

22 April 2022

Review of the Aboriginal Act 1975
Department of Natural Resources and Environment Tasmania
Hobart TAS 7001

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Submission to the Aboriginal Cultural Heritage Protection Act Consultation Paper

We welcome the opportunity to provide our views in respect to a new Aboriginal Cultural Heritage Protection Act and wish to continue to participate in the consultative process.

The Tasmanian Forest Products Association (TFPA) is the peak body for forestry that undertakes policy development, lobbying and advocacy for members interests. TFPA represents all elements of the value chain from the sustainable harvesting of plantations and multiple use natural forest resource including forest establishment and management, harvesting, processing of timber resources and manufacture of pulp, paper and bioproducts.

The TFPA respects the need to protect Tasmania's extensive Indigenous heritage.

TFPA supports the high-level policy directions by the Department of Natural Resources and Environment Tasmania to modernise Tasmania's Aboriginal heritage legislation. We recognise that Aboriginal people are custodians of their heritage and believe the new Aboriginal heritage legislation should give Aboriginal people a significant role in decisions affecting their heritage.

Please find below our comments to the discussion paper specific sections.

2. Better definitions

"Aboriginal heritage"

The TFPA supports the broader definition of Aboriginal heritage, and suggests that the new Act must have clear, statutory criteria and standards so that places and their Aboriginal heritage value can be objectively identified based on evidence of the importance and special significance of the place to traditional owners and knowledge holders as a community.

"Intangible heritage"

The consultation paper identifies in Victoria intangible heritage is included and caters for "stories, social practices and oral traditions".

Our concerns do not go to these issues but to the potential to include spiritual essence of a place. Our concern is that this concept is too abstract to be capable of definition and could lead to significant areas of the state being protected due to a claim that it constitutes intangible heritage.

We recognise and support the consultation paper saying that existing lawful access and use of land would not be impacted by future recognition of any cultural landscape. We also note the new Act would formally recognise intangible heritage as being an integral part of Tasmania's Aboriginal cultural heritage, but it must not create confusion, angst or elevate sovereign risk for industry.

3. Ownership

The TFPA supports the model pursued in past reform processes, that is, to address the rights of the landowner by providing assurance of continuing lawful use of their land, subject to them not knowingly or unreasonably harming the heritage.

As stated, the new legislation would provide for the representative Aboriginal body to make decisions about repatriation of Aboriginal cultural heritage. And the government agrees with *Pathway to Truth-Telling and Treaty* report that it should facilitate repatriation.

TFPA supports repatriation, on the basis that appropriate processes and consultation provisions are established.

4. The representation of Aboriginal people and interests

We support the proposal to establish a single statutory representative body to represent the interests of Tasmanian Aboriginal people.

5. Who makes decisions on Aboriginal cultural heritage

We recognise and respect the aspirations of the Aboriginal community and the Aboriginal representative body to be the decision makers in respect to issues associated with cultural heritage coupled with involvement from the Minister, who should be the final decision maker, when required.

TFPA supports the proposed new approach to shift the focus from being about decisions concerning authorisations or destruction of heritage, towards early consideration of Aboriginal cultural heritage. This matches the approach already undertaken by the forest industry, with the Forest Practices Authority working with Aboriginal Heritage Tasmania to develop the *Procedures for managing Aboriginal cultural heritage when preparing Forest Practices Plans*.

Forest Practice Officers use this guide to provide for the protection of Aboriginal heritage in production forests and wherever forest practices plans are required to ensure that Aboriginal cultural heritage values are maintained.

6. Alignment with the State's planning and development system

The TFPA agrees with the proposed new legislation to retain provisions for statutory guidelines, as mentioned, the forest industry already has a working guide, the *Procedures for managing Aboriginal cultural heritage when preparing Forest Practices Plans (the guide)*, which is written for foresters and planners working on Aboriginal cultural heritage within production forests and other land subject to forest practices plans.

The industry also recognises that good forest management entails reasonable protection of natural and cultural values during forest practices which is undertaken through the main planning tool for planning forest practices in Tasmania, the *Forest Practices Code*. The Code is legally enforceable under the *Forest Practices Act 1985* for both public and private forests.

Some of the key points under the Code:

- Forest practices will be conducted in a manner that respects and manages Aboriginal and historic cultural heritage through prescription or reservation in accordance with legislative requirements and the Duty of Care provisions.
- The cultural heritage of all ethnic groups (e.g. Aboriginal and other Australians) will be considered in all stages of forest management. The need for consultation with stakeholders is acknowledged.
- Protection of cultural heritage should be achieved through identification, recording and assessment, and subsequent management by prescription or reservation.
- On-ground surveys for Aboriginal heritage will be conducted by a person who has received specialised training.
- The FPA's Procedures for managing Aboriginal cultural heritage when preparing FPPs will be followed when planning and conducting forest practices.

From the *Pathway to Truth-Telling and Treaty* report it was noted that "one person raised the issue of a disconnect between Aboriginal heritage and current planning policy, explaining that there is no current expectation that vendors disclose known cultural value on the land".

The forestry industry continues to demonstrate it has relevant management practices when planning a forestry operation to ensure cultural heritage values are identified and managed appropriately pre, during and post operations.

We understand that this guide may be reviewed wherever significant legislative changes are enacted, as will be the case under this proposed new legislation. As the industry needs certainty through any review period, we ask for appropriate transitional arrangements during this time.

TFPA agrees with the proposed non-statutory processes and mechanisms as an effective way to educate people about the possibility of Aboriginal cultural heritage on their land.

7. Modern management mechanisms

Currently under the *Aboriginal Heritage Act 1975*, the Minister can take steps to declare an area of land to be a protected site. On this basis we support the ability of the Minister, in conjunction with the Aboriginal representative body, to create Aboriginal Cultural Heritage Protected Areas, which should have appropriate processes, with appeal rights, being established for creating and declaring such areas.

The Aboriginal Heritage Council acknowledged within the *Procedures for managing Aboriginal cultural heritage when preparing Forest Practices Plans (the guide)* that it reflects the forest industry's genuine intent to ensure protection and management of Aboriginal heritage sites and places within Tasmania.

The guide states that "Significant sites and places are protected by identifying, recording and assessing Aboriginal heritage when planning forest operations, by prescribing appropriate site management and protection in forest practices plans, and by conducting post-harvest surveys where the landscape context indicates that Aboriginal cultural heritage sites are likely to be found."

This shows the forestry industry is placing a high importance towards Aboriginal cultural heritage and that we have the required management mechanisms in place.

8. Compliance and enforcement

The TFPA will need to see the legislative detail behind the provision for protective 'stop orders', as without very carefully constructed checks and balances a cease work notice is a very blunt and potentially damaging tool.

Further information is required on how long a stop order should apply; timeframes to apply; avenues to appeal; who would be responsible in the event of a notice for damages and/or compensation; who will meet the costs associated with the investigation generally or particularly where a claim is found to be unsubstantiated.

TFPA suggest there should be a deterrent for individuals and associations that seek to use this legislation to make vexatious claims. To avoid inappropriate use of the new Aboriginal Cultural Heritage Protection Act, eg. hinder development, we recommend linkages to the *Vexatious Proceedings Act 2011*.

We look forward to continuing to participate in the ongoing consultations processes in respect to developing a new Aboriginal Cultural Heritage Protection Act.

Yours sincerely,



Nick Steel
Chief Executive Officer