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Submission on *Aboriginal Heritage Bill 2026*

Who owns Aboriginal Historic Cultural Heritage?

For decades, Tasmanian governments have refused to work with the Aboriginal community to co-design appropriate Aboriginal heritage laws. The community wants its heritage to be owned by those who created it, just as European heritage is owned by its creators. Many protections for Aboriginal heritage depend on recognising Aboriginal ownership. Because planning approvals often lead to the destruction of Aboriginal heritage, structural reform should protect heritage through ownership and require planning permits to consider Aboriginal ownership rights.

Ownership of European historic cultural heritage is generally straightforward: those who created it—whether a painting, historic building, church, monument, or ruin—own what they made. For example, John Glover’s paintings were his private property, as was the house he built near Evandale.

One important consequence of owning historic cultural heritage is that creators may deal with it as they choose, protected by the legal and political sanctity of private property.

Why, then, are those rules not applied equally to historic cultural heritage created by Aboriginal people?

Since 1975, under Part IV of the former *Aboriginal Relics Act*, the amended 2017 *Aboriginal Heritage Act*, and now the government’s proposed 2026 draft *Aboriginal Heritage Bill*, the State of Tasmania has continued to deny that ownership vests in the Aboriginal creators of that heritage.

The answer lies in entrenched racism. When Europeans arrived in Tasmania, whatever they created was recognised as giving rise to a property interest. Whether building a hut, fencing a corral, ploughing a field, or planting crops, colonial authority accepted that labour created private property. Tasmanian officials have long acted consistently with John Locke’s theory of how property rights are formed.

‘The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property¹.’

By contrast, from the moment Europeans arrived in Tasmania, evidence of Aboriginal creativity in the landscape was stolen along with the land itself. Where Aboriginal historic cultural heritage sites and places remain—such as middens, rock carvings, and hut depressions—the Crown claims ownership. It is one thing for colonial attitudes in 1803 to deny Aboriginal people any right to inherit what their forebears created; it is unbelievable that such attitudes persist in government, or among its officials, in 2026. That continuing discrimination is reflected in the draft Bill, which denies Aboriginal people ownership of Aboriginal historic cultural heritage.

Another example of the discriminatory outcome of this policy is where an historic structure built by a white person is now fallen and the foundations barely visible. The State does not claim ownership. Middens are the product of generations of Aboriginals and are either very visible or hidden. The State does claim ownership.

A case in point; Boobyalla in the northeast is now a ghost town. Buildings such as the old hotel and houses were either burned down by bushfires or dismantled. Remnants of the old wharf are still visible at the edge of the silted-up Boobyalla River. A single property now owns the whole site with the main house located at the end of former Hurst Street.² The State does not claim ownership.

European heritage legislation, including Tasmania’s *Historic Cultural Heritage Act 1995* (THCHA), does not strip owners of property rights in the way Tasmanian Aboriginal heritage laws deny Aboriginal people ownership. Listing European heritage under THCHA may limit how an owner can alter a property, but it does not transfer ownership to the State. If the State wants the property, it must comply with legal processes that includes compensating the owner. By contrast, the draft *Tasmanian Aboriginal Heritage Act* treats the historical dispossession of Aboriginal property rights as its foundation. That discriminatory premise is embedded in the very fabric of the Bill and will continue unless Parliament overrides it. This Bill gives Parliament the opportunity to reject discrimination in the ownership of historic cultural heritage and restore fairness and non-discrimination to that field.

¹ Locke, John (1690) *Second Treatise of Civil Government*, Chapter V, Of Property.
<https://la.utexas.edu/users/hcleaver/368/368LockeOnPropertytable.pdf> [Accessed 2026]

² <https://en.wikipedia.org/wiki/Boobyalla> [Accessed 2026]

To correct this racist historical position, new legislation must state clearly that Aboriginal ownership of heritage created by Aboriginal people vested in its creators, and that those property rights pass—according to Aboriginal cultural protocols—to their Aboriginal descendants. The right to inherit, which the draft Bill currently denies Aboriginal people, must be recognised on a non-discriminatory basis: in the same way that non-Aboriginal people may inherit property, apart from any sale of the cultural heritage object itself.

Just as *Mabo*³ and the *Native Title Act 1993 (Cth)* displaced the racist doctrine of terra nullius, a reformed Tasmanian Aboriginal Heritage Act must overturn past prejudice and discriminatory practice.

PART 2 – RECOGNITION OF CONNECTION TO COUNTRY

To remedy this racist historical position, new legislation must clearly recognise that Aboriginal heritage created by Aboriginal people belongs to its creators, and that those property rights pass to their Aboriginal descendants according to Aboriginal cultural protocols. The draft Bill's denial of that right to inherit should be replaced with a non-discriminatory approach that recognises Aboriginal people's inheritance rights in the same way non-Aboriginal people may inherit property, subject only to any sale of the heritage object itself.

Just as *Mabo*⁴ and the *Native Title Act 1993 (Cth)* rejected terra nullius, a reformed Tasmanian Aboriginal Heritage Act must reject the prejudice and discriminatory practices of the past.

Section 8 could be amended simply to state: '*Aboriginal people are the owners of Aboriginal heritage.*' The remainder of the section could then define tangible ownership as including the rights to use and enjoy Aboriginal cultural heritage, exclude others from heritage places or areas, maintain that heritage in all its forms, and pass it on to future generations of Aboriginal people.

Even the definition section, s.11, describes an Aboriginal object as something 'made, adapted or used by an Aboriginal person', yet acknowledges no rights to its creator. That contrasts sharply with the *Historic Cultural Heritage Act 1995*, which governs European heritage without disturbing existing property rights.

How does the draft legislation maintain that Aboriginals have lost our ownership of our heritage?

³ (No 2) [1992] HCA 23

⁴ *ibid*

1. Section 11 of the draft makes various references to the culturally significant connection Aboriginals may have to a cultural landscape. However, section 10 (3), denies Aboriginal people a legislated right of access, a position inconsistent with ownership.
2. In s. 30 of the draft Bill, the Minister may acquire, in accordance with the *Land Acquisition Act 1993*, an Aboriginal heritage site or place. There is no requirement that such acquisitions be made on behalf of Aboriginal owners, or that any acquired ownership of historic cultural heritage be transferred to Aboriginal people (despite Clause 30 of Explanatory Notes declaring):

‘Note that the expectation is that any such land would then be transferred to Aboriginal ownership, which would be done under different legislation (the *Crown Lands Act 1976* and the *Aboriginal Lands Act 1995*).’ There is nothing in the Bill to support this contention.

In fact, section 30 of the draft Bill retains the State’s unfettered control over Aboriginal heritage as outlined in the old section 12 of the *Aboriginal Relics Act 1975*. Section 12 of the *Aboriginal Relics Act* provided —

- (1) Subject to this section, on the recommendation of the Director, the Minister may acquire or accept a relic on behalf of the Crown and a relic so acquired or accepted becomes vested in the Crown.

Similarly, section 30 of the draft Bill empowers the minister to acquire Aboriginal heritage on behalf of the Crown without any consideration of Aboriginal people’s interests—

- (1) The Minister may acquire, in accordance with the *Land Acquisition Act 1993*, an Aboriginal heritage site or an Aboriginal heritage place if the Minister reasonably believes that...

When acquiring Aboriginal heritage, the Minister may seek advice from the Minister-appointed Council. Any acquired heritage then appears to remain in State custody under s. 8(d). This power could, for example, allow the Minister to compulsorily reacquire the Preminghana rock carvings. The section needs qualifications added such as that any compulsory acquisition of Aboriginal heritage by the Minister must be approved by the independent Aboriginal entity and that ownership must transfer to an independent Aboriginal entity.

By applying *Land Acquisition Act 1993* provisions to Aboriginal heritage rights, the draft Bill reinforces the view that the Crown claims ownership of Aboriginal heritage and may deal with it as it chooses, regardless of Aboriginal community views.

Section 19 of the *Land Acquisition Act 1993* makes the right of the Crown vis a vis Aboriginal people very clear—

19. Effect of notice of acquisition

- (1) On the gazettal of a notice of acquisition, the land –
 - (a) where the acquiring authority is the Crown, reverts in the Crown absolutely, freed and discharged from all estates, statutory reservations and dedications, except those that are specified in, or created by, the notice...’

The land in this instance is the land on which Aboriginal heritage exists thus giving the State absolute ownership of the heritage.

3. There is no equivalent compulsory acquisition power in the *Historic Cultural Heritage Act 1995* enabling the State to take European cultural heritage, or lands upon which European cultural heritage is located, from an owner. The power in section 30 of the draft Bill is a double standard that takes full advantage of the unlawful dispossession of Aboriginal people.

Aboriginal ownership of cultural heritage – proposed change

The Bill should re-establish Aboriginal communal title for heritage created by unknown Aboriginal persons, meaning historic heritage created before the invasion of Luruwita. That property right—the right to use and enjoy the heritage, exclude others, and deal with it according to Aboriginal tradition—should extend to burial grounds, village areas, cave paintings, rock shelters used by Aboriginal people or containing evidence of Aboriginal use and occupation, stone and ochre quarries, artefacts, Aboriginal stone markings and petroglyphs, seal hides, hut depressions, and similar heritage.

The property right should also include the surrounding landscape within or on which Aboriginal heritage exists. For example, where carvings have been made, the rock and its nearby surrounds should form part of the property. This reflects the principle that when a European paints on a canvas, ownership extends to both the painting and the frame in which it is held. The boundaries of a surrounding landscape should be those that sensibly form the setting of the heritage, such as the nearby water or sheltering trees associated with a village.

The Bill should define Aboriginal ownership of Aboriginal heritage in terms:

‘Ownership and property’

The Aboriginal property right is the right to possess, use and enjoy the property to the exclusion of others. The shared property right must be exercised according to Aboriginal tradition and custom.

The Aboriginal property right to land on which Aboriginal heritage exists is vested to a depth of 50 metres and includes minerals, oil, atomic substances, gold, silver, coal and geothermal substances, within the meaning of the *Mineral Resources Development Act 1995* and helium. The property right should extend into the air space at such a distance as to inhibit trespasses by modern instruments e.g. drones. We suggest 2 kilometres.

Intellectual property should include traditional knowledge and cultural expressions.

The definition excludes the right to sell the communal title because traditionally, such rights could only be traded inter se (among or between themselves).

In what or whom is the Aboriginal communal property right to vest?

The Bill should recognise Tasmanian Aboriginal people as a legal entity. Property rights in Aboriginal cultural heritage would be administered on behalf of Tasmanian Aboriginal people collectively, by an independent Aboriginal entity empowered to act as trustee in dealings involving those communal rights. In that role, the entity must act consistently with Aboriginal culture and traditions.

Section 10(3) of the draft Bill concerns Aboriginal access to, and traditional use of, Aboriginal heritage. It appears to recognise existing restrictions on access to areas where Aboriginal heritage is located. For example, the *Crown Lands Regulations 2021*, Sustainable Timber Tasmania arrangements for State forests and Permanent Timber Production Zone land, and the *National Parks and Reserves Management Act 2002* all restrict public access to Crown land. These laws do not exempt Aboriginal people from access restrictions, even for cultural purposes. This omission appears inconsistent with Tasmania's and Australia's obligations under Article 27 of the ICCPR, which protects the rights of ethnic, religious and linguistic minorities to enjoy their culture, practise their religion, and use their language in community with other members of their group. Denying access, or allowing access only with permission or payment of a fee, may breach Article 27.

Further under **PART 2- RECOGNITION OF CONNECTION TO COUNTRY**, section 10 (1) (a) states that nothing in the Bill is intended to take away or restrict any right or interest held or enjoyed by Aboriginal persons generally. Neither this section nor any other part of the Bill explains what such 'right or interests' might be. Placed against the background of the legislative restrictions mentioned above, the reference to rights and interests seems meaningless. Any rights or interests Aborigines did have and should have, have been legislated away and this draft Bill further extends a policy of legislating away Aboriginal rights to culture.

Although section 10(3) appears under the heading recognising Aboriginal connection to Country, it effectively denies Aboriginal people any right to access Country. It expressly denies a right of access across an “area” for traditional purposes, which could include Crown land containing Aboriginal heritage sites or places. Since the mid-1990s, an informal arrangement with Parks and Wildlife has allowed Aboriginal people to enter parks for cultural purposes without paying an access fee or being refused entry. Proposed section 10(3) could be used to further erode the limited cultural recognition rights Tasmanian Aboriginal people have negotiated. The section should instead expressly allow access across all Crown land for traditional purposes and require private landowners to negotiate in good faith with Aboriginal people to enable access for cultural purposes.

Restricting access for cultural purposes is inconsistent with the legally enforceable clause 4.5.1 of the *Tasmanian Reserve Code of Practice: Cooperative Management of Aboriginal Values*, which provides:

‘The Tasmanian Aboriginal community has a special relationship with many reserves because of its long association with these areas. Members of the community experience a unity with the land and consider natural and cultural values inseparable.’

By contrast, a policy of recognition of white people’s association with stolen Aboriginal lands is recognised—long-term use of a place by non-Aboriginal people may be recognised as a contemporary social value.

The **Aboriginal Heritage Council** is a left-over product of the old advisory body appointed by government in the original 1975 Act. The AHC is a construct of government administration. The AHC is not representative of the Aboriginal people (it is selected by government) and no government created entity can legitimately claim to act as owners of Aboriginal heritage.⁵ It is no substitute for an Aboriginal body put in place by Aboriginal people to administer Aboriginal ownership rights to our heritage. An independent Aboriginal entity, put in place and answerable to the heritage owners, must replace the Minister and AHC. One possibility is the Aboriginal Land Council of Tasmania established by

⁵ See contrary opinion by Environment Defenders Office 35 page submission to draft Heritage Bill. EDO did not recommend ownership of Aboriginal heritage by descendants of Aboriginals who created the heritage but instead recommended greater say in protection and management. EDO called for extended powers to the government’s AHC (1.2 of submission) arguing ‘The Council is the proposed vehicle through which the Tasmanian Aboriginal Community exercises control and decision-making in relation to its cultural heritage. It is therefore essential that the body represents the Tasmanian Aboriginal Community (as determined by the community) and is empowered to be the ultimate arbiter of the protection and management of Aboriginal heritage.’ (Representative Body, p. 14)

parliament with Aboriginal approval and that body could replace the AHC in carrying out functions on behalf of the Aboriginal owners of cultural heritage.

The Bill defines Aboriginal heritage to include objects, places, sites and human remains and removes the outdated term “relics”. However, it only protects cultural landscapes if they have been added to the Aboriginal Heritage Register. A register of places of Aboriginal cultural heritage should inform potential users but should not establish a qualification for the existence of Aboriginal heritage. Nor does the Bill protect intangible cultural heritage. This is a major gap because Aboriginal heritage is not limited to isolated artefacts or mapped sites. It includes living cultural relationships, landscapes, stories, knowledge, practice and continuing connection.

Intangible Heritage: The Bill fails to adequately define and deal with Aboriginal intellectual property. Oral traditions, performing arts, social practices, rituals, and traditional crafts as well as songlines and traditional dance should be included in the definition. The draft Bill (s. 97 (2) (c)) assumes intangible heritage will only exist for protection purposes if it belongs to the bureaucratic Register currently operated by Aboriginal Heritage Tasmania (AHT).

The conservative influence of the Liberal government in the electorate of Braddon is in full flow in sections 9 and 14 in defining traditions of Aboriginal people thus:

‘...or of a particular group of Aboriginal persons’ or ‘any such tradition, knowledge, observance, custom or belief relating to particular persons.’

The draft Bill seeks to add ‘a particular group of Aboriginal persons’ to the definition of what has significance to the Tasmanian Aboriginal people. These words of extension should be deleted wherever they occur. They are clearly intended to either make a place for illegitimate claims by race-changers or to divide the customary practice of Aboriginal communal engagement with cultural heritage.

Section 17 (2) is also worded in a way that enables the Minister to decide who is Aboriginal for the purposes of appointing the advisory Aboriginal Heritage Council—

The Minister may only appoint a person as a member of the Council if the Minister is satisfied that the person is an Aboriginal person.

Astonishingly, this provision now openly provides for a white person to decide who is Aboriginal.

This power enables the Minister to appoint white people claiming to be Aboriginal. Currently, for example, race-changers from Smithton are appointed by Ministers coincidentally located in Braddon to sit on the AHC. At any rate, the whole concept of an Aboriginal group advising government about heritage created and owned by Aboriginal people should be abandoned, and the AHC abolished. Abolition of the Aboriginal Heritage Council means substituting an independent Aboriginal entity wherever AHC is referred to, including in permits and management plans in Part 6.

PART 5 – IDENTIFICATION OF ABORIGINAL HERITAGE

Section 23 effectively provides that if an Aboriginal person finds Aboriginal heritage, they must notify the Secretary within a reasonable time under penalty of about \$10,000 if they fail to do so. Section 23 (2) (c) provides a defence where an Aboriginal believes, ‘on reasonable grounds, that a failure to report the object or area as required under subsection (1) is the best way to protect the object or area from harm.’ Two comments about this section are warranted.

First, why should the owner of property report discovery of that which he/she owns to a bureaucrat? It is another reminder of the Bill’s denial of Aboriginal ownership of Aboriginal heritage. Second, proof to satisfy this defence would be problematic. An Aboriginal finds some heritage uncovered in a sand blow. On what basis could the defence given above be relied on in that case not to have notified? Reburying the heritage in loose sand is hardly ‘the best way to protect the object or area from harm.’ The Aboriginal in such a case would be prosecutable, if not liable.

PART 6 – PROTECTION OF ABORIGINAL HERITAGE

This part dealing with protection orders is in reasonable shape except that the administrative provisions need to be revamped to accommodate Aboriginal ownership of Aboriginal heritage. For example, a permit under s.40 (a) and 41 etc would be illegal without notice to the Aboriginal owners and compensation for any damage or loss affected.

Division 4 – Management plans

Management plans protecting Aboriginal heritage may coexist with Aboriginal ownership in the same way as conceived by section 12 of the *Nature Conservation Act 2002*. The difference might be that Aboriginal people have to consent to their heritage being declared in the same way as a land owner under the *Nature Conservation Act* s12.

The draft Bill provides that AHC and the Minister will decide management plans. That function is for the Aboriginal owners to decide through independent Aboriginal entity, not a government structure.

PART 7 – STOP ORDERS

We support Part 7 but propose that the independent Aboriginal entity or the Minister acting on instruction from the independent Aboriginal entity, not the Minister, have responsibility for stop orders. We also agree with EDO submission that the powers given to Tasmanian Heritage Council to order repair to damage should apply to Aboriginal heritage.

PART 8 – ABORIGINAL HERITAGE AGREEMENTS

Save for the need to substitute ‘the Council’ with an independent Aboriginal entity we support the thrust of Part 8.

PART 9 – ABORIGINAL HERITAGE REGISTER

We generally support Part 9 except that the reference to ‘the Council’ needs to be removed and substituted with an independent Aboriginal entity, and the Secretary must jointly hold the Register with an independent Aboriginal entity.

PART 10 – ENFORCEMENT

This Part deals with enforcement powers of police and other authorised officers to carry out certain functions, including on Aboriginal owned land. Section 100 of the draft, according to the explanatory notes, explains that the section:

Provides that a power under Part 10 does not generally apply on Aboriginal land unless the Aboriginal Land Council has approved the exercise of the power.

However, the strange wording of the draft section reads that such powers cannot be used on Aboriginal land where the Land Council approves. We believe the qualifying words ‘may not’ are not meant to be in the section.

PART 11 – MISCELLANEOUS

Contents of sections 119-120 will need to be altered in light of our earlier comments much of which affects these sections.

We disagree with section 122 which advocates that Aboriginal heritage is no longer Aboriginal heritage where certain approvals to destroy have been issued. We note the effect of this provision among our earlier comments, namely, that planning approvals as they relate to Aboriginal heritage are used to destroy, not protect. Nevertheless, Aboriginal memory is an important ingredient of heritage and damaged goods does not alter memory of what was.

130. Regulations

Section 130 enabling the Governor to pass a range of regulations affecting Aboriginal heritage must be qualified by the need to obtain prior approval from an independent Aboriginal entity.

Appeals

Decisions taken by the entity representing the owners of Aboriginal cultural heritage must be final and any appeals limited to procedural or legal error.

Defences to prosecution under the draft Bill

Having had the opportunity to consider the EDO submission on this 8.2 point, we adopt EDO’s arguments.

SCHEDULE 1 – MEMBERSHIP OF COUNCIL

The schedule is now obsolete in so far as it applies to the old Aboriginal Heritage Council and may be omitted.

Conclusion

The department's website states that 'The Government will continue to work with Tasmanian Aboriginal people and organisations to seek guidance on appropriate consultation approaches and governance to inform the draft Bill.'

Neither the government nor the department has come anywhere near the Aboriginal community. Neither has contacted either the Aboriginal Land Council, Cape Barren Aboriginal Association or Tasmanian Aboriginal Centre. The claim to 'continue' to work with us is patently false.

It is high time government acted decently toward Aboriginal people and our heritage instead of imposing their will. The first step for new Aboriginal heritage laws is to address the historic and ongoing mentality that the state owns Aboriginal heritage. Only then should planning processes be considered. The government's draft *Aboriginal Heritage Bill 2026* is discriminatory: it maintains the 19th century mindset that Aborigines lost ownership of Aboriginal heritage to the State while providing that European heritage is not owned by the State.