

“All Australians have an interest in ensuring the laws that protect Indigenous heritage are effective. Protecting traditional areas and objects of importance to Australia’s Indigenous peoples can help them to maintain their traditions and cultural identity. In turn this benefits all Australians. It enriches our shared culture. It demonstrates Australia’s commitment to respecting Indigenous culture.”

The Hon Peter Garrett AM MP

Minister for the Environment, Heritage & the Arts



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The Australian Government is considering changes to laws protecting Indigenous heritage

You can help by making a submission

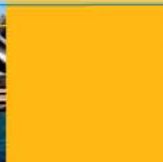
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www.heritage.gov.au/indigenous/lawreform



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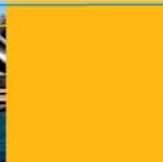
What is this about?

- The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act)
 - This is an Australian Government (Commonwealth) law
 - Your state or territory has laws for Indigenous heritage
 - We will explain how the Commonwealth law and the state and territory laws are connected
- The Australian Government is looking at whether there are better ways to ensure that Indigenous heritage is protected across Australia than the ATSIHP Act
- We want your comments on the Government's ideas



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How does the ATSIHP Act fit with state laws?

- States and territories issue permits or similar approvals that clarify how people must protect Indigenous heritage
- The ATSIHP Act does not allow the Australian Government to permit or approve activities
 - Allows the Commonwealth Minister to make declarations in exceptional circumstances to stop activities that could injure or desecrate traditional areas and objects
 - Declarations can stop threats to areas or objects by providing emergency protection of areas for up to 30 days (s9), long-term protection of areas (s10), and protection of objects (s12)



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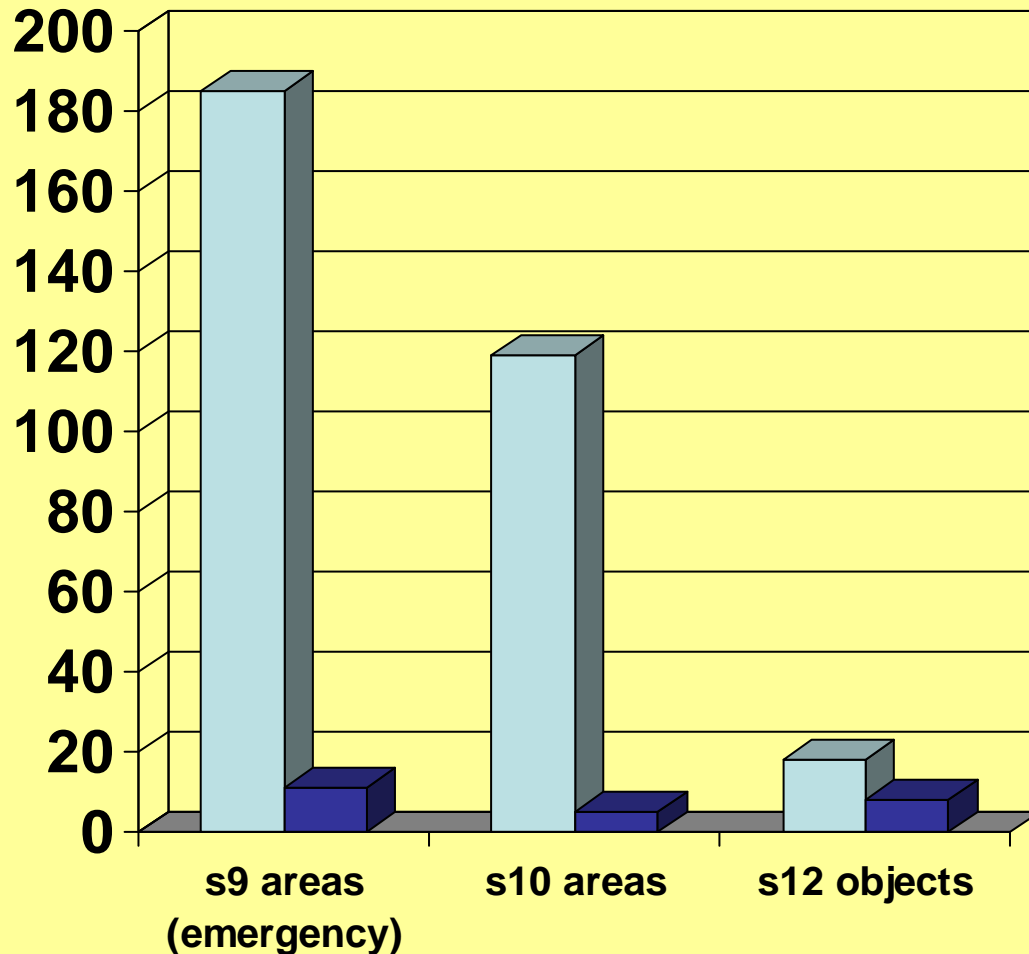


Some other laws that protect Indigenous heritage

Some of these laws did not exist when the ATSIHP Act was passed

Commonwealth		State/territory	
EPBC Act <i>Environment Protection and Biodiversity Conservation Act 1999</i>	Protects matters of national environmental significance, including nationally important Indigenous heritage, e.g. Kakadu	Various Indigenous heritage laws	States and territories have different approaches May protect traditional areas or objects generally, or may only protect archaeology, relics or registered sites
PMCH Act <i>Protection of Movable Cultural Heritage Act 1986</i>	Restricts the export of traditionally important Indigenous objects		
ATSIHP Act	Protects traditional areas and objects from threats in exceptional circumstances		
NT Act <i>Native Title Act 1993</i> ALR(NT) Act <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	Ownership of land or native title rights can enable Indigenous Australians to protect heritage on their land	Various land rights laws	Ownership of land can enable Indigenous Australians to protect heritage on their land

How many applications, how many declarations?



1984–2009

■ applications

■ declarations

Most applications
are for areas

The Junction Waterhole declaration

- In February 1991 Arrernte people asked the Commonwealth Minister to stop the NT Government building a dam at Junction Waterhole near Alice Springs
- Over the next 15 months:
 - The Commonwealth Minister made a 30-day emergency declaration and appointed mediators but they could not resolve the matter
 - The NT Government redesigned the dam and decided to proceed despite decisions by their own Aboriginal Areas Protection Authority
 - The Arrernte responded by asking the Commonwealth Minister to stop the redesigned dam
 - The Commonwealth Minister made further emergency declarations (March-April 1992) and appointed a reporter
- In May 1992 the Commonwealth Minister made a 20-year declaration to stop the dam
- The declaration will expire in May 2012



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Two of the five longer term declarations also have helped protect heritage

- 1989: a declaration for the old Swan Brewery area was revoked after one month when the WA government agreed to apply its laws to the issue
- 2002-04: a declaration to protect Boobera lagoon gave the NSW government time to protect it under NSW laws. The declaration expired after two years.



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Two of the five longer term declarations failed

- 1995: the Federal Court overturned:
 - the Hindmarsh Island Bridge declaration
 - the Broome crocodile farm declaration
- These were the only longer term declarations challenged in court
 - Other kinds of ATSIHP Act decisions have been challenged



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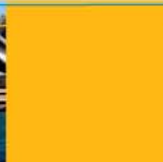
Other benefits and costs?

- Sometimes applications or the possibility of applications may have led parties to resolve issues
- Currently no one can be certain whether decisions made under other laws will be overturned at the last minute
- The Act has not met Indigenous expectations and many applications and other parties affected often are frustrated by the work that is required for decisions



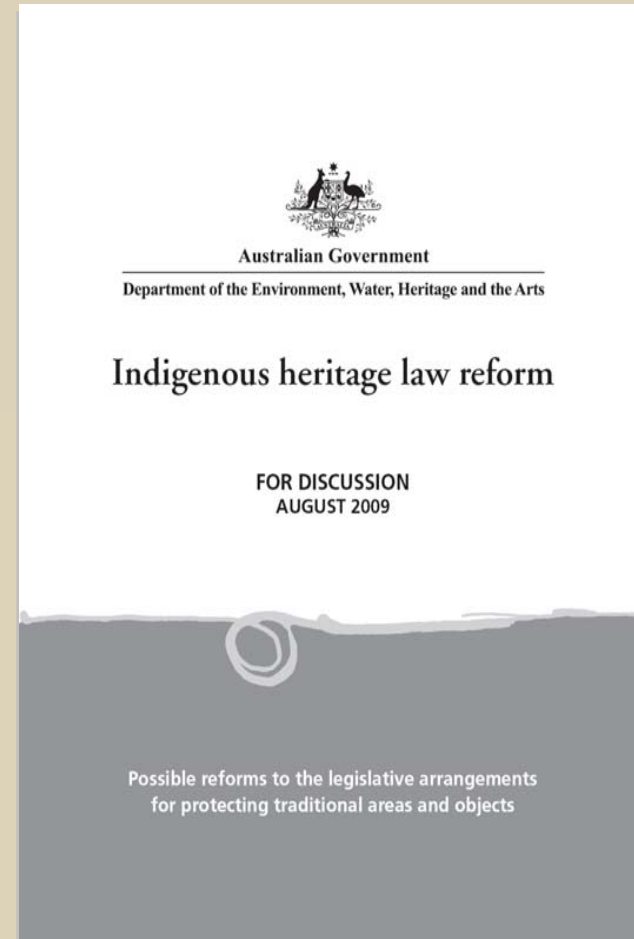
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What is the Government proposing?

- The Government is proposing 15 major reforms to the ATSIHP Act
- Page 7 of the discussion paper has an outline of the Government's 15 proposals
- You might want to respond to the questions under each proposal in the main body of the paper
- Or you may just want to respond to the questions that particularly interest you



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If the proposals were enacted in a new law, what would happen *straight away*?

- The states and territories would continue to work as now
- The Commonwealth Minister continues to respond to applications for protection from Indigenous Australians
 - Only the legally recognised traditional custodians could apply for Commonwealth heritage protection on their lands
 - The Minister couldn't stop activities allowed under native title agreements (Indigenous Land Use Agreements)
 - Conferences and management of information for decisions
- There would be Australian Government standards for state and territory laws to meet (see later)



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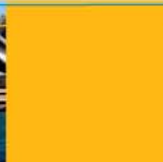
What would be the effect on movable objects?

- The public display of secret sacred objects and Indigenous remains would not be lawful
- Discoveries of Indigenous remains would continue to be reported first to state police
- The Federal Heritage Minister could still protect traditional objects and Indigenous remains if asked
- The Commonwealth *Protection of Movable Cultural Heritage Act 1986* controls the import and export of Indigenous movable heritage



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If the proposals were enacted in a new law, what might happen *later on*?

- States will continue to have the main responsibility to protect Indigenous heritage
- States could decide whether to meet the Australian Government standards
- The Commonwealth Minister could accredit states and territories that meet the Australian Government standards



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What role would the Australian Government have for accredited states?

- The Commonwealth Minister would:
 - advise the state or territory about using “calling in issues” under the state or territory laws
 - monitor changes to the state and territory laws that could affect the state or territory accreditation
 - review the accreditation scheme periodically
- Indigenous places of outstanding heritage value to the nation could still be included in the National Heritage List and protected under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*
- The Commonwealth Minister would not be able to override decisions made by an accredited state or territory
- Unless the state is accredited, the Minister would continue to decide applications for protection in exceptional circumstances



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What do the standards for state and territory laws cover?

- Strong ‘blanket’ protection for traditional heritage
- Certainty about agreements and decisions
- Traditional custodians’ key role in decisions
 - They are the primary source of information about relevant traditions
- Opportunities for early engagement with traditional custodians in planning processes
 - Includes rapid referral of matters to traditional custodians
- Fair, transparent and reviewable decisions
 - Includes legal reviews by courts and tribunals
- Keeping and using records
 - Rights to view records of traditional heritage, agreements reached with traditional custodians about protection and other decisions
- Protection for sensitive information



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We encourage you to make a submission

To have your say, please email your written submission to

atsihpa@environment.gov.au

or post it to:

Indigenous Heritage Law Reform

Heritage Division

Department of the Environment, Water, Heritage and the Arts

GPO Box 787

CANBERRA ACT 2601

The deadline for submissions is **Friday, 6 November 2009**

For assistance please call **1800 003 164**

More information is available at **www.heritage.gov.au/indigenous/lawreform**



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