



Environmental
Defenders Office

EDO Briefing Note: The Western Tasmania Aboriginal Cultural Landscape and the West Coast Off-Road Vehicle Strategy

June 2025

Introduction

Tasmania Parks and Wildlife Service (**PWS**) has recently released the [West Coast Off-Road Vehicle Strategy](#) (**the Strategy**). The Strategy is focused on improving existing four-wheel drive tracks and associated facilities in the Arthur Pieman Conservation Area (**APCA**). Its aim is to encourage use of the area by four-wheel drive vehicles.

The Strategy covers the Arthur-Pieman Conservation Area and the area of land listed by the Commonwealth Government under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) as a National Heritage Place, the Western Tasmania Aboriginal Cultural Landscape (**the Aboriginal Cultural Landscape**), because of the significance of its Aboriginal cultural heritage values. The area covered by the Strategy is also of great biodiversity importance, including because a significant proportion of the world's Hooded Plovers nest on the beaches in the area.

The EDO has reviewed the Strategy and considered whether it:

- should be referred to the Commonwealth Minister for Environment for decision as to whether actions proposed in the Strategy are likely to have a significant impact on a Matter of National Environmental Significance
- Is consistent with management of the APCA under Tasmanian laws.

The EDO has drafted this Briefing Note to assist the community to understand:

- (1) the legal framework for these questions and EDO's view about the application of the Commonwealth environmental legal framework to the Strategy; and
- (2) available protection of the Aboriginal Cultural Landscape under Tasmanian Aboriginal cultural heritage laws.

In summary, EDO considers that actions proposed in the Strategy are likely to have a significant impact on the national heritage value of the Aboriginal Cultural Landscape. Accordingly, the Strategy should be referred by PWS to the Commonwealth Minister for the Environment and Water for decision under the EPBC Act as to whether the actions it proposes should be assessed and considered by the Commonwealth because of their likely impacts.

Background

The APCA is an area of approximately 100,000 ha in northwest Tasmania. It has significant Aboriginal cultural heritage values and is habitat for Commonwealth listed species.

The APCA was reserved in 1982 as a Conservation Area. A conservation area is an area of land, predominantly in a natural state, which is reserved for the protection and maintenance of the natural and cultural values of the area of land and the sustainable use of the natural resources of that area of land.¹

The area became popular as a location for four-wheel driving and quad biking, resulting - by the early 2000s - in an extensive network of vehicular tracks in all coastal and some inland parts of the APCA. In many places the impacts extend off established tracks into adjacent areas of boggy or sandy ground, which were targeted by some off road-vehicle users. The extent of the tracks and the scale of impact constituted a significant source of land degradation within the APCA.²

Aboriginal cultural heritage values and the Western Tasmania Aboriginal Cultural Landscape

4WD tracks in the area between Sandy Cape and Pieman Heads on the west coast of Tasmania were closed by the Tasmanian government in 2012 after extensive community consultation because of unacceptable impacts on Aboriginal cultural heritage.

A large stretch of the West Coast was subsequently listed in 2013 by the Commonwealth government as a National Heritage place, the Western Tasmania Aboriginal Cultural Landscape (**the Aboriginal Cultural Landscape**), because of the significance of its Aboriginal cultural heritage values, under section 324JJ of the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#) (**EPBC Act**).³

The Aboriginal Cultural Landscape was listed under criteria (a):

the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history.

The listing contains the following National Heritage Value:

During the late Holocene Aboriginal people on the west coast of Tasmania and the southwestern coast of Victoria developed a specialised and more sedentary way of life based on a strikingly low level of coastal fishing and dependence on seals, shellfish and land mammals (Lourandos 1968; Bowdler and Lourandos 1982).

This way of life is represented by Aboriginal shell middens which lack the remains of bony fish, but contain 'hut depressions' which sometimes form semi-sedentary villages. Nearby

¹ Nature Conservation Act 2002 (Tas), Schedule 1 item 5.

² Arthur-Pieman Conservation Area Vehicle Tracks Assessment: Geoconservation, Flora and Fauna Values and Impacts (Report commissioned by the Tasmanian Parks and Wildlife Service June 2007), p.2

³ The Gazettal Notice for the listing can be found here: <https://www.legislation.gov.au/C2013G00230/latest/text>. Further detail can be found on the [Australian Heritage Database](#).

some of these villages are circular pits in cobble beaches which the Aboriginal community believes are seal hunting hides (David Collett pers. comm.; Stockton and Rodgers 1979; Cane 1980; AHDB RNE Place ID 12060).

The Western Tasmania Aboriginal Cultural Landscape has the greatest number, diversity and density of Aboriginal hut depressions in Australia. The hut depressions together with seal hunting hides and middens lacking fish bones on the Tarkine coast ... are a remarkable expression of the specialised and more sedentary Aboriginal way of life.

Natural values of the area

The area is also significant for its **natural values**. As part of the Tarkine area it contains the most extensive and least fragmented tract of cool temperate rainforest in Australia. The cool temperate rainforests within the Tarkine area are significant for our understanding of evolutionary processes. Tasmania's rainforests represent a living example of one of the most primitive vegetation formations on Earth, and those species that remain have demonstrated an extraordinary ability to survive.⁴ The Tarkine contains extensive high-quality wilderness and landscape values which are extremely rare worldwide.⁵

Previous legal action to protect Aboriginal cultural heritage values of the area

In 2014, a newly elected Tasmanian Liberal government announced the reopening of the closed tracks. Despite the National Heritage listing, no approval was sought under the EPBC Act and there was no assessment of the impacts of the reopening of tracks on the cultural values of this area and their ongoing significance to the Tasmanian Aboriginal community.

EDO successfully took legal proceedings on behalf of the Tasmanian Aboriginal Centre to prevent the re-opening of the 4WD tracks, arguing that the re-opening was likely to have a significant impact on the National Heritage value protected by the EPBC Act.⁶ As a consequence of the legal action, the Tasmanian government referred the proposal for assessment under the EPBC Act. On 16 October 2017 the Federal Minister's delegate decided that the reopening of the tracks was a "controlled action" under the EPBC Act because it was likely to have a significant impact on its listed values. As a result of this decision, **the Tasmanian government now cannot re-open the tracks without EPBC Act approval.**

The West Coast Off-Road Vehicle Strategy

The Tasmanian Government has recently released the West Coast Off-Road Vehicle Strategy (**the Strategy**). The Tasmanian Government has committed \$10 million for:

- Developing the Strategy

⁴ <https://www.dcceew.gov.au/sites/default/files/env/pages/d3456005-87a2-4c69-beb9-3223499797bf/files/final-assessment.pdf> Australian Heritage Database

⁵ Ibid at [21].

⁶ See *Tasmanian Aboriginal Centre Incorporated v Secretary, Department of Primary Industries, Parks, Water and Environment (No 2)* [2016] FCA 168; the case was then appealed to the Full Federal Court - see: *Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Incorporated* [2016] FCAFC 129.

- Maintenance and re-grading roads and tracks to many of the small shack locations managed by the PWS within the APCA.
- Improvements to general visitor experiences, including the gateway to the APCA.

The Strategy's stated focus is:

*In recognition of the significance of the WTACL and outcome of the EPBC Act referral decision not to reopen tracks that had been closed, this Strategy does not contemplate opening new tracks or reopening previously closed tracks. **It is focused on improving existing tracks and associated facilities.***

The Strategy prioritises the promotion of off-road driving rather than the protection of Aboriginal heritage.

Do Federal Environmental Laws apply to the Strategy?

The relevant legal framework under the EPBC Act

Matters of National Environmental Significance

Approval under the [EPBC Act](#) is required for any project, action or series of actions that has, will have, or is likely to have, a significant impact on a Matter of National Environmental Significance (MNES). Of relevance to the Strategy these include:

- the Western Tasmania Aboriginal Cultural Landscape,
- nationally listed species, and
- migratory shorebird species.⁷

Protection of National Heritage Values

Section [15B](#)(4) of the EPBC Act provides:

(4) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

...

Note: For indigenous heritage value, see section 528.

Section [528](#) of the EPBC Act relevantly provides:

action has the meaning given by Subdivision A of Division 1 of Part 23.

⁷ See Significant Impact Guidelines 1.1 - Matters of National Environmental Significance – DCCEEW at <https://www.dcceew.gov.au/environment/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance>

heritage value of a place includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

indigenous heritage value of a place means a heritage value of the place that is of significance to indigenous persons in accordance with their practices, observances, customs, traditions, beliefs or history.

[Section 324D](#) of the EPBC Act defines “National Heritage values” as follows:

(1) A place has a National Heritage value if and only if the place meets one of the criteria (the National Heritage criteria) prescribed by the regulations for the purposes of this section. The National Heritage value of the place is the place's heritage value that causes the place to meet the criterion.

(2) The National Heritage values of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.

[Regulation 10.01A \(2\)\(a\)](#) of the [EPBC Regulations 2000](#) prescribes one criterion as:

(a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history.

This is the criterion which formed the basis for listing of the APCA.

Regulation 10.01A (3) of the EPBC Regulation 2000 provides that:

“for subregulation (2), the cultural aspect of a criterion means the indigenous cultural aspect, the non - indigenous cultural aspect, or both”

[Section 15C\(7\)](#) of the EPBC Act provides for a criminal offence relating to indigenous heritage values, in the following terms:

(7) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action results or will result in a significant impact on the heritage values, to the extent that they are indigenous heritage values, of a place; and
- (c) the heritage values are National Heritage values of the place; and
- (d) the place is a National Heritage place.

Protection of Listed Threatened Species

[Section 18](#) of the EPBC Act provides, in summary, that a person must not take an action that:

- (a) has or will have a significant impact or
- (b) is likely to have a significant impact

on a listed threatened species included in categories protected under the Act, including those categorised as endangered or vulnerable. However, this is qualified by [section 25AA](#) which relevantly provides:

(1) A provision mentioned in subsection (2) or (3) does not apply to an action (the primary action) if:

(a) a person (the primary person) takes the action; and

(b) as a consequence of the primary action, another person (the secondary person) takes another action (the secondary action); and

(c) the secondary action is not taken at the direction or request of the primary person; and

(d) the significant impact referred to in the provision is a consequence of the secondary action.

(2) ...

(3) For the purposes of subsection (1), the following provisions do not apply to the primary action: ...

(d) subsections 18(1) to (6); ...⁸

The qualification in section 25AA, EPBC Act means that while the construction of campgrounds and other facilities and carrying out roadworks pursuant to the Strategy are actions which may be likely to have a significant impact on a MNES (including the fact that they have facilitated increased driving over the nests of Hooded Plovers) these are not likely to be actions for which PWS can be held responsible under section 18 of the EPBC Act. Liability could arise only where there are impacts on indigenous heritage values under section 15B of the EPBC Act, in addition to impacts on listed threatened species.

“Controlled actions” require approval from the Commonwealth Environment Minister before they can proceed

[Section 67](#) of the EPBC Act provides:

An action that a person proposes to take is a controlled action if the taking of the action by the person without approval ... would ... be prohibited by the provision. The provision is a controlling provision for the action.

[Section 67A](#) prohibits the taking of a controlled action without approval in the following terms:

A person must not take a controlled action unless an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the relevant provision of Part 3.

[Section 68](#), “Referral by person proposing to take action,” provides:

⁸ This section was introduced in the EPBC Act in 2006.

- (1) *A person proposing to take an action that the person thinks may be a or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.*

In our view, Section 68 requires the actions proposed in the Strategy to be referred to the Minister, because they constitute “actions” under the EPBC Act.

What is an “action”?

[Section 523](#) of the EPBC Act is headed “Actions” and relevantly provides:

- (1) *Subject to this Subdivision, action includes:*
- (a) *a project; and*
 - (b) *a development; and*
 - (c) *an undertaking; and*
 - (d) *an activity or series of activities; and*
 - (e) *an alteration of any of the things mentioned in paragraph (a), (b), (c) or (d).*

[Section 524\(2\)](#) of the EPBC Act further provides:

- (2) *A decision by a government body to grant a governmental authorisation (however described) for another person to take an action is not an action.*

The Full Federal Court considered the meaning of “action” in the EPBC Act in the case of [Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Incorporated \[2016\] FCAFC 129](#). We explain the Court’s findings in the following section.

The Tasmanian Aboriginal Centre (**TAC**, represented by the EDO) argued that the Tasmanian Department of Primary Industries, Parks, Water and Environment had engaged in, or proposed to engage in, conduct, namely:

- a. *designating parts of the APCA as a “designated vehicle area” in accordance with Regulations 18 and 33 of the National Parks and Reserved Land Regulations 2009 (Tas).*
- b. *carrying out actions to implement conditions attached to the designation in relation to individual drivers...*
- c. *carrying out, or directing their employees, officers, agents or representatives to carry out works in the [Western Tasmania Aboriginal Cultural Landscape] in and around the tracks for the purposes of facilitating recreational vehicles to be driven on the tracks by:*
 - i. *constructing new sections of track;*
 - ii. *spreading gravel over Aboriginal cultural heritage; and/or*
 - iii. *placing rubber matting over Aboriginal cultural heritage with star pickets or other means of fastening the rubber matting in place;*

- iv. *installing culverts, fencing or track markers;*
- v. *carrying out rehabilitation works; and/or*
- vi. *other works as directed by the Respondents.*

On appeal, the Full Federal Court held that the act of designating an area (as per paragraph (a) above) was not an “action”, but that each of the matters in paragraph (c) above was an action.⁹ Importantly, a breach of the Act would arise at the point of physical implementation or activity.¹⁰

Is carrying out the West Coast Strategy an “action” under the EPBC Act?

For the following reasons, the EDO considers that carrying out the Strategy will be carrying out an “action” or “series of actions” or a “project” for the purposes of section 523 of the EPBC Act.

In order to determine whether carrying out the Strategy or any of the actions under the Strategy is an “action” one must look carefully at what is proposed.

The individual strategies are designed to increase off-road use of the areas by meeting the needs of off-road users as identified above. The strategies include:

- › ***Undertake remedial works on off-road vehicle tracks to protect cultural heritage and natural values, while seeking to retain the desire for maintaining challenging experiences;***
- › ***Improve the basic facilities and services associated with off-road driving in the APCA and West Coast through targeted improvements and redevelopment at selected locations;***
- › *Undertake research, site investigations, natural values and Aboriginal heritage surveys and consultation to inform actions and monitoring programs to help achieve more sustainable management.*¹¹ [our emphasis]

Looked at as a whole and based on the reasoning of the Full Federal Court in 2016, the Strategy can be seen to be effectively a project or undertaking or activity or series of activities.¹²

Is the West Coast Strategy likely to have a significant impact on indigenous heritage values?

For the following reasons, the EDO considers that the Strategy and the actions it proposes, are likely to have a significant impact on indigenous heritage values.

The Commonwealth Government has published guidelines for determining whether a matter is “likely” to have a significant impact on a MNES. You can read the guidelines here: [Significant Impact Guidelines 1.1 - Matters of National Environmental Significance \(Guidelines\)](#).

⁹ *Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Incorporated* [2016] FCAFC 129 at [77].

¹⁰ Ibid, at [79]

¹¹ Strategy, p 11.

¹² Footnote 9, at [80].

“Likely”

The Guidelines state the following, which effectively reflects the findings of various Federal Court judgments on the issue:

“To be ‘likely’, it is not necessary for a significant impact to have a greater than 50% chance of happening; it is sufficient if a significant impact on the environment is a real or not remote chance or possibility.

If there is scientific uncertainty about the impacts of your action and potential impacts are serious or irreversible, the precautionary principle is applicable. Accordingly, a lack of scientific certainty about the potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact on the environment.”

All impacts are relevant

As to the nature of impacts, the Guidelines state:

“...it is relevant to consider all adverse impacts which result from the action, including indirect and offsite impacts:

- (a) ...
- (c) *‘facilitated impacts’ which result from further actions (including actions by third parties) which are made possible or facilitated by the action. For example, the construction of a dam for irrigation water facilitates the use of that water by irrigators with associated impacts. Likewise, the construction of basic infrastructure in a previously undeveloped area may, in certain circumstances, facilitate the urban or commercial development of that area³.*

Consideration should be given to all adverse impacts that could reasonably be predicted to follow from the action, whether these impacts are within the control of the person proposing to take the action or not. Indirect impacts will be relevant where they are sufficiently close to the proposed action to be said to be a consequence of the action, and they can reasonably be imputed to be within the contemplation of the person proposing to take the action.

The Strategy notes the findings of its market research of Australian off-road driving enthusiasts:

- › *The most important factors for off-road destination selection are firstly a range of environments, secondly a wider range of moderate to easy tracks, thirdly lots of activities and fourthly access to good camping sites and facilities.*
- › *Improving camping facilities and the condition of off-road tracks were the priority for enhancing their driving experience. Access to clean water and toilets were considered the most important for improving camping facilities*

› 74% of Tasmanians and 71% of mainlanders rated the importance of sustainability as very or quite important.¹³

The Strategy is designed to advance these outcomes and in doing so, will facilitate increased 4WD visitation and use of the area. In our view, these constitute “facilitated impacts” under the Guidelines.

Notably, the same market research suggests that between 26-29% of those who took part in the market survey did not consider sustainability was important.

It is also relevant to note that significant cultural heritage sites in the APCA have previously been the target of vandalism, including spray painting and the removal of sections of petroglyphs.¹⁴

Precautionary Principle

The lack of existing research and documentation is not a reason for assuming that there will be no impacts on indigenous heritage values under the Strategy.

Section 391 of the EPBC Act relevantly provides that the Minister must take account of the precautionary principle in making a decision as to whether an action is a “controlled action.” A lack of scientific certainty about the potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact on the environment.

Should the Strategy be referred to the Commonwealth Minister?

On the available evidence the EDO considers that the Strategy is clearly a project or series of actions within the meaning of the EPBC Act and that an impact on a MNES is “likely.”

The Strategy appears to propose to slice the project up into individual actions, to examine each individually through separate “Reserve Activity Assessments” and to consider for each step whether there is likely to be a significant impact on a MNES.¹⁵ **In our opinion, this “salami slice” approach does not avoid the protections afforded by the EPBC Act.** The cumulative impact of each individual part of the project must be considered in the context of the overall project or action - the Strategy.

We consider that before PWS takes any step in carrying out the project, it must consider whether there is likely to be a significant impact on the indigenous heritage values of the Aboriginal Cultural Landscape as a result of the Strategy and implementation of the activities under it. If so, to ensure compliance with the EPBC Act, the Strategy, and the actions proposed in it, must be referred to the Commonwealth Minister for the Environment.

¹³ Section 2.3 (under the heading “Off-road users market”).

¹⁴ See for example <https://www.sbs.com.au/nitv/article/fresh-probe-into-tasmanian-aboriginal-rock-damage/ze1upflor>

¹⁵ Strategy, p12

But what if PWS does not refer the West Coast Strategy to the Commonwealth?

The Commonwealth Minister for the Environment has the power under [Section 70](#) of the EPBC Act to “call in” the Strategy. Section 70 relevantly provides:

(1) If the Minister believes a person proposes to take an action that the Minister thinks may be or is a controlled action, the Minister may request:

- (a) the person; or*
- (b) a State, self - governing Territory or agency of a State or self - governing Territory that the Minister believes has administrative responsibilities relating to the action;*

to refer the proposal to the Minister within 15 business days or a longer period agreed by the Minister and the requested person, State, Territory or agency (as appropriate).

Alternatively, a person with a sufficient interest could bring proceedings in the Federal Court for a declaration that the conduct proposed by PWS in carrying out the Strategy is likely to have a significant impact on indigenous national heritage values. As with any formal legal action, this can be expensive and time-consuming. Legal advice should be obtained about this process before this step is considered.

Inadequate consultation with the Tasmanian Aboriginal community

Consultation with affected Aboriginal people is fundamental to understanding the extent of impact of an “action” on indigenous National Heritage values.

The Strategy acknowledges the lack of adequate information held by PWS about Aboriginal cultural heritage:

*There are large areas of the West Coast where the natural and cultural values are not fully known or documented. Aboriginal heritage values and landscapes in the region are of great importance to Tasmanian Aboriginal people as well as being of international significance. Not only is there a rich variety of types of cultural heritage but many sites are relatively undisturbed and should remain so.*¹⁶

The draft Strategy was made available for public comment. There is little detail as to what consultation occurred with the Tasmanian Aboriginal community in development of the Strategy; the draft Strategy stating only in general terms:¹⁷

“PWS sought to engage the Tasmanian Aboriginal people during the early stages of the project and more recently during preparation of the draft WCORVS”

The [Aboriginal Heritage Council submission](#) on the draft Strategy points out:

¹⁶ Page 7.

¹⁷ Strategy, p.12.

It is important to note that the AHC received a briefing from Inspiring Places (lead consultant) and the Parks and Wildlife Service (PWS) project manager on the draft West Coast Off-Road Vehicle Strategy at the meeting of 23 February 2024.

...Presenting to the AHC does not constitute meaningful consultation with Tasmanian Aboriginal people.¹⁸

Consultation is a proactive step. The Tasmanian Aboriginal Centre clearly has a significant interest in the Strategy.¹⁹ It has been reported that the TAC was not approached before publication of the Strategy.²⁰

In section 3.3 at p.12 of the Strategy, “Consultation and Approvals” it is stated:

*It is acknowledged that the West Coast, APCA and the WTACL hold tangible and intangible cultural heritage values for Tasmanian Aboriginal people. The tangible values, such as sites and artifacts are not definitively mapped. **Aboriginal people are the primary source of information on the value of their heritage and should be consulted on a proposed action likely to significantly impact on the listed Aboriginal heritage values of the place and/or on a protected matter that has Aboriginal heritage values (like listed threatened species)** (DCCEEW 2021). Amendments have been incorporated into this Strategy to reflect submissions received and acknowledge previous recommendations provided by Tasmanian Aboriginal people in the management of the APCA.*

The Strategy states further at p.12:

Further consultation and engagement will occur with Aboriginal organisations and community members across the state through the implementation of the project when developing site plans, planning heritage protection works on tracks, interpretive materials and monitoring systems.

*Initial site concept plans, informed by the findings from assessments of Aboriginal heritage values undertaken in November 2023, require further planning and consultation with Tasmanian Aboriginal people and will each be reviewed taking into consideration the management objectives and any management plan for the reserve. **For works proposed in this Strategy, the PWS will prepare Reserve Activity Assessments (RAA) with the level of assessment based on the proposal’s scale, location, consistency with management objectives, risk to cultural and environmental values, and recommend management actions to avoid or mitigate impacts.** The RAAs will consider the existing knowledge, specialist knowledge required (including Aboriginal Heritage Assessment) and where referral is required under the EPBC Act for potential impacts to MNES. These processes are rigorous and there may be instances where cultural or natural values necessitate changes to*

¹⁸ See Item 78, Public submissions to the Draft West Coast Off-Road Vehicle Strategy (available [here](#)).

¹⁹ As noted above, TAC was the applicant in the Federal Court proceedings which successfully argued in 2016 that reopening 4wd tracks was likely to have a significant effect on the indigenous heritage values of the Landscape.

²⁰ See: <https://www.abc.net.au/news/2025-05-21/tasmania-4wd-track-management-plan/105317266>

proposals. In all cases, it remains Government's strategic priority to keep existing tracks open and accessible.

We note the suggestion that consultation and assessment will take place “*when developing site plans.*” The Strategy already contains Draft Site Concept Plans for Camping Area and Day Use Areas which are highly specific in their location and detailed in their content. It appears that the Tasmanian Aboriginal community was only invited to comment on what had already been developed.

Further and in any event, the Strategy appears to have been developed in the absence of the free, prior and informed consent of the Tasmanian Aboriginal Community, as required by Article 19 of the [United Nations Declaration on the Rights of Indigenous Peoples](#) which provides:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.²¹

Protections for Aboriginal cultural heritage under Tasmanian laws

Below we provide guidance as to the adequacy of Tasmanian law in protecting Aboriginal cultural heritage. In summary, Tasmanian legislation does not provide effective protection of Aboriginal cultural heritage, including in the APCA.

Nature Conservation Act 2002 (Tas)

The APCA is reserved under the [Nature Conservation Act 2002 \(Tas\)](#) as a “Conservation Area”. It is listed for its value as “*An area of land predominantly in a natural state*” and the purpose of reservation for a conservation area is listed in Schedule 1 to the Act as:

“The protection and maintenance of the natural and cultural values of the area of land and the sustainable use of the natural resources of that area of land”.

National Parks and Reserves Management Act 2002 (Tas)

This Act provides for the making of management plans for reserved lands, including Conservation Areas. Management plans must specify the management objectives and the manner in which the management objectives specified in the management plan are to be achieved.²²

Schedule 1 to the NPRM Act provides in point 5, column three, the objectives for management of a Conservation Area. They include:

(d) to conserve sites or areas of cultural significance;

(l) to encourage appropriate tourism, recreational use and enjoyment (including private uses) consistent with the conservation of the conservation area's natural and cultural values;

²¹ While Australia formally endorsed UNDRIP in 2009, it has not yet incorporated UNDRIP into federal law.

²² Section 27

A management plan was prepared for the APCA in 2002 (**the APCA Plan**) (available [here](#)).

The APCA Plan is now 23 years old. It predates the Commonwealth listing of the Landscape by 11 years and has not been updated since that listing. It refers to listing of the APCA on the Register of the National Estate, which is an indication of the importance of the APCA, but the Register has been closed and references to it have been repealed since 2007.

The APCA Plan states in the Summary:

The reserve provides protection to an extraordinary richness of Aboriginal cultural heritage, to highly significant and diverse ecosystems, and to spectacular coastal landscapes and wilderness values.

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The APCA Plan also notes:

The major management initiatives for the reserve are summarised below.

- *Far greater emphasis will be placed upon careful management and interpretation of the reserve's Aboriginal heritage values.*
- ...
- *The use of off-road recreation vehicles in the reserve will continue, but with careful regulation and emphasis on the education of users about low impact use.*

Management requires expenditure. The APCA Plan noted that:

All provisions of this plan requiring expenditure are subject to the availability of funding.

Aboriginal Heritage Act 1975 (Tas)

The [Aboriginal Heritage Act 1975 \(Tas\)](#) is the main law which purports to protect Aboriginal cultural heritage in Tasmania. Sections 9 and 14 of the Act provide that it is an offence to interfere with, damage or destroy Aboriginal heritage ("relics" or "objects") without a permit issued by the Minister responsible for the Act.²³ Despite these provisions, off-road driving has continued to impact Aboriginal heritage in this fragile cultural area for decades.²⁴

On 1 July 2021 the Tasmanian Government tabled a report detailing the outcome of a statutory [Review of the Aboriginal Heritage Act](#). The Review identified that Tasmania has the worst Aboriginal cultural heritage laws in the country and made the following findings as to the age and general adequacy of the Act:

FINDING #1. While the 2017 amendments addressed a number of the most problematic elements of the Act, it remains amongst the most outdated in Australia. In the view of the

²³ "Relics" are defined in [section 3](#) of the Act.

²⁴ See submission to the draft Strategy by the Aboriginal Heritage Centre (above, footnote 18).

vast majority of contributors to this review, the shortcomings of the Act are considerable and cannot be meaningfully addressed through further amendment of the current Act. There is a near consensus on the need for new, modern and contemporary Tasmanian legislation.

FINDING #2. The language, structure and functions of the Act are outdated and do not support management and protection of Aboriginal heritage in Tasmania in a manner that is consistent with contemporary practices and standards for managing Indigenous heritage, nationally and internationally. (p4)

These findings were echoed in evidence provided to the Federal Inquiry into the destruction of Indigenous heritage sites at Juukan Gorge.²⁵

The Government accepted the key findings of the Review Report and publicly committed to the development of a Draft Exposure Bill, with a view to its introduction in Parliament in mid-2023.²⁶ In March 2022 the Government released a discussion paper which further announced that:

*The Government allocated funding, in the 2021-22 State Budget, to facilitate rapid progression of the much-needed new legislation and the Department of Natural Resources and Environment Tasmania (NRE Tas) is already well underway in progressing this critical work.*²⁷

In late 2023 the Government published an [Update on the new Aboriginal Cultural Heritage Protection Act](#) promising “the release of a full exposure draft as soon as possible in 2024.”

As at the time of writing (June 2025) an exposure draft Bill is yet to be released.

EDO considers that Aboriginal cultural heritage in Tasmania will not be adequately protected without specific, strong legislation. The Western Tasmania Aboriginal Cultural Landscape is just one example of cultural heritage in Tasmania under threat.

How to raise concerns about the Strategy

As set out above, Commonwealth laws apply to the APCA. There are several ways in which concerns about the impact of the Strategy on the ACPA and the extraordinary cultural heritage values of the Western Tasmania Aboriginal Cultural Landscape can be raised. These include:

- **Write to the Secretary, Department of Natural Resources and Environment Tasmania**

The person responsible under the EPBC Act for referring the proposal to the Commonwealth is the Secretary, Tasmanian Department of Natural Resources and Environment, Jason Jacobi. You can write to the Secretary at GPO Box 44, Hobart TAS 7001.

²⁵ [Final report into the destruction of Indigenous heritage sites at Juukan Gorge](#), p133ff.

²⁶ [A new Aboriginal Cultural Heritage - Consultation Paper on High-level Policy Directions](#), p5.

²⁷ Ibid, p6.

- **Write to the Tasmanian Minister for Aboriginal Affairs**

You can write to the Tasmanian Minister for Aboriginal Affairs, the Hon Jacqueline Petrusma. The Minister's address is Level 5, Salamanca Building, 4 Salamanca Place, Hobart, 7000 and email is jacquie.petrusma@parliament.tas.gov.au

- **Write to the Federal Minister for the Environment**

You can write to the Federal Minister for the Environment and Water, Senator Murray Watt. The Minister's address is PO Box 310, Southport Business Centre, QLD, 4215.

If you have any questions about this Briefing Note, please contact our office on 1800 626 239.