



AUSTRALIAN ASSOCIATION OF CONSULTING ARCHAEOLOGISTS INC

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12 December 2012

Aboriginal Heritage Legislation  
Department of Primary Industries, Parks, Water and Environment  
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Email: ahl@dpipwe.tas.gov.au

**RE: DRAFT ABORIGINAL HERITAGE PROTECTION BILL – TASMANIAN GOVERNMENT 2012**

The Australian Association of Consulting Archaeologists Inc. (AACAI) is the peak body of professional archaeologists in Australia, with approximately 140 members. The aims of AACAI are:

- to encourage the communication of knowledge and promote a spirit of co-operation amongst workers within the field of archaeology;
- to support and encourage research into all forms of archaeology, particularly those with relevance to consultancy work within the discipline;
- to promote the training of students in archaeology, especially in consulting work, by encouraging consultants to provide such training;
- to establish, maintain and encourage adherence to professional standards and ethics by fellow consultants.

Within this context, AACAI provides comments on the Tasmanian Government Draft Aboriginal Heritage Protection Bill. Members of the AACAI executive have read and endorse the Draft Bill comments of the Australian Archaeological Association Inc. (AAA) dated 12 December 2012.

For enquiries regarding this submission, please contact me on the details provided below.

Yours sincerely,

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## **Review of the Tasmanian *Aboriginal Heritage Protection Bill 2012***

The Australian Association of Consulting Archaeologists Inc. (AACAI) is pleased to be consulted on the Draft Aboriginal Heritage Protection Bill – Tasmanian Government 2012. Discussions with interested members have resulted in the following submission and suggestions below.

The *Aboriginal Heritage Protection Bill 2012* is an extensive document that consists of 13 parts and 5 schedules (filling 194 pages). Our focus in undertaking this review is to consider the general make up of the proposed legislation, benefits and potential problems.

### **General overview of draft legislation and potential benefits**

Through the provision of fact sheets and the explanatory guide the proposed Draft Bill is relatively straightforward to follow. The Draft Bill improves on the existing legislation.

AACAI supports provisions in the Draft Bill that aim to improve the following processes:

#### **1. Planning**

For the first time legislation will integrate the management of Aboriginal heritage with development proposals. At those locations which are not exempted under the future legislation, it is likely that Aboriginal heritage issues will be dealt with early in the planning approval process (Part 6).

#### **2. Management and Protection**

The Draft Bill has provisions for heritage management plans and permits likely to improve the management and to enhance the protection of known Aboriginal heritage. These provisions include the establishment and maintenance of a statutory register of sites. Proposed management plans (Part 5) will improve the likelihood that areas known to be rich in Aboriginal heritage will be managed on a long term basis.

#### **3. Enforcement**

There are improved investigative options for authorised officers to allow proper investigation of breaches. Unlike the *Aboriginal Relics Act 1975*, the Draft Bill encourages a more balanced onus of proof. Appropriate penalties will be available under the new legislation.

#### **4. Improved scope of protection**

The Draft Bill recognises that Aboriginal heritage is not limited to prehistoric cultural remains but will apply to more modern heritage, some forms of movable heritage and intangible Aboriginal heritage.

#### **5. Aboriginal Community participation**

The Draft Bill formally incorporates participation of the Aboriginal Community in the management of their cultural heritage. It allows the establishment of an Aboriginal Heritage Council (Part 2 Division 1). It also vests the ownership of Aboriginal human remains in the Aboriginal Heritage Council (Part 3

Division 1). Under the provisions laid out in the Bill the Aboriginal Heritage Council will have some decision making powers and an advisory role in relation to some Ministerial decisions.

## **6. Rights of Appeal**

The Draft Bill provides affected parties with rights of appeal. In the case of the decisions of the Minister or their delegate, the appeals will generally go to the Resource Management and Planning Appeal Tribunal. In the case of the Aboriginal Heritage Council appeals will be heard by the administrative appeals division of the Magistrates Court.

## **General Comments and Issues of Concern In Relation to the Draft Bill**

### **1. Limited Role and Capacity of the Aboriginal Heritage Council**

Most provisions of the Draft Bill that influence properties, containing (or likely to contain) Aboriginal heritage, are vested in the Minister. In some instances the Aboriginal Heritage Council has an advisory capacity. This situation is strangely at odds with, and likely to be less effective than, the empowerment of the Tasmanian Heritage Council under the *Historical Cultural Heritage Act 1995*, under which this Council has extensive statutory powers to make decisions in relation to heritage listed places.

### **2. Powers of Delegation**

Under Part 2 Division 1 Section 18, the Minister will have broad reaching powers of delegation. In an administrative system where it is anticipated that an effective working relationship should be formed between the Minister and the Council, it would be prudent to at least make it a requirement that, prior to enacting the power of delegation, the Minister must first consult with the Aboriginal Heritage Council on the intended action.

### **3. Exemptions under the Draft Bill**

Under Part 1 Section 8, a number of exempt land activities are listed. While none of the listed exempt land activities relate to places where Aboriginal heritage is already registered, this section does not recognise that some locations are much more likely to contain Aboriginal heritage than other locations. Many properties with coastal or estuarine frontage are likely to contain Aboriginal middens. The fact that properties may be a single residential block or part of a subdivision in no way diminishes the potential impact on Aboriginal heritage.

Similarly, Section 8(h) indicates that construction or maintenance of certain dams will be exempt from requiring an Aboriginal heritage assessment under the Bill. The logic is unclear. Many Aboriginal sites presently recorded on rural freehold land in Tasmania were found and recorded as a result of a survey undertaken prior to the construction of a farm dam.

#### **4. Regulations**

Future mechanisms will be defined through the subsequent drafting of regulations (Part 13 Section 137). A point of concern is that the Draft Bill appears to be silent in relation to the role of the Aboriginal Heritage Council in the drafting of the required regulations. As with Ministerial Guidelines (Part 2 Division 2 Section 19), the Aboriginal Heritage Council should be consulted in relation to Regulations before they are placed before the Governor for signing.

#### **5. Aboriginal Heritage Consultants**

AACAI strongly support the need to define this term with minimum standards and qualifications. Consultants to be engaged as archaeologists should have a minimum qualification of an Honours degree with relevant experience.

#### **Concluding Comments**

The Draft Bill is an improvement on the *Aboriginal Relics Act 1975*. The long-term success of such laws (if passed) will depend on the effectiveness of relations formed between the Minister and the members of the Aboriginal Heritage Council. The Draft Bill needs to ensure more clearly defined and stronger powers for the Aboriginal Heritage Council to make it properly effective.