power for decision making and accountability
 - d. Could this be improved and how? The minister and director to follow advise given by council
 6. Offences under the act and penalties for doing the wrong thing
 - a. How well does the act describe and manage offences? Question: Does the act state (similar to Victorian act) that Aboriginal people carrying out land management etc are exempt?
 - b. Are the penalties adequate? No! I am not sure they ever will be or have a capacity to be adequate, our heritage is at least 10x older than the pyramids and 212x older than any European heritage in Tasmania. Our heritage sites are irreplaceable.
 - c. Could the offences and penalties provisions in the act be improved and if so how? Inclusion of compulsory cultural awareness for offenders
 - d. Are there circumstances where the 'rules' of the act should apply differently to different people? See Victorian and WA acts for suggestions
 7. When can Aboriginal heritage be interfered with?
 - a. Are the defence provisions in the act adequate and reasonable?
 - b. Could the defence provisions be improved and how?
 - c. Do the guidelines provide adequate protection for Aboriginal heritage?
 - d. Could the guidelines be improved, how?
 8. Enforcement of legislation
 - a. How well does the act provide for enforcement of its provisions? Not well enough
 - b. Could this be improved, how? More power given to PWS rangers and heritage officers to issue on the spot fines etc
 - c. Should the act include stop work provisions? YES
 - d. Should the act include provision for infringement notices and on the spot fines? YES
 - e. Should offences in the act be further scaled to distinguish between minor and non-minor offences? YES
 9. Other ways the legislation protects Aboriginal heritage
 - a. How well does the act protect and manage Tasmania's Aboriginal heritage?
 - b. Could this be improved and how?
 - c. Are 'protected sites' a useful mechanism for protecting Aboriginal heritage?
 - d. Is the provisions for making the regulations useful?
 10. Other matters covered by the legislation
 - a. Question: section 22 states that monies collected from fines go to the governments consolidated fund – what is this? What is the money used for? Should the money go to Aboriginal people/organisations for the repair/ongoing maintenance etc of sites/heritage places?
 - b. The act should include an appeals process

Hank Horton – notes for Tasmanian Aboriginal Heritage Act Review

The Discussion Paper provides an opportunity to comment on any other matters relating to the management of Aboriginal heritage in Tasmania.

We have sorted it by outlining the top 10 points that we need our community {Aboriginal} to better understand and inform us (the AHC) on the best way to progress this, ensuring that our heritage is better managed and owned by us into the future.

Key Points:

- a. Acknowledge the Aboriginal Community as “rights Holder / Owners” of our own Aboriginal Heritage.
- b. Acknowledge that this Country was “Invaded” and not discovered, and that Aboriginal People are the true custodians of our Land and Sea country.
- c. Acknowledge and recognize the “Intangible Aboriginal heritage” such as “Cultural Landscapes” and Song lines, as well as the dreaming connections and story.

These and also other major issues need to be addressed by the Act, to ensure we are recognized as the true land managers and that our Heritage should be of higher value than any built heritage from colonisation, along with placing our heritage on top of the list for better protection.

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

We see the Act as the major and current legislation & policy framework for best protection of Aboriginal Heritage in the state, and we need to ensure the rules and regulations stated here hold strong management and protection of our Aboriginal Heritage.

- This Act should be the best there is, needs be better than the last, but also the best in the Nation, as the outstanding protection and management of Aboriginal heritage.

Do we feel that the ACT should state?

The Aboriginal Community are true Custodians, Rights Holders, Owners & Managers!

That Aboriginal heritage is best managed by the Aboriginal Community, and work towards co/joint management with other stake holders and managers.

All Aboriginal heritage should be acknowledged, even Trade Routes, dreaming and Song lines as well as the same as all other Aboriginal heritage.

Is the Act clear on what we need it to achieve?

This protection should not be done just so it is easy to administer and manage, but truly reflect the needs and ambitions of the Aboriginal community of today and into the future.

2. What is Aboriginal Heritage?

How do we want Aboriginal Heritage to be defined? Is it just Old relics or should it include later history and materials, such as what was being done on Flinders and CBI?

Is it just what you can see or should it include what we know as the dreaming and stories connecting us to place? If so, how do we deal and manage this? Landscapes and/or Cultural Landscapes; are these classed as Aboriginal Heritage; if so why? If not why?

Should it be different or classed different if the Aboriginal heritage is located on crown lands or private property?

3.

4. Ownership of Aboriginal Heritage:

We know that we all feel that the Aboriginal community is the only people to hold/own Aboriginal heritage, (also following our community Proto-Cols) and be able to manage as culturally appropriate is required. But will the Act allow this? And what about our heritage located on Crown (GOV) land?

Also noted; Aboriginal heritage is not just a Relic.

The Act has several provisions relating to ownership of relics:

- Section 10 of the act required a person owning or holding relics at the time of the Act commenced to report that fact to the authorities.
- Section 11 of the Act provides that relics on Crown lands owned by the Crown; and
- Section 12 of the Act contains provisions for the compulsory acquisition of relics by the minister, if the minister determines that the relic is required by the Crown.

The Act is quiet on ownership of relics (Heritage) on lands other than Crown lands {e.g. privately-owned land}.

Also, we noted that "ownership" concept does not fit with how Aboriginal people view Aboriginal heritage and its value.

WHO? Should own our heritage? How do we deal with artefacts on private or Crown lands? Should they stay on Country, with good management? Do we (Aboriginal community) remove and relocate? How do we define Cultural landscapes and intangible heritage? Will ownership/Custodianship be applied here?

5. Making decisions about what happens to Aboriginal heritage:

We know that currently the Minister for Aboriginal Affairs is the primary decision maker under the Act and makes decisions in relation to: Dealing with our Aboriginal heritage when He feels fit or required. Issues permit (that allow our heritage to be destroyed/damaged) issuing guide lines, declare protected areas, and so on.

Is this current process right? What would we do better or change? How do we implement and enforce this (with current capacity and resources) when required?

So how do we improve this? Is the AHC working? Do you feel that the AHC has given us a better voice now? Has the AHC managed to make any difference?

What other ways may we improve these decisions being made; Education and Creating a better Cultural understanding for all levels of Gov. and current land managers and interested groups, to ensure better management and care of heritage and cultural landscapes ETC.

6. Aboriginal Heritage Council? What do you think of the AHC and how it works?

I see that the AHC now is the major decision maker and dealing with Gov. and those stake holders such PWS, Hydro ETC.

Since we had the Aboriginal heritage Council established, to try and take the place of TALSC, and deal with the "Permit" process and also work closely with Gov. and all those other Dept. previously mentioned. Do you feel that AHC has met those expectations? Can the AHC still be improved? Do we still see the AHC as the main "Council" to deal with these issues and represent the Aboriginal communities across Tasmania? I have noticed that many community members have stated a need to hold more of the AHC meetings in regional places (Deloraine, Devonport, St Helens, and Launceston) and other Aboriginal corporations around the state. Some have also said the AHC need to get over to the Islands, Flinders and CBI and hold meeting over there, where the mobs from there can also have a more in-put.

The AHC is funded by Dpt. And is also limited to the amount of travel it is able to do, the role we perform is for the whole state, I know that we should get out and have more regional meetings, but current funding will not allow for this.

Capacity building: we also see this as important, and allowing for younger (or in-experienced) community members are able to attend (as visitors) AHC meeting (be easier if held in regions) and see how, what and the role the AHC has and learn from current members. Do we have the community fund these people attending? Or do we seek further support through the AHC and Gov.

7. Offences under the Act and penalties for doing the wrong thing:

We know that with the last changes to the Act, we managed to have our Aboriginal heritage lifted and the penalties were also lifted to match those of any other heritage, man built or since the invasion.

Is this enough? Equal Value? Can we enforce better? Is Equal enough, with the world interest and values placed on our "Oldest Living Culture" on the global scene? How do we deal with work places and/or contractors, to ensure they follow the rules under the Act? Would "Stop Work" note or another way? Will the \$\$ value out way damage/destroy to our Aboriginal heritage? As some big contracts are priced into the \$millions, so a few hundred \$K may be small for the work they can do or carry-out.

I hear that we (the Aboriginal community) feel that with more Aboriginal Land managers, Compliance Officers and Aboriginal Heritage officers out working on Country, would enable us to better enforce the Act and laws as well as manage the heritage in a culturally manner.

Capacity again is the big issue now facing our community, as these interests (Tourism ETC) grow, we are going to need more Aboriginal people out on Country. Will Joint/Co-management fix this issue?

8. When can Aboriginal heritage be interfered with?

As we know the AHC has now been made a statutory body to deal with and assist the Minister in their decision making when it comes to any interference of Aboriginal heritage.

Is this enough? How do we improve the system? Is it ok to damage/interfere heritage if the work is of a safety need or community and economic value?

We currently have a few process that are in place, like RAA's for PWS, permits for bigger works, Aboriginal Heritage Officers doing "Specialist surveys" before any works start, Forrest standard and a few other ways to deal with managing heritage.

Can this be improved? Again I see a capacity issue here, with the need to skill up more community to become AHO's and advisors to those contractors, work dept.

If heritage items are to be removed, who, how, where? And how will the community be able to handle these items and keep/store them ETC.

9. Enforcement of the legislation:

Again we have spoken about this as being a capacity issue and needs to be addressed, also joint and/or co-management would also lead to better enforcement, with more Aboriginal people out on country.

Working with relevant bodies, dept. and people to ensure that enforcement is carried out when required.

Also stressing the "**Value**" of being equal, as the people doing the final enforcement may not fully understand the "**said Value**" from an Aboriginal community perspective. Not just a western view of value!

10. Other ways the legislation protects Aboriginal heritage:

The act provides for a number of other ways which are intended to protect and manage Aboriginal heritage in addition to the general provision already spoken about.

Again, we see the "Capacity Building" is a huge issue again, with the need for more Aboriginal enforcement required with the future directions of the "Tourism Industry" and state growth.

So building more skills to provide good information to land managers and gov. departments across all levels, local councils ETC.

11. Other matters covered by the legislation:

The AHT (Aboriginal Heritage Tasmania) cultural management group will address this with you all, and they are also holding further community meetings and on Country community days, where you can join them for a further chat about the ACT or what they are dealing with and doing out on Country as well.

Hank Horton.

Non Indigenous NPWAC member comments – notes for Tasmanian Aboriginal Heritage Act Review

I agree with others that the key input has to come from the Aboriginal Community on this matter, its critical that the Act reflects their views on how to manage Cultural Heritage.

In relation to our role as a Council there were however some areas where I would like to emphasise the following from my perspective:

- In relation to Section 2, Aboriginal Heritage, I thought that the issue of "intangible heritage" could be particularly important in the context to the TWWHA and other reserve system areas. I believe that we all too often view cultural heritage through a western lens and consequently miss entirely or undervalue the intangible heritage. Given the importance and value of "wilderness" we so often

discuss, should this not also apply to intangible cultural heritage? I would like to support intangible heritage being included in the Act on those grounds. I note the issues raised that potentially make it “difficult to define and manage” but I feel strongly that too many processes are designed for ease of administration rather than better outcomes, and Victoria has taken the initiative and set the precedent anyway.

- Noting in Section 6 that penalties are finally in line with other (colonial) Heritage I was questioning the relative value. It may be consistent and again easy to administer but is equal value a true reflection of value? I would suggest the remaining Aboriginal Heritage in Tas and on the reserve estate is both rarer and of more global significance. Having witnessed myself the coastal changes in recent years (climate related) and impact of the recent fires, particularly in remote areas, it would suggest that the threats and risks are increasing and therefore the value increases. While value is subjective I would advocate that there are grounds to consider a greater value on cultural heritage be considered and reflected in the penalties in the Act?
- Section 8 mentions a couple of things that I would consider particularly important to the reserve estate, the issue of scaled offences and stop work notifications. In reference to the scaled offences I think that more options for enforcement would contribute to better management. On the spot fines for minor infringements would empower front line staff and potentially see more penalties issued because it does not require a formal legal process (as opposed to warnings or do nothing). I think this would be valuable in changing the community culture around Aboriginal heritage (think West Coast). I also believe that the issue of “stop work” notices is a no brainer in terms of practical management and enforcement and the law should apply equally to colonial and cultural heritage, especially in the current development climate.

Thanks Richard

Hi All,

Whilst I am no expert on these matters, I would just like to write and support Richard’s comments on ‘Intangible Heritage’ as they relate to aboriginal heritage. When this was discussed at a previous meeting it was a big eye opener to me and if I take either a traditional owner or a visitor’s experience of place, the intangible assets could almost be the most significant. These intangible assets, and providing greater understanding and education of these through education or sensitive visitation to an area has the potential to really enrich the uniqueness and values of regions of our Parks. I would like to support Richard’s suggestions to include intangible heritage in the Act although realise that it may provide hard to monitor. To provide an example, under 2. What is Aboriginal Heritage? - it describes heritage as, amongst other things, any object, site or place that bears signs of the activities of any such original inhabitants or their descendants. I would suggest that this statement could be expanded to include any place that holds significance such as traditional trade routes, places of spiritual or ceremonial significance or places where trade took place.

Therefore, I also support the removal of the 1876 cut-off date for an aboriginal relic because it is again supporting this concept of intangible assets and the cultural as a ‘living culture’.

Finally, in the Act’s review there was also a question:

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

I find the concept of ownership difficult to grasp. Is the question better asked as, ‘Who is the custodian of aboriginal heritage?’ If custodian is a more appropriate concept then I believe that we are all custodians, both our traditional owners and communities, but also all of us, whether we are visitors, land owners, Parks service, government etc. I know this adds complexity to the concept and makes measurement hard but I find ownership too black and white in this situation. We are all responsible for the protection of our Aboriginal heritage.