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AUSTRALIAN ASSOCIATION OF CONSULTING ARCHAEOLOGISTS INCORPORATED

Australian Association of Consulting Archaeologists Inc. (AACAI) - Submission on the Draft Tasmanian Aboriginal Heritage Bill 2026.

AACAI welcomes the opportunity to provide feedback on the Tasmanian *Aboriginal Heritage Bill 2026*. As the peak professional body representing consulting archaeologists across Australia, AACAI has a strong interest in legislative frameworks that support best practice cultural heritage management while respecting the rights, responsibilities and cultural authority of Aboriginal people.

The current *Aboriginal Heritage Act 1975 (Tas.)* is widely regarded as outdated, as it adopts an outdated, relic-based approach to Aboriginal cultural heritage that focuses primarily on the protection of physical archaeological objects rather than recognising Aboriginal heritage as a cultural system. It provides limited recognition of intangible values, cultural landscapes, and ongoing connections to Country, and affords only a relatively minor role for Aboriginal people in decision-making processes. The Act relies heavily on a permit-based framework that has been criticised for its rigidity, often resulting in poor management outcomes and failing to reflect ethical, contemporary cultural heritage management practice or principles of Aboriginal self-determination.

The Tasmanian Government has recently released a draft of the proposed *Tasmanian Aboriginal Heritage Bill 2026* (the Bill) for public consultation. The Bill seeks to replace the current *Aboriginal Heritage Act 1975*, introducing a range of reforms including updated and expanded definitions of Aboriginal cultural heritage, the establishment of the Aboriginal Heritage Council as a central regulatory decision-maker, new approval mechanisms such as Management Plans, and the expansion of the Aboriginal Heritage Register into a more comprehensive statutory system.

Overall Position

AACAI does not support the Bill in its current form.

This position is primarily informed by the lack of support expressed by the Palawa / Pakana (Tasmanian) Aboriginal community for the proposed legislation. AACAI considers the view, aspirations and self-determination of Aboriginal people to be fundamental to any cultural heritage framework, particularly state legislative instruments. Based on consultation and engagement with members of the Lutruwita / Tasmanian Aboriginal community, AACAI's understanding is that the Bill is perceived as:

- Not providing appropriate ownership and control over Aboriginal cultural heritage; and
- Not having been developed through adequate consultation with Aboriginal people.

AACAI emphasises that Aboriginal cultural heritage legislation must be underpinned by Aboriginal self-determination, cultural authority, and meaningful participation in decision-making. Without clear and demonstrable support from Aboriginal communities, the legitimacy and effectiveness of any such framework is significantly compromised.



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Key aspects of the Bill with relation to Aboriginal cultural heritage management

Notwithstanding the above, AACAI recognises that the Bill introduces a number of important and long-overdue changes to the legislative framework for Aboriginal cultural heritage management in Lutruwita / Tasmania. These are discussed below.

1 - Broadened Definitions of Aboriginal Heritage

The Bill expands the definition of Aboriginal heritage to include Aboriginal heritage objects, places, sites, Aboriginal human remains and cultural landscapes, as well as heritage connected to Aboriginal traditions, cultural knowledge, practices and connections to Country.

AACAI supports the expanded definitions and Bill's move away from a relic-based framework towards a broader conception of Aboriginal cultural heritage. This approach takes the right step towards aligning Lutruwita / Tasmania with contemporary national and international heritage practice by recognising Aboriginal heritage as a holistic system, rather than focussing on physical objects or archaeological relics.

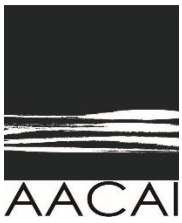
However, it is noted that these definitions remain somewhat limited and will not capture all aspects of intangible values recognised by Aboriginal people. Further consultation and collaboration with Palawa / Panaka people to refine and expand these definitions to ensure that all significant aspects of Aboriginal cultural heritage can be protected by the Bill.

2 - Improvements to the Permit System

AACAI acknowledges the Bill's attempt to address longstanding issues in the current permit system. Under section 9 of the *Aboriginal Heritage Act 1975 (Tas.)*, it is an offence to "*destroy, damage, disfigure, conceal, uncover, expose, excavate, or otherwise interfere with a protected object,*" or to undertake any act likely to endanger it, without a Permit. While this provision provides broad protection, in practice it has resulted in regulatory complexity and impractical outcomes.

In particular, the term "*conceal*" is not defined. In ordinary usage, concealment generally implies an intentional act of hiding or obscuring something from view or discovery. However, in the absence of a statutory definition, it has been interpreted more broadly to capture activities that do not involve any intent to hide or obscure heritage. This has led to situations where permits are required for actions such as adjusting water levels in dams or the reburial of test pits following archaeological assessment. In many cases, these activities do not result in harm to Aboriginal cultural heritage and may, in fact, contribute to its protection. The current framework can therefore inadvertently capture such actions as offences, resulting in unnecessary permit applications and, at times, breaches of the Act that are not consistent with its original intent, such as reburial undertaken to stabilise or protect heritage from exposure and degradation.

By contrast, the Bill introduces a more structured and explicit definition of harm, including damage, destruction, interference and permanent concealment of Aboriginal heritage. This reframing shifts the focus



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from a broad list of activities toward a clearer articulation of impact and better aligns with contemporary heritage management principles by recognising both physical and contextual impacts to Aboriginal heritage.

From a practical perspective, AACAI supports reforms that improve clarity and consistency in the application of the permit system and reduce unnecessary or counterproductive regulatory outcomes. This includes partially addressing issues arising from technical interpretations under the current framework, particularly through the refinement of “conceal” to “*permanent concealment*,” which may assist in clarifying when activities such as reburial can occur for protective purposes. However, AACAI considers that further clarification is required, either through additional statutory definition or supporting guidance, to ensure the term “*concealment*” is clearly understood as involving intentionality and does not continue to capture legitimate heritage management practices.

3 - Establishment of the Aboriginal Heritage Council

In principle, AACAI supports the formal establishment of the Aboriginal Heritage Council (the Council) as a statutory decision-making body.

The Bill represents a clear shift toward greater Aboriginal involvement in heritage governance, including expanded roles in the assessment, negotiation and approval of activities which may impact Aboriginal cultural heritage. This reflects an important move away from the primarily advisory role under the current legislative framework toward a more substantive role in decision-making.

However, AACAI notes that the effectiveness of this reform will depend on several key factors, including:

- the extent of decision-making authority vested in the Council;
- how that authority interacts with Ministerial and departmental powers, particularly in circumstances where decisions may be escalated or overridden; and
- whether the composition and operation of the Council adequately reflect the diversity of Palawa / Pakana stakeholders and cultural authority within Lutruwita / Tasmania.

In particular, AACAI is concerned that the Council may be established without adequate resourcing to support its expanded regulatory role. It is anticipated that, if the Bill is passed, there will be a significant and immediate increase in workload associated with the Council’s new approval and decision-making functions. Under the current system, the Council meets infrequently and permit approvals can already take extended periods. Without additional capacity, there is a risk that this increased workload may result in delays and procedural bottlenecks.

Such outcomes could undermine the intent of the Bill by reducing the effectiveness of Aboriginal-led decision-making and, in practice, increasing reliance on Ministerial intervention where statutory timeframes are not met. To ensure the Council is equipped to manage its expanded responsibilities, AACAI considers that the Tasmanian Government should provide adequate resourcing, including funding and administrative support, and consider mechanisms such as the engagement of qualified assessors to assist with the review of applications, including the newly introduced Management Plans (discussed overleaf). Funding may also be at



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least partly achieved through statutory fees prescribed by the State Government which may accompany approval or review applications.

AACAI also notes that, under the Bill, members of the Council are appointed by the Minister. AACAI does not support this approach. Given the Council's role as a body exercising Aboriginal cultural authority, its composition should be determined by, and directly reflect, the Palawa / Pakana community. AACAI strongly recommends that a transparent and community-led nomination process be established to ensure that Council membership is representative, culturally appropriate and supported by the Aboriginal community of Lutruwita / Tasmania. Without such a mechanism, the Council risks lacking legitimacy in the eyes of the community it is intended to represent. It is acknowledged that the Lutruwita community may require a specific approach to representation, rather than what has been adopted elsewhere in Australia. This is examined and discussed in McConnell, Pedder & Piotrowski (2023)¹ who include suggestions for appropriate representation, including with application to the Tasmanian Aboriginal Heritage Council.

AACAI considers that, while the establishment of the Council has the potential to significantly strengthen Aboriginal participation in heritage governance, its success will ultimately depend on how authority is exercised in practice and whether it delivers genuine, representative and culturally appropriate decision-making outcomes.

4 - Introduction of Management Plans

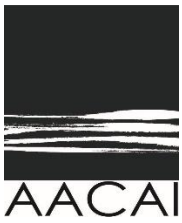
AACAI broadly supports the introduction of Management Plans as a mechanism for managing Aboriginal cultural heritage within development contexts. Under section 54 of the Bill, an approved Management Plan is required for a land activity if it is within a prescribed class of activities or where the Minister determines that a plan is required due to the potential risk of harm to Aboriginal heritage.

The Bill requires that a Management Plan include an Aboriginal heritage assessment of the relevant area and that consultation be undertaken with the Aboriginal Heritage Council during its preparation. Management Plans must also comply with the Act, relevant regulations and any Ministerial guidelines.

AACAI notes that the Bill embeds Management Plans within a broader statutory approval's framework, where plans must be prepared in accordance with prescribed processes, supported by assessment and consultation, and approved by the Aboriginal Heritage Council or, in certain circumstances, the Minister. This provides a significantly more robust and transparent mechanism than the current system, which relies primarily on reactive, activity-based permits.

However, AACAI notes that the referenced regulations and Ministerial guidelines have not yet been released for consultation. As such, it is difficult to fully assess the effectiveness and operation of the proposed Management Plan framework, as key aspects remain unclear, including:

¹ McConnell, A., Pedder, C. and Piotrowski, S. 2023 'An overview of the current status of Tasmanian Aboriginal heritage legislation'. In *Historic Environment* (volume – 'Indigenous cultural heritage legislation in Australia: A review'), vol 34, nos 1-3-2022; 50-63.



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- Which classes of developments will require a Management Plan;
- The scope of the 'heritage assessment' as required by the bill; and
- Level of appropriate consultation with Aboriginal community required.

AACAI further notes that the proposed framework appears broadly consistent with the approach established under the *Aboriginal Heritage Act 2006 (Vic.)*, which legislates Cultural Heritage Management Plans. If this alignment is intentional, the introduction of Management Plans in Lutruwita / Tasmania has the potential to result in significantly improved heritage management outcomes by embedding heritage considerations at a strategic and early stage of project planning, rather than the current, often reactive approach. By integrating thorough assessment, consultation and management into a single framework, Management Plans have the potential to deliver more consistent, proportionate, efficient and culturally appropriate outcomes across development projects.

5 - Aboriginal Heritage Register

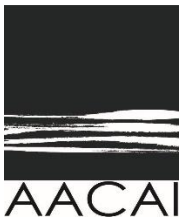
AACAI supports the expansion of the Aboriginal Heritage Register as a central component of the proposed legislative framework. The Bill substantially broadens the function of the Register beyond a record of sites or objects, establishing it as a comprehensive system for recording Aboriginal heritage and supporting identification, assessment, management and decision-making processes.

Under the Bill, the Register is intended to include not only Aboriginal heritage objects, sites, places, human remains and cultural landscapes, but also documentation relating to assessments, permits, Management Plans, agreements, protection orders and compliance activities. This represents a significant shift from the current system, where access to Register information is limited and generally provided through requests to Aboriginal Heritage Tasmania, rather than being directly available to Aboriginal communities and heritage practitioners.

AACAI considers that this expansion has the potential to significantly improve heritage management outcomes by providing a more complete and integrated evidence base to support decision-making. In particular, a comprehensive Register can:

- support earlier and more accurate identification of Aboriginal cultural heritage;
- improve consistency and transparency in assessment and approval processes; and
- enhance the effectiveness of compliance and enforcement mechanisms across the framework.

However, AACAI notes that the effectiveness of the Register will depend on several key factors. First, the quality, completeness and consistency of information entered into the Register will be critical to ensuring it functions as a reliable foundation for decision-making. Second, appropriate controls on access to information will be required to balance transparency with the protection of culturally sensitive knowledge. Third, the relationship between the Register, the Tasmanian State Government and the Aboriginal Heritage Council will require clear definition to ensure effective coordination between administrative and decision-making functions.



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AACAI also anticipates that, as with other aspects of the Bill, the practical operation of the Register will be heavily dependent on supporting regulations and Ministerial guidelines, which have not yet been released. Without clear guidance on matters such as information standards, data management, access protocols and the treatment of sensitive cultural information, there remains uncertainty as to how the Register will operate in practice.

AACAI considers that, if appropriately resourced, supported by clear guidance, and implemented in a culturally appropriate manner (including appropriate access for Aboriginal communities and qualified heritage practitioners), the expanded Aboriginal Heritage Register has the potential to become a foundational element of the new legislative framework, enabling more informed, consistent and effective management of Aboriginal cultural heritage across Lutruwita / Tasmania.

Conclusion

AACAI acknowledges that the Tasmanian *Aboriginal Heritage Bill 2026* represents a substantial evolution from the existing *Aboriginal Heritage Act 1975*, particularly for its:

- expanded definitions of Aboriginal cultural heritage, moving away from the previous relic, object-based approach;
- improvements to the current Permit system;
- establishment of the Aboriginal Heritage Council as a central decision-making body;
- introduction of Management Plans; and
- expansion of the Aboriginal Heritage Register.

These reforms collectively reflect a significant shift away from an outdated framework toward a more holistic system of Aboriginal cultural heritage management.

However, AACAI cannot support the Bill in its current form due to the absence of demonstrated support from the Palawa / Pakana community. As outlined throughout this submission, the effectiveness and legitimacy of any Aboriginal cultural heritage framework is fundamentally dependent on Aboriginal ownership, cultural authority and genuine participation in its development and implementation.

AACAI also notes that key elements of the framework, including the implementation of Management Plans, assessment processes, and decision-making pathways, are dependent on future regulations and Ministerial guidelines which have not yet been released. This creates uncertainty regarding how the framework will function in practice and whether it will deliver consistent, culturally appropriate and good heritage management outcomes. Without reviewing these Regulations and guidelines, it is difficult to support proposed parts of the legislation, particularly the implementation of Management Plans.

AACAI strongly recommends that the Tasmanian Government:

1. Undertake genuine, collaborative and good-faith consultation with Lutruwita / Tasmanian Aboriginal communities



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2. Ensure the legislation and framework provides for clear Aboriginal ownership, authority and decision-making power, including appropriate mechanisms for community representation;
3. Develop and publicly release the Regulations and operational guidelines prior for review and comment
4. Ensure adequate resourcing and administrative capacity to support the Aboriginal Heritage Council

AACAI would welcome continued engagement to support the development of a legislative framework that achieves best-practice cultural heritage management outcomes, grounded in genuine Aboriginal collaboration and self-determination.

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