

# TASMANIAN ABORIGINAL HERITAGE LEGISLATION

Newsletter Number Two

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**W**elcome to the second Tasmanian Aboriginal Heritage Legislation newsletter. I am proud to be involved in a process that aims to ensure proper protection of this most significant aspect of Tasmania's heritage.

The Aboriginal heritage of this State is extraordinary, and protecting it is the responsibility of all Tasmanians.

Creating new Tasmanian Aboriginal Heritage Legislation is a very important initiative for Tasmania. Your participation and commitment is crucial if we are to achieve better protection of cultural assets and to improve community understanding of this irreplaceable legacy.

The State Government is working with all Tasmanians in developing new legislation through an inclusive process.

*Paula Wriedt, Minister for Tourism, Arts and the Environment*



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*Did you know?*

The largest known 'artefact scatter' in Tasmania contains approximately 5 1/2 million artefacts in a square kilometre.

# What's Wrong with the *Aboriginal Relics Act 1975*?

## **Danielle Grey, Senior Planning Officer, Kingborough Council**

Although the Kingborough Council's new planning scheme refers directly to the *Aboriginal Relics Act 1975*, Ms Grey said it was the only municipal planning scheme she was aware of that did. The absence of a link between local government planning and the ARA is a failing of this Act.

"Aboriginal Heritage is something that can be missed by inexperienced planners." Ms Grey said that it would be good if all planning schemes referred directly to Aboriginal heritage protection, possibly in conjunction with existing heritage provisions in planning schemes.

## **Graham Wilkinson, Chief Forestry Officer, Forest Practices Authority**

Mr Wilkinson has concerns that while the Aboriginal Relics Act (ARA) focuses on the protection of Aboriginal heritage, it fails to provide adequate guidance with respect to the management of heritage values, leading to inconsistent approaches across various forms of land use and development.

He said: "The current Act does not clarify appropriate management requirements for artefacts scattered throughout Tasmania. It would be good to have clear and consistent objectives that can be readily integrated into planning systems across all forms of land use."

## **Colin J Hughes, Manager, Tasmanian Aboriginal Land and Sea Council**

"It's outdated, antiquated, it's back in the dark ages," said a disgruntled Mr Hughes. He explained that the inclusion of an ignorance clause and the 6 month statute of limitations has allowed hundreds of crimes to slip through the net. There have only ever been two successful prosecutions. Even then the maximum fine of \$1100 is inadequate and offers little deterrence or

*"It's outdated, antiquated, it's back in the dark ages,"*

Colin Hughes, Tasmanian  
Aboriginal Land and Sea Council

punishment. "If we ever find the perpetrator of the damage at Greenes Creek we can only ever fine them 11 penalty points when that piece of rock art is priceless. It's no deterrent whatsoever. It needs to be up there with the [Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984]." Mr Hughes said another fault in the ARA is that fact that items created after the year 1876 (the year of Truccanini's death) cannot be registered for protection. "I find it very offensive."

He said that he would like to see blanket protection transferred across to the new Act, considering it about the only good thing in the ARA.

## **Sandra Hogue, Cultural Heritage Program Manager, Hydro Tasmania**

While adhering to the provisions of the Act, Hydro Tasmania relies heavily upon relationships and agreed protocols to actively manage Aboriginal heritage values. "The principles of the Act are not well defined and this makes it difficult to explain them to relevant project managers. The Act uses outdated terms, such as 'relic', which are restrictive and do not convey that the Act is about managing Aboriginal heritage and, in particular, artefacts," explained Ms Hogue. She also sees the Act's lack of coordination with other approval processes as a potential problem.

Ms Hogue said that Hydro Tasmania deals with Aboriginal heritage on a daily basis and is committed to improving processes

and working with the Aboriginal community to ensure that this heritage is protected. "Recently Hydro Tasmania held a cross-cultural Aboriginal heritage training session for project management and field staff with the Aboriginal Heritage Office and the Tasmanian Aboriginal Land and Sea Council (TALSC). Further, we have been investigating

a formal agreement with the [Aboriginal] community through TALSC on how we identify the potential for heritage values during environmental impact assessments and how we monitor works on site that may impact on heritage."

## **Caleb Pedder, Manager, Aboriginal Heritage Services Branch, DTAE**

Like other Aboriginal heritage practitioners, Mr Pedder considers that many of the shortcomings of the ARA 1975 lie with the difficulty of prosecutions, the 1876 cut off date, lack of integration with current planning schemes and the definition of a relic.

"From a practical view point, Section 21(3) says if you do not know it was a relic you cannot be prosecuted, unless they had written it down or they were a heritage practitioner - it's difficult to prosecute," he said. Due to this inability, the Act has not been significantly tested in the courtroom. With few precedents set, interpretation of the Act has remained problematic.

He said that without revamping the Act or making a new one, it is difficult to participate in planning schemes, which could provide triggers in the planning stages of developments which may impact Aboriginal heritage.

Mr Pedder also considers that the definition of a relic is not broad enough. "It doesn't cover cultural, spiritual and important places; it is very limited.

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# THE SIGNIFICANCE OF SIGNIFICANCE

Tasmanian Aboriginal people have long expressed the view that all Aboriginal heritage is 'significant'. At the same time others have argued that it is more logical, in managing this heritage through legislation, that stronger protection be given to heritage that is defined as having 'greater significance'.

However, there is a problem in writing levels of significance into legislation.

Colin Hughes, Manager of the Tasmanian Aboriginal Land and Sea Council and Aboriginal Heritage Officer of 15 years, explained why this would not work for the Aboriginal community. "I don't believe in the [concept of] significance [being written into the act] because it's all based on scientific terms, it would not allow for Aboriginal community recognition of sites.

"Criteria such as spirituality can't be defined in scientific terms," he said.

"If we've got low levels of [scientific]

significance it may allow developers to go ahead without a site's full potential being realised."

Mr Hughes emphasised that while it is not impossible to assess significance - in fact that is exactly what needs to be done - sites need to be assessed for significance on an individual basis, for their cultural, scientific, spiritual or whatever other significance may be assigned to them. They should not be assessed solely because of the type or category they belong to. These assessments require experience and knowledge, and in most cases need not be a lengthy or complicated process.

Mr Hughes explained how problems can arise when significance is attached to particular sites or items. "It's always the isolated artefacts that are [deemed to be] at the low level of significance, so therefore a piece of Spongelite\* that has been found in an area that it hasn't been found before

would be considered low even though it has the potential to tell more stories than a large midden adjacent to it," Mr Hughes said.

Peter James, former Chair of the Tasmanian Heritage Council and University Heritage Law lecturer, has been heavily involved in drafting Historic Heritage legislation nationally and agrees that writing significance levels into legislation is fraught. "There's no way that in an act you can say this is of great significance or this is of little significance. No one in Australia has been able to. It's too complicated. There will always be different views," he explained.

Tasmania's *Historic Cultural Heritage Act 1995* does not assign significance to particular types of heritage.

The emphasis nationally and locally is on ensuring adequate assessment.

\*Spongelite is a rare and distinctive stone which was used by Tasmanian Aborigines to make tools, sourced from Tasmania's North West.

## Office of Aboriginal Affairs: Providing a Link Between Government and the Aboriginal Community

The Office of Aboriginal Affairs (OAA) within the Department of Premier and Cabinet plays an essential role in the development of new Tasmanian Aboriginal Heritage Legislation (TAHL).

"We provide a link between the Government and the Aboriginal community. It's a bit like being stuck between a rock and a hard place!" said Greg Brown, Manager of OAA, and also a member of the TAHL steering committee.

Mr Brown went on to explain that his office has to balance the expectations of the Aboriginal community against the policy of the Government, which at times can be hard to do.

"We're also a bit of a watch dog. Where other government agencies may have overstepped boundaries and vice versa or when [the Aboriginal] community wants to speak to the Government we can provide a link to facilitate that and give advice."

OAA provides that link between the Tasmanian Aboriginal Land and Sea Council (TALSC) and the State Government in the development of this new legislation. TALSC is an Aboriginal community elected body which consults with and represents the Aboriginal community through providing advice and services on heritage, land management and land rights issues. "TALSC is the major community player in all of this and has a mandate and responsibility to the [Aboriginal] community in all heritage issues," said Mr Brown.

TALSC has consulted with the Aboriginal community through established meetings, resulting in the formation of an Aboriginal Working Group to progress the many issues important to the Aboriginal community, in the development of TAHL. OAA will assist and support TALSC if and where required through the process.

Mr Brown said it is very important that the Aboriginal community has its issues heard and dealt with, unlike the past reviews of the *Aboriginal Relics Act 1975* which were deficient in incorporating the aspirations of the Aboriginal community.

"Our aspiration [for the new legislation] is for the [Aboriginal] community to control, protect, own and manage its own heritage."



## Whats Wrong with the Aboriginal Relics Act 1975?

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In relation to the word relic, the language is archaic, it's not really appropriate." Furthermore, Mr Pedder said that the regulations have lapsed, removing the opportunity to define process and procedures in relation to the Act, such as permits. "In a practical sense the permit process under Section 14 (1) can be quite cumbersome. The process we follow does not allow for differentiation between complex and simple sites, and there's no

scope to simplify the process for really straight forward issues."

### Geoff King, Cattle Farmer and Wildlife Tour Operator

Mr King regards lack of available education about Aboriginal heritage as a problem associated with the ARA.

He educated himself about Aboriginal heritage and as a result voluntarily moved his agisted cattle off culturally sensitive areas in the Arthur Pieman Conservation Area, opting to run wildlife tours from there instead.

He believes that the Crown could be

doing more to relieve areas with natural and heritage values from the impacts of farm animals. "It is totally frustrating and annoying the way they always compromise the [Aboriginal] sites.

"A human is not allowed to interfere with a relic but an animal can," said Mr King.

He also cited the ignorance clause as a failing of the ARA. Hiding behind ignorance is used too often."

Mr King is looking forward to new Tasmanian Aboriginal Heritage Legislation but is becoming discouraged at slow progress. "I know we've got to do things right, but it's too slow," he said.

# Cross Cultural Awareness Training

For almost a decade now the Aboriginal Heritage Office (AHO), in partnership with the Tasmanian Aboriginal Land and Sea Council (TALSC), has been providing cross cultural awareness training to organisations, agencies, local governments and industry.

"It's a sought after service," said Caleb Pedder, Manager of the Aboriginal Heritage Services Branch. "We focus on organisations that have the potential to adversely affect Aboriginal heritage. Participants gain an appreciation of, and an insight into Aboriginal heritage.

"Feedback has been really positive. Participants have come away having gained an appreciation for Aboriginal heritage and in most cases they have said it was very enjoyable."

A range of practical information is presented, such as what an Aboriginal site is, the role of the AHO and TALSC, State and Commonwealth legislation designed to protect Aboriginal heritage, permit procedures and who to contact when dealing with Aboriginal heritage.

The training includes a visit to an Aboriginal site or sites. Mr Pedder said: "They get to experience Aboriginal heritage in country, it's not all in the classroom, and it's satisfying for the participants because they can experience finding something for themselves."

These visits also present an opportunity for participants to appreciate how subtle a site may be in the landscape and the requirement for the use of skilled individuals in this area.

The most recent training provided was for a group of team leaders, project managers, field officers and senior engineers from Hydro Tasmania at Mienna in May. A visit to a huge artefact site nearby, on the shores of Great Lake, was considered the highlight by participants. Feedback has been very positive and there have already been requests for a second round for those who missed out.



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