18 December 2003

The Historic Cultural Heritage Act Review
Department of Tourism, Parks, Heritage and the Arts
GPO Box 771
HOBART TASMANIA 7001


Australia ICOMOS welcomes the efforts of the Tasmanian Government to strengthen the State’s heritage management system through a broad consultative process. We are therefore pleased to take the opportunity to contribute to the review of the Tasmanian Historic Cultural Heritage Act 1995, and to offer our assistance in the future decisions arising from this process.

Our submission to the review is attached. I am aware that the 12 December deadline for the receipt of submissions has passed, but the Chair of the Tasmanian Heritage Council has kindly agreed to allow for a late submission to be lodged.

Australia ICOMOS

Australia ICOMOS is Australia’s leading non-government professional organisation for cultural heritage. Australia ICOMOS is the national committee of the International Council on Monuments and Sites, a non-government professional organisation primarily concerned with the philosophy, terminology, methodology and techniques of cultural heritage conservation. Internationally, ICOMOS works closely with UNESCO, and acts as UNESCO’s principal advisor on cultural matters related to world heritage.

In Australia, we have a nation-wide membership of over 300 practitioners from a wide range of disciplines, working in all facets of the understanding and protection of Australia’s cultural heritage. Australia ICOMOS has been particularly active in the development and promotion of the philosophy and standards of practice for cultural heritage conservation. The Burra Charter (Australia ICOMOS Charter for Places of Cultural Significance) has become the Australian national standard for heritage conservation.

Structure and Purpose of the Submission

The content of the submission has been structured to comment on two major aspects of the review – concerning legislative and administrative issues. The purpose of the submission is not be critical of either the Act or those charged with its administration, but to encourage a more effective and broadly based approach to the protection and
management of the cultural heritage assets of Tasmania that is consistent with the “best practice” conservation principles espoused in the Burra Charter. For your information, I have also attached a copy of the Australia ICOMOS Guideline Objectives for Heritage Legislation that sets out the broad position of the organisation in regard to legislation.

The comments about the Act itself should be considered as necessary fine tuning to a piece of legislation that has worked reasonably well to this point. Those pertaining to the administration of the legislation and heritage management generally are largely concerned with the need to broaden the range of those involved in the statutory decision making and management process.

Tasmania is fortunate in that it contains a disproportionate wealth of places of post-contact cultural heritage significance, but it is also limited by its relatively small taxpayer base from which to fund their conservation.

Ultimately the responsibility for places of cultural (especially local) significance must be devolved to communities through local government, with the Tasmanian Heritage Council and Heritage Office taking the critical leadership role. The THO would promote the devolution process by policy development, by encouraging the formulation of planning schemes with heritage provisions, by the education and promotion of heritage conservation within the community, by the continuing provision of grant moneys for conservation projects, and by the training of local government officials and consultants (especially drafting agencies) in the principles of “best practice” heritage conservation.

Finally, Australia ICOMOS suggests that there is a need to develop a “best practice” approach to the conservation and management of publicly owned sites of state and national significance throughout Tasmania. The application of consistent and adequately funded methodology based on a rigorous assessment of cultural value is essential, not only to protect these sites, but to facilitate an understanding of their values by visitors.

The process of reviewing the Historic Cultural Heritage Act 1995 is an encouraging development, and an indication that the Tasmanian Government is committed to improving the management of the State’s considerable non-Indigenous cultural heritage assets. We are aware that the Government recently convened a multi-stakeholder workshop to discuss the larger strategic directions. Australia ICOMOS is willing to work with the Tasmanian Government in these important processes to further the cause of conservation “best practice” in accordance with the principles of the Burra Charter.

I look forward to further opportunities for Australia ICOMOS to contribute to this important initiative.

Best wishes for the holiday season,

[SIGNED]

Kristal Buckley
President
Review of Tasmania’s *Historic Cultural Heritage Act* 1995
Submission by Australia ICOMOS

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The comments contained in this submission have been broadly grouped into two main categories i.e. legislative and administrative. The ‘legislative’ comments relate to what are perceived to be shortcomings or omissions in the *Historic Cultural Heritage Act* 1995 (HCH Act). The ‘management’ comments relate to both the manner in which the Act is administered and to other aspects of the management of post-contact cultural heritage in Tasmania.

1. **LEGISLATION**

- Aesthetic value should be a component of historic cultural heritage significance (Cl.3 - Interpretation). This is in keeping with current practice in other States/Territories in Australia, and with the new national heritage system introduced by the Commonwealth Government.

- The Heritage Register does not define “cultural landscape” (Cl.3 - Interpretation), nor does it specifically provide for the listing on the Register of a cultural landscape (Cl.15[3] – Heritage Register).

  This omission is contrary to the developing recognition of the significance of cultural landscapes in the conservation and management of cultural values.

  This should be addressed as proposed by Recommendation 24 of the Heritage Review (2000) which states “That the THC undertake a review of measures to best protect cultural landscapes and streetscapes…”.

- Forest practices should be a “work” (Cl.3 - Interpretation) so that the probable impact of proposed forestry work on the cultural values of the place can be assessed under the same heads of consideration as for any other type of work.

- The constitution of the Heritage Council does not specifically provide for (although it does not exclude) the inclusion of a person with expertise in the evaluation and management of cultural landscapes (Cl.6[1] – Constitution of Heritage Council).
• The purpose of a Heritage Area needs to be clarified, and the time period of 2 years reviewed (Cl.29 - Declaration of Heritage Areas).

• The standard of documentation provided in support of an application under the HCH Act should in all cases be adequate to objectively assess whether the impact of the proposal is acceptable. The HCH Act does not establish this prerequisite, referring merely to “an application” and “details of the works to be carried out” (Cl.32[3] – Application for approval to carry out works). The Act should be amended to include a provision for the refusal of an application where the documentation is not adequate to make an objective assessment.

• The exemption allowing any works to be carried out within a church if “the works are required for liturgical purposes” could be misused. It should be qualified or removed (Cl.32[4]).

• The provision allowing works that could “destroy or reduce the cultural heritage significance of a registered place…” to be approved if “there is no prudent and feasible alternative” should be reworded so that the focus is on the building or place, not the circumstances of a particular owner (Cl.41 – Approval of certain works).

• The extent to which the HCH Act protects the archaeological significance of a place is limited by the requirement for that place to be listed on the Register (usually brought about by its other more obvious values). Notwithstanding that Part 8 allows for the imposition of a stopwork order on an unregistered place, it is preferable that the Act be amended to require a permit to be sought if it is known or suspected that the place may have archaeological potential (as is the case in other States).

2. ADMINISTRATION

• The HCH Act provides for a very wide range of functions for the Heritage Council, from advising the Minister to assisting in the promotion of tourism (Cl.7[1] – General functions and powers of Heritage Council). The majority of these functions are non-statutory, notwithstanding that they are provided for in the Act. It is arguable that to date, the focus of the THC has been to comply with its statutory obligations as a consent authority, and that the other important functions of education, promotion, tourism, place management (etc.), have not been able to be adequately addressed.

• Experience in other States has demonstrated that these non-statutory (more pro-active) obligations and objectives can be most efficiently handled by a bureaucracy that is staffed with competent and experienced heritage professionals that are able to concentrate on longer term strategic outcomes. An adequately staffed and resourced Heritage Office is required to provide guidance and education so as to promote qualitative heritage management throughout the community, especially by local government and organisations responsible for the care of places of cultural significance.

• The THC cannot continue to perform the role of the primary consent authority for a rapidly expanding register of places subject to the provisions of the HCH Act. The process of devolving the statutory approval process to local government must be accelerated, preferably through the incorporation of heritage registers and provisions within
The delegation of the HCH Act consent role to local government should also be considered, at least as an interim measure.

- The process of devolving the management of places of cultural significance to local government through planning schemes will facilitate and simplify the process of dealing with cultural landscapes and archaeological sites. A place on the Heritage Register is required to be identified and defined using standard property descriptions (Cl.15[4] – Heritage Register), whereas a local government planning scheme covers the entire area controlled by the Council in question.

- Consequently a planning scheme can more easily accommodate a less-defined cultural asset such as a cultural landscape or an archaeological site, with a combination of generic provisions that focus on the impact upon the place or development in its vicinity. More sophisticated strategic measures such as archaeological zoning plans are also much more feasible under a planning scheme than under the HCH Act.

- In conjunction with the process of devolution, the THC/THO should facilitate training of local government planning staff and the funding of specialist heritage advisors to provide assistance to local government. The adoption of planning schemes incorporating heritage registers and provisions and/or the delegation of the THC consent role could be conditional upon a concurrence role by the THC and the provision of adequate local heritage expertise within the local authority (e.g., heritage advisors).

- A key role of the THC/THO should be to encourage a “best practice” approach to the management of places of cultural significance, in both public and private ownership. The preparation and adoption of conservation plans prepared in accordance with the Burra Charter and the J. S. Kerr model should be promoted, possibly with the use of incentives such as exemptions from the need to obtain approval for work that is in accordance with an endorsed conservation plan.

- In the case of publicly owned sites of state and national significance, there is a need to develop a “best practice” approach to their conservation and management. The application of consistent and adequately funded methodology based on a rigorous assessment of cultural value is essential, not only to protect these sites, but to facilitate an understanding of these values by visitors.

This methodology is of course well established at the Port Arthur Historic Site, but there are other sites of equivalent significance (especially convict sites) that have not as yet benefited from the application of a values-based management approach. The preparation and implementation of “best practice” conservation planning methodologies will of course be a prerequisite for inclusion on the new National List and for World Heritage listing. The approach would also bring a considerable degree of certainty to all parties with an interest in these places.

- The administration of the HCH Act as it affects the management of archaeological values has been particularly difficult, with a consistent pattern of non-compliance with consent conditions and the archaeology practice note. The imposition of consent conditions requiring archaeological assessments or other research work provides no incentive for compliance in the first instance, and inevitably results in disruptions to
construction critical paths when retrospective compliance is required. It should be incumbent upon the applicant to provide all information necessary to assess the impact of a proposal prior to that application being determined.

- It is worth considering the future direction and evolution of the Register through a gap analysis, and the development of a strategy for ensuring that the State’s post-contact cultural heritage is being comprehensively identified.

AUSTRALIA ICOMOS
December 2003