

Legislative Comparison

The **Aboriginal Cultural Heritage Bill 2020 (the Bill)** is intended to replace the **Aboriginal Heritage Act 1972**. The following table compares the two pieces of legislation, and highlights key changes proposed in the Bill across three key themes – empowering Aboriginal voices, improved protection and better decisions.

Empowering Aboriginal Voices

Aboriginal Heritage Act 1972

- ✘ No statutory requirement for proponents to consult with Aboriginal people. Decision-making processes do not always result in the 'right people speaking for country'.
- ✘ Evaluating whether a place is important and significant is the role of the Aboriginal Cultural Material Committee (ACMC).
- ✘ No statutory role for Aboriginal people in the management of their heritage.
- ✘ Established ACMC.
 - ✘ No requirement for members to be Aboriginal. Members required to have skills necessary to perform the Committee's functions.
 - ✘ Committee responsible for evaluating importance and significance of sites.

Aboriginal Cultural Heritage Bill 2020

- ✓ Real and meaningful consultation with Aboriginal people is required in the identification, management and protection of their heritage. Early engagement by proponents giving Aboriginal people an active role in decisions about their heritage.
- ✓ Local Aboriginal people and not a statutory body responsible for evaluating importance and significance of their Aboriginal cultural heritage
- ✓ Provision for local Aboriginal cultural heritage services to ensure the relevant Aboriginal people are notified and consulted, to make agreements regarding Aboriginal cultural heritage management plans in specific geographic areas.
- ✓ Priority given to prescribed body corporates to be appointed as local Aboriginal cultural heritage services.
- ✓ Establishes the Aboriginal Cultural Heritage Council to provide strategic oversight of the Aboriginal heritage system.
 - ✓ Chair is required to be an Aboriginal person.
 - ✓ Members to be selected based on relevant skills and experience, with a preference for the appointment of Aboriginal people.
 - ✓ Council will have a key role in educating the public and promoting Aboriginal cultural heritage.
 - ✓ Council will be required to develop and implement policies and guidelines relating to compliance with the legislation and best practice heritage management.

Improved Protection

Aboriginal Heritage Act 1972

- ✘ Protected Areas under the Act vested in the Minister for Aboriginal Affairs, therefore restricts management options of the area. No Protected Areas have been declared since 1993.
- ✘ Limited definition of Aboriginal heritage, no definition of cultural landscapes or reference to intangible elements of Aboriginal cultural heritage
- ✘ Does not cover Aboriginal ancestral remains.
- ✘ Establishes the Register of Aboriginal Places and Objects to record all protected areas, Aboriginal cultural material and other places and objects to which the AHA applies.
- ✘ Penalties:
 - ✘ Penalties for offences are low \$100,000 for a body corporate, \$40,000 and up to two years imprisonment for an individual.
 - ✘ 12-month timeline for prosecution restricts comprehensive investigations being conducted.

Aboriginal Cultural Heritage Bill 2020

- ✓ Protected Areas will no longer be vested with the Minister for Aboriginal Affairs, which will enable active management by Aboriginal custodians and provide opportunity for more places of outstanding significance to be declared Protected Areas.
- ✓ An updated definition of what constitutes Aboriginal heritage including tangible and intangible elements, and cultural landscapes that better recognises Aboriginal cultural heritage as a living culture.
- ✓ Legislation will include definition of Aboriginal ancestral remains and provide for their appropriate care and management.
- ✓ New Aboriginal Cultural Heritage Directory will be a record of Aboriginal cultural heritage across the State and a repository of all relevant information and documents, including permits and Aboriginal Cultural Heritage Management Plans. Minimum recording standards will be developed by the Aboriginal Cultural Heritage Council for Directory entries.
- ✓ Penalties:
 - ✓ Establishes new offences of **harm**, **material harm** and **serious harm** to Aboriginal cultural heritage.
 - ✓ Penalties increased up to \$10million for a body corporate, and \$1million or imprisonment up to five years for an individual.
 - ✓ Extends timeline for prosecution from 12-months to six years.
 - ✓ Introduction of stop activity and prohibition orders to prevent unauthorised proposals from impacting Aboriginal cultural heritage.
 - ✓ Stronger enforcement options including stop activity orders, prohibition orders and remediation orders.

Better Decisions

Aboriginal Heritage Act 1972

- ✘ No right of review of decisions impacting cultural heritage for Aboriginal people.

Land use proposals

- ✘ Section 18 of the Act allows for consents to be granted where impacts to Aboriginal sites cannot be avoided. The approvals process is the same irrespective of the type and level of impact.
- ✘ Section 16 authorisations are granted when somebody wishes to excavate, or to examine or remove anything from an Aboriginal site.
- ✘ Regulation 10 authorisations are issued for non-deleterious, site-preservation activities on Aboriginal sites.

- ✘ Lack of transparency - no requirement for decisions to be published.
- ✘ Minister for Aboriginal Affairs the final decision maker with responsibility for the Aboriginal heritage system.
- ✘ No provision for early advice from the Department of Planning, Lands and Heritage to stakeholders.

Aboriginal Cultural Heritage Bill 2020

- ✔ Aboriginal people and proponents will be afforded the same rights of review for key decisions.

Land use proposals

- ✔ A new tiered assessment system for land use proposal will be established under the Bill.
 - ✔ Proponents required to undertake due diligence to determine if the activity will impact Aboriginal cultural heritage. A new Aboriginal Cultural Heritage Code will be developed to provide guidance on the due diligence required.
 - ✔ **Exempt activities** will not require approval.
 - ✔ **Minimal impact activities** can proceed without approval.
 - ✔ Permits will be issued by the Aboriginal Cultural Heritage Council for **low impact activities**.
 - ✔ For activities with **medium to high impact activities**, proponents will need to reach agreement with the relevant Aboriginal party and develop an Aboriginal Cultural Heritage Management Plan. Plans will require approval by the Aboriginal Cultural Heritage Council or the Minister for Aboriginal Affairs.
 - ✔ Where no agreement can be reached, an alternate process will provide for Government consideration of these proposals.
- ✔ Improved openness and transparency - decisions to be published along with the reasons for the decision.
- ✔ Minister for Aboriginal Affairs to retain overall responsibility for the Aboriginal heritage system and may delegate certain decision-making powers to the Aboriginal Cultural Heritage Council.
- ✔ A defined role for the Department of Planning, Lands and Heritage in providing early advice to all stakeholders regarding compliance and the approvals pathway.