

SECOND READING SPEECH
ABORIGINAL HERITAGE PROTECTION
BILL 2013

Mr Speaker, I move that the Bill now be read a second time.

The Bill before the House is historic – providing a modern framework for the protection and management of Aboriginal heritage in our State.

Tasmanian Aboriginal people are the only group of humans to have lived in isolation for around 12,000 years, since Bass Strait cut Tasmania off from the mainland, and their culture and heritage is like no other.

Aboriginal heritage provides physical and spiritual links for Aboriginal people to their traditions, observances, customs, beliefs and history. Shell middens and concentrations of stone artefacts, rock art, cultural landscapes, quarries and caves can help tell the story of how Aboriginal people lived sustainably with the Tasmanian environment for at least 35,000 years.

Aboriginal heritage provides evidence of the lives and existence of Aboriginal people before European settlement through to the present.

There is still much to be learned, acknowledged and respected from this heritage.

The current legislation dealing with Aboriginal heritage in Tasmania, the *Aboriginal Relics Act 1975*, is now very out dated and has to be replaced. Since it was introduced there has been significant social, economic, cultural and legislative change, including the implementation of contemporary Aboriginal heritage legislation in some other States.

The current Act:

- Lacks a contemporary understanding of what Aboriginal heritage is, beyond “relics”, and includes an arbitrary cut-off date of 1876;
- Has no clear statutory role for the Aboriginal community;
- Is not in any way integrated with other planning and land use development approval systems; and
- It lacks such basic elements as transparency, certainty of process, statutory timeframes, appeal rights, and effective enforcement and penalties.

We want new legislation that will stand the test of time and cover off on all the issues.

To get to this point has taken a great deal of time. That is because it is difficult and challenging – as all States have found.

There was a foundation of work from earlier reviews and consultations. The current reform process is effectively the fifth review of Aboriginal heritage legislation to be undertaken in Tasmania since 1986. Extensive public consultation on a policy framework for new legislation occurred in 2006-07, and further work continued until early 2010.

Building on that, we developed a framework of ideas two years ago, which we then discussed with the Aboriginal community and key stakeholders. Public consultation then occurred in late 2012. A regulatory impact statement was then released based on draft Regulations, which led to detailed feedback on the proposed legislation in general and was considered in finalising the Bill before the House today.

We genuinely tried to consult in a meaningful way, and I believe most stakeholders would acknowledge our efforts.

I acknowledge that there are divergent views on the Bill. But we need better legislation. Our aim was to try and find a balance that is going to be better for the State as a whole. The Bill is broad in scope, and is about much more than the permits that are the key to the current Aboriginal Relics Act.

The legislation includes a number of key definitions. They reflect the wider scope of the heritage covered by this Bill compared with the current Aboriginal Relics Act, and also the experience of contemporary legislation in other States.

Significantly, Aboriginal heritage will no longer be defined in terms of an arbitrary 1876 cut-off date under the Bill. Aboriginal heritage consists of sites and objects that are of significance to the Aboriginal people of Tasmania, as well as Aboriginal human remains. It provides evidence of the long history and culture of Aboriginal people right through to the present.

The approach to defining the significance of Aboriginal heritage has moved on from a “relics” model and recognises a broader range of heritage. Under the Bill, “significance” is defined to include archaeological, anthropological, contemporary, historical, scientific, social and spiritual significance.

Some objects or sites with Aboriginal heritage significance may not contain any material evidence of occupation or use (in the form of structures, artefacts or archaeological deposits), or may be more recent than 1876. The legislation acknowledges this and the Regulations provide a public process for the registration of “nominated Aboriginal heritage” on the Aboriginal Heritage Register, provided the relevant criteria can be met.

One of the strongest messages taken from consultations was the need to recognise the role of the Aboriginal community in managing their heritage. The Bill addresses this concern by establishing an Aboriginal Heritage Council comprised of up to nine Aboriginal people appointed by the Governor on the nomination of the Minister, on the basis of relevant knowledge, experience or expertise, to provide a state-wide voice for Aboriginal people on the management of their heritage.

The Council will be responsible for making decisions on 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.

In determining whether to approve a management plan, the Council is to have regard to specified matters, including whether the management plan provides for the land activity to be carried out in a way that avoids, or if that is not possible, minimises harm to Aboriginal heritage, and whether the management plan makes satisfactory provision for the protection and management of any Aboriginal heritage likely to be impacted by the land activity, both during and after the land activity.

The Council will also advise the Minister generally in relation to the protection of Aboriginal heritage and act as a consultant to the Minister on various matters, including the Aboriginal heritage impacts of land activities, audit orders, protection orders and stop orders.

The intention is to bring the law on Aboriginal heritage into the wider system of approvals in the State, which requires linkages with other approvals legislation.

As with any important values (cultural or natural), the aim is to ensure that when a development is planned, all values are identified early and accurately. Then they can be as far as possible protected, and appropriately managed. In most cases this can be done in the context of an inclusive and sustainable development process.

The Bill is integrated with the State's Resource Management and Planning System, to provide flexible and workable processes. It will require Aboriginal heritage to be considered (unless activities are exempt or clearly can have no Aboriginal heritage impact) at the early stages of project development. Clarity at the outset will ensure Aboriginal heritage values are fully factored into development considerations.

The Bill takes the approach that development with larger physical impacts will generally carry higher risks of impacting on Aboriginal heritage.

It requires the preparation of a management plan at the planning stage of certain specified large-scale developments or activities. For example, a major infrastructure project under the *Major Infrastructure Development Approvals Act 1999* will require a management plan. Other circumstances in which a management plan is required for an activity will be clearly specified in regulations. The Bill also allows the Minister to direct a person to prepare a management plan.

Decision makers, such as local government, will not be able to issue a permit for those activities until the management plan is approved. A decision not to approve a management plan may be appealed in the Resource Management and Planning Appeal Tribunal.

The Bill acknowledges that some large projects may have little or no impact on Aboriginal heritage, such as when occurring on reclaimed land or offshore. It provides the opportunity for proponents to demonstrate this to the satisfaction of the Minister, who may seek advice from the Aboriginal Heritage Council prior to making a decision.

The Bill also provides for the possibility of Voluntary Management Plans for multiple small activities, such as infrastructure maintenance or coastal weed management. Voluntary management plans may also be prepared in circumstances where the Aboriginal heritage issues for a project appear complex and a proponent decides that a management plan is the most effective way to address them.

The Bill also provides 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. There will therefore be a single approval for the activity, with one statutory timeline.

Consideration of forestry and its interrelationship with the Bill will be considered over time, including a review of the manner in which forest practices are conducted to ensure that they meet the objectives and requirements of this Bill.

For development activities that affect Aboriginal heritage, but that do not require a management plan or form part of the integrated approval

process, a permit is required. Applications for such permits are to the Minister.

The Bill also requires permits for specified activities, such as carrying out scientific research on an Aboriginal site and dealings with Aboriginal objects. The Council determines applications for such permits.

Smaller-scale activities are exempt unless there is registered heritage in the affected area and the activity will cause additional surface disturbance, or if heritage is found. There will be a simple on-line process to allow people to check whether registered Aboriginal heritage is present on specific land or in a specific area of the State.

Exempt activities, such as minor works, alteration and maintenance works, are specified in the Bill. Further details for some, such as dam sizes, will be more clearly specified in the regulations. The exemptions are expected to cover most ordinary development activities in urban and suburban blocks. If an activity is exempt, no Aboriginal heritage approval will be required.

Consistent with contemporary Aboriginal heritage laws in other jurisdictions, sites previously subject to 'serious ground disturbance' are

also exempt under the Bill. The existence of such disturbance must be demonstrated to the satisfaction of the Minister.

Unavoidable activities such as activities undertaken in the course of an emergency also do not require approval under the Bill and, provided such actions are a necessary and proportionate response to an actual or impending emergency, are a defence to the general harm offences.

The Bill also provides for the declaration of exempt areas or areas of high sensitivity, by order of the Governor. This will 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. Such declarations will affect exemptions. Activities in an exempt area will be exempt, subject to the usual exceptions, that is unless there is registered heritage in the affected area and the activity will cause additional surface disturbance, or if heritage is found. On the other hand, activities in an area of high sensitivity will, if they involve additional disturbance of the surface, not be exempt.

The legislation also seeks to promote partnerships between the Aboriginal community, landowners, government and others for the purpose of protecting and managing Aboriginal heritage. The Bill encourages these partnerships through voluntary Aboriginal heritage agreements, which the Council may enter with landowners or Crown land managers, for example to access, maintain or rehabilitate an Aboriginal object or site on private land or Crown land. Agreements like this are a feature of contemporary legislation elsewhere in Australia.

The new legislation allows for the issuing of Ministerial Guidelines on Aboriginal heritage assessments. Such Guidelines may cover the different types of assessment, standards and methodologies (including when surveys may be necessary). The Guidelines will provide further direction to developers, industry and others on the nature and extent of the assessment required for a proposed land activity.

The Bill also allows the Minister, in consultation with the Council, to endorse codes of practice, standards or other guidelines on a case-by-case basis where they deal suitably with Aboriginal heritage issues.

The Bill will establish a statutory Aboriginal Heritage Register, similar to registers in other States. It is critical to the success of the new legislation that information about Aboriginal heritage is as accurate and accessible as possible, and that we continue to improve knowledge of this heritage. The Register will hold records of Aboriginal heritage objects and sites in Tasmania, and be an important administrative tool to support the protection and management of Aboriginal heritage.

The Bill also includes a range of measures to promote the effective enforcement of the new legislation. The Minister will be empowered to order an audit in specified circumstances, including where the Minister believes there has been a contravention of an approval issued under the Act. The Bill allows the Minister or an authorised officer to issue a stop order where a person is carrying out an activity in contravention of the legislation and there are reasonable grounds for believing that the activity is harming, or likely to harm, Aboriginal heritage.

Some Aboriginal heritage is of exceptional significance to the Aboriginal community, and requires additional protection. The legislation acknowledges this by allowing the Minister to make an Enduring Protection Order where satisfied that ongoing protective measures are appropriate, to preserve this heritage for future generations. It also

allows the Minister to make Interim Protection Orders, including while an assessment is undertaken to determine if a site or object warrants permanent protection. The Council can ask the Minister to issue an Aboriginal Heritage Protection Order, or the Minister may do so on his or her own initiative.

The Bill's offences will be very different from those in the current Aboriginal Relics Act. The definition of 'harm' is to be broadened to include 'conceal and interfere with'. The main 'offences to harm' are graded in three levels, in a way familiar from other areas such as driving offences, depending on whether a person knows he or she is harming Aboriginal heritage, or is reckless or negligent. .

Penalties for breaches of the current legislation (Aboriginal Relics Act) are too low and not an effective deterrent. The new legislation has maximum penalties in line with those in the Tasmanian Historic Cultural Heritage Act 1995, of up to \$1.3 million for bodies corporate. They are also in line with Aboriginal heritage laws in Victoria and Queensland, and with other relevant heritage and planning legislation in Tasmania.

In summary, the Bill provides a clear statutory role for the Aboriginal community - as well as clarity and certainty for those proposing

developments - and other features to improve the protection and management of Aboriginal heritage including voluntary agreements, an Aboriginal Heritage Register, modern and effective systems of enforcement, transparent processes, and appeal rights.

We've also produced draft Regulations. Although not yet finalised as they are dependent upon the passage of this Bill, they have been made available as a guide to how they will work in practice.

Having improved laws and processes for Aboriginal heritage will positively affect many people in the Tasmanian community. It will provide the Aboriginal community with a clear, statutory role in the protection and management of their heritage. For landowners and developers, it will provide clearer procedures and greater certainty than exist under the current system.

However, the Government recognises that introducing such a significant Bill requires as much certainty as can be provided. As such the intent is to stagger implementation of the Bill, with only Parts 1 and 2 and section 138 relating to regulations and 141 (administration of Act) of Part 13 to be proclaimed initially. This will enable the formation of the Aboriginal Heritage Council, consideration of high sensitivity and exempt areas, in consultation with the Council and other relevant stakeholders, development of guidelines and criteria for nominated Aboriginal heritage.

In the first 12 months the Urban Growth Boundary as described in the Southern Regional Land Use Strategy and the Greater Launceston Urban Area as described in the Northern Regional Land Use Strategy and the central business districts of Burnie and Devonport and their immediate surrounds will be the focus of consideration as exempt areas. The exact areas to be mapped in Burnie and Devonport will be determined in consultation with local government.

Final decisions on any exempt areas will be made on sound, evidence based information. The process will involve the Aboriginal Heritage Council and other relevant stakeholders.

The first high sensitivity areas likely to be considered include those already declared under the Aboriginal Relics Act (for example, Sundown Point, West Point and Maxwell River Protected Sites) and could include, subject to Aboriginal community agreement, lands vested in the Aboriginal Land Council of Tasmania under the Aboriginal Lands Act 1995.

The remainder of the Bill will not be proclaimed until the mapping of exempt areas is finalised. We will use our best endeavours to complete the mapping within 12-months, however if it takes longer the remainder of the Bill will not be proclaimed until its completion.

Within three years of its full commencement, the legislation will be reviewed to ensure the scope of the legislation is adequate and to ensure its efficacy and efficiency.

Mr Speaker, the Government fully supports the introduction of this Bill.

I commend this Bill to the House.