

FACT SHEET

Aboriginal Heritage Protection Bill 2013

The *Aboriginal Heritage Protection Bill 2013* is designed to replace the existing legislative framework for the preservation of Aboriginal relics, the *Aboriginal Relics Act 1975*, with a fair, balanced and modern legislative framework for the protection and management of Aboriginal heritage.

The Bill seeks to provide a central role for the Aboriginal community in protecting and managing their heritage and aims to ensure greater clarity and certainty for all parties, including through the timely assessment of development applications.

The Bill focuses on the need for effective integration of Aboriginal heritage protection with the State's Resource Management and Planning System and creates a regulated environment for managing Aboriginal heritage. With a range of flexible heritage management tools, it aims to provide clearer procedures than the current system, and more structured participation for the Aboriginal community.

Key features of the Bill include:

- Aboriginal heritage no longer defined in terms of an arbitrary 1876 cut-off date.
- Establishment of a state-wide Aboriginal Heritage Council (AHC), comprising up to nine Aboriginal people appointed by the Governor on the nomination of the Minister, on the basis of relevant knowledge, experience or expertise. The Council is to be broadly representative of the Tasmanian Aboriginal community and Aboriginal persons generally, and has both decision-making and advisory functions. Its decision-making responsibilities are in relation to: management plans, if the Council and proponent reach agreement on specified matters; permits relating to specified dealings with Aboriginal objects and scientific research; preliminary registration determinations in relation to the registration of objects and sites as nominated Aboriginal heritage; and entry into Aboriginal heritage agreements with other parties for the voluntary protection and management of heritage. It has an advisory role to the Minister on: the assessment of development activities which go through the integrated approvals process or require a permit from the Minister; cases requiring audits; issuance of protection orders and stop orders; criteria for registering nominated Aboriginal heritage; policy development and public education and awareness regarding Aboriginal heritage; and management plans, if agreement could not be reached with the proponent.
- Vesting of decision-making powers with the Minister (with broad powers of delegation) in relation to permits for development activities and the integrated approval process, as well as management plans in specified circumstances (where agreement cannot be reached between the proponent and the within the required statutory timeframe or the AHC elects not to evaluate a plan). The Minister is also responsible for issuing protection orders and for other compliance tools such as audits and stop orders.
- An integrated approval process for lower-impact and smaller-scale activities that require a development approval under the *Land Use Planning and Approvals Act 1993* or a permit for dam works under the *Water Management Act 1999*, with any Aboriginal heritage conditions to be included in the main approval permit.

- Mandatory management plans for high-impact and large-scale activities, subject to prescribed exemptions, with the ability for a proponent to demonstrate that a management plan is not required in certain circumstances. Provides the ability for the Minister to “call in” an activity and sets minimum standards for the preparation of management plans in Regulations. Embeds the consideration of Aboriginal heritage into the early stages of the planning process, by requiring the approval of management plans, where mandatory, before other statutory approvals are granted.
- A permit system for activities that affect Aboriginal heritage, but that do not require a management plan or form part of the integrated approval process, as well as for scientific research and dealings with Aboriginal objects.
- Ability for voluntary management plans to be used in the place of permits or the integrated approval process for smaller-scale activities, where desired, as well as the ability to use voluntary management plans for multiple small activities, such as infrastructure maintenance or coastal weed management.
- Exemptions for certain activities, unless there is registered Aboriginal heritage present and the activity will cause additional surface disturbance, or Aboriginal heritage is found. Exempt land activities include: minor works, alteration and maintenance works, demolition, one or two dwellings, works ancillary to an existing building (such as pools, sheds, fences and driveways), certain dam works, subdivisions of no more than four lots and other minor development that directly impacts less than 750 square metres. Sites previously subject to ‘serious ground disturbance’ and unavoidable activities such as emergency works also constitute exemptions.
- Provision for the declaration of exempt areas or areas of high sensitivity by order of the Governor, subject to approval by both Houses of Parliament, to recognise clear evidence that in some areas there is little chance of finding undisturbed Aboriginal heritage, while in others there is little chance of not disturbing Aboriginal heritage.
- Provision for Ministerial endorsement, in consultation with the AHC, of codes of practice, standards, guidelines or other documents on a case-by-case basis where they deal suitably with Aboriginal heritage issues, including transitional provisions to recognise any codes, standards, guidelines or documents prescribed in regulations for a limited period.
- Provision for Ministerial guidelines to be issued on a range of matters, including in relation to the investigation and documentation of Aboriginal heritage and Aboriginal heritage assessments, subject to mandatory consultation requirements.
- Establishes the Resource Management and Planning Appeal Tribunal (RMPAT) as the primary place for resolving disputes, including in relation to management plans, permits in regard to development activities, protection orders and stop orders. Retains existing appeal and dispute resolution mechanisms under RMPAT for the integrated approvals process, but specifically excludes from the Aboriginal heritage approval process the processes of public exposure through notification and representations under section 57 of the *Land Use Planning and Approvals Act 1993* where the planning application would not otherwise be discretionary. Allows for limitations to be placed on public notifications for applications that would normally be discretionary. Provides additional appeal rights for non-development permits through the Magistrates Court (Administrative Appeals Division).

- Seeks to promote voluntary Aboriginal Heritage Agreements to support the development of partnerships in the protection and management of Aboriginal heritage and to provide access to significant sites with landowner consent.
- Creates an Aboriginal Heritage Register to record Aboriginal sites, objects, declared exempt areas and areas of high sensitivity, management plans, agreements and other information, with controls on access to ensure landowners, land managers and developers can practically access relevant information, without compromising the protection of Aboriginal heritage. Allows for greater levels of access to the Register, on application to the Secretary and by agreement with the Council, to specified users for specified purposes.
- Makes provision for public access to a web-based synopsis of the Register, to provide an immediate indication of whether or not there is registered Aboriginal heritage present at any location.
- Establishes a public process, prescribed in Regulations, for registering as “nominated Aboriginal heritage” objects or sites which may not contain physical evidence of occupation or use, provided the relevant criteria can be met. The criteria for the registration of nominated Aboriginal heritage are to be established by the Minister, following public consultation on draft registration criteria developed by the AHC and a recommendation from the AHC.
- Requires anyone in possession of Aboriginal human remains to hand them to the Aboriginal organisation approved by the Attorney-General under section 23(1) of the *Coroners Act 1995*.
- Provides a contemporary framework of offence and penalty provisions, as well as a range of enforcement tools that are better aligned with other planning legislation in Tasmania and with Aboriginal heritage legislation in other jurisdictions, to ensure an effective deterrent against harming Aboriginal heritage.
- Repeals the *Aboriginal Relics Act 1975* and includes transitional provisions to ensure that the legislation operates effectively and to allow for permits and other controls currently in place under the *Aboriginal Relics Act* to remain in place, for two years from its repeal.
- Requires the legislation to be reviewed within three years of its full commencement, to ensure the scope of the legislation is adequate and to ensure its efficacy and efficiency.