

ABORIGINAL CULTURAL HERITAGE LAWS IN TASMANIA

**Note: The Tasmanian Government is currently consulting on new Cultural Heritage laws. You can read more about the proposed changes [here](#)*

Aboriginal Heritage Act 1975

What is Aboriginal Cultural Heritage?

In Tasmania, **Aboriginal Cultural Heritage** is protected under the *Aboriginal Heritage Act 1975* (**the Act**). The Act uses the outdated term “relic” to refer to Aboriginal Heritage. Aboriginal Heritage includes any **object, site or place** made by or showing signs of activities of First Nations people which are **of significance to the Aboriginal people of Tasmania**. The Act does not protect intangible Aboriginal Heritage such as stories, images, music and dance.

Examples of Aboriginal Cultural Heritage

- artefacts
- ceremonial grounds
- paintings
- engravings
- carvings
- stone arrangements
- middens
- ancestral remains

How is Cultural Heritage protected?

The Act protects Aboriginal Heritage by prohibiting anyone from interfering, damaging or destroying an object, site or place of significance to Tasmanian Aboriginal people, whether or not the object, site or place is on the Tasmanian Aboriginal Heritage Register. A person needs a **permit** from the Minister of Aboriginal Affairs (**Minister**) if they want to do anything that interferes with an object, site or place. The Minister has to get advice from the Director of National Parks & Wildlife before issuing a permit. The Minister can - but does not have to - also seek advice from the Aboriginal Heritage Council.

The Minister can also **declare an area of land** to be a **protected site**, if recommended by the Director of National Parks & Wildlife. The Minister and Director do not have to consult with Tasmanian Aboriginal people about these declarations.

For **objects, sites or places**, it is an offence under the Act to:

- destroy, damage, deface or conceal the object, site or place
- destroy, damage or remove an object from where it is found
- copy a carving or engraving through direct contact
- sell, exchange or dispose of an object or a deceptive replica
- dig up Crown Land to search for Aboriginal Heritage.

For declared **protected sites**, it is an offence under the Act to:

- destroy, damage, conceal, excavate or carry out an act likely to endanger a protected object
- harm or interfere with any infrastructure (e.g. fencing), or other protective works
- remove a protected object from the site.

A person does **not** commit an offence if their action:

- followed due diligence Aboriginal Heritage Guidelines issued by the Minister,
- was allowed under a **permit** granted by the Minister, or
- was necessary because of an **emergency**.

The Aboriginal Heritage Council is an advisory group of up to 10 Aboriginal people appointed by the Government. The Council provides advice to the Minister and Director of National Parks, including on permit applications. The Minister does not have to follow their advice. The Council has to consult with the Aboriginal people of Tasmania, where appropriate and practicable.

The Tasmanian Aboriginal Heritage Register is a database administered by Aboriginal Heritage Tasmania which lists Aboriginal Heritage places and objects. The Register is not set up under the Act. The general public cannot access the Register because it contains culturally sensitive information. Landowners can visit the Aboriginal Heritage Property Search to obtain information relevant to their property.

What can I do if Cultural Heritage is under threat?

1. Report threats or damage to Aboriginal Heritage Tasmania

To report threats or damage to Aboriginal Cultural Heritage, contact **Aboriginal Heritage Tasmania** in the Department of Natural Resources and Environment Tasmania. The Act includes a range of enforcement mechanisms. Wardens appointed under the Act can require the offender to leave the site, seize any protected objects, search a premises and arrest a person to prevent an action that is likely to harm Aboriginal Cultural Heritage.

To report threats or damage to Aboriginal Heritage call or email **Aboriginal Heritage Tasmania:**
☎ 1300 487 045
✉ aboriginal@heritage.tas.gov.au

2. Report a potential Aboriginal Heritage site or object

Under the Act, any person who finds an unrecorded Aboriginal object, site or place has to report it to Aboriginal Heritage Tasmania. A **Site Recording Form** must be completed to document the site and/or object's details, including its location, type, and photographs. Objects, sites and places do not need to be registered to get protection, but registration gives them stronger legal protection.

To report a site or object, complete the **Site Reporting Form** on **Aboriginal Heritage Tasmania's** website.

3. Propose land for declaration as a protected site

If the Minister has made a **protected site declaration**, then the area (and any associated objects) have an extra layer of protection. There are only three protected areas in Tasmania: nungu/West Point Aboriginal Site; laraturunawan/Sundown Point Aboriginal Site and maynpatat/Trial Harbour Aboriginal Site. There is no formal process under the Act for seeking a declaration.

To nominate an area of land for declaration as a protected site, write to the **Minister of Aboriginal Affairs**.

Go to the [Parliament of Tasmania](#) webpage for the current Minister's contact details.

4. Nominate cultural heritage for State Heritage Listing

Anyone can nominate an object or place to be listed on the **Tasmanian Heritage Register**. It must meet certain criteria to be put on the list, including that it is of historic cultural heritage significance in addition to its association with Aboriginal tradition. Once listed, it is protected under the *Historic Cultural Heritage Act 1995* (Tas).

Contact the **Tasmanian Heritage Council** and submit an **application form**.
Tasmanian Heritage Council
☎ 1300 850 332
✉ enquiries@heritage.tas.gov.au

5. Apply to the Federal Minister for a Declaration

If you have run out of options to protect Cultural Heritage under Tasmanian laws, you can apply for a declaration to protect Cultural Heritage under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth). Read EDO's factsheet on **First Nations Cultural Heritage and Federal Law** for more information.

To apply for a **declaration** under **Federal law**, call or email **DCCEEW:**
☎ 1800 751 242
✉ atsihpa@dcceew.gov.au

You can call the Environmental Defenders Office on **1800 626 239** for free legal advice.

☎ 1800 626 239

✉ first.nations.program@edo.org.au

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Disclaimer: This factsheet is a guide only and does not replace legal advice. For advice on your specific situation, contact a lawyer. EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.



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