



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

Federal Government Protection of Aboriginal culture and heritage

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This Fact Sheet provides general information about the Federal laws that can be used to protect Aboriginal culture and heritage, in particular, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (**ATSIHP Act**).

This is one of a series of Fact Sheets which have been developed for Local Aboriginal Land Councils (**LALCs**) and the Aboriginal community by the NSW Aboriginal Land Council (**NSWALC**). Copies of the Fact Sheets are available from www.alc.org.au or by calling the NSWALC Policy and Programs Unit on 02 9689 4444.

Please note: While all care has been taken in the preparation of this fact sheet, it is not a substitute for legal advice in individual cases. This Fact Sheet is current as of February 2015.

How is Aboriginal heritage protected by the Federal Government?

While the State Government has the main responsibility for Aboriginal culture and heritage in NSW, the Federal Government also has some powers to protect Aboriginal culture and heritage. The main Federal law is called the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (**ATSIHP Act**).ⁱ

The Federal Government suggests that the ATSIHP Act is “intended to be used only where state or territory laws and processes prove to be ineffective.”ⁱⁱ

The ATSIHP Act states that: “*The purposes of this Act are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.*”ⁱⁱⁱ

In practice only 7% of applications made to the Federal Government to protect sites have resulted in a declaration being made. This equates to just 24 declarations in 25 years.^{iv}

How to apply to the Federal Minister for Protection

Currently the Minister for the Environment, the Hon Greg Hunt MP, is responsible for making decisions under the ATSIHP Act.

The Department of the Environment (the Department) assists the Minister with these responsibilities. The authorized officers under section 17 of the ATSIHP Act are senior executives of the Department.

Applications for protection should be addressed to:

The Hon Greg Hunt MP
Minister for the Environment
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Questions on the administration of the ATSIHP Act should be directed to:

The Assistant Secretary
Heritage Branch
Department of the Environment
GPO Box 787 Canberra ACT 2601
(02) 6274 2015

Other laws to protect Aboriginal culture and heritage at the Federal level

Whilst the ATSHIP Act is the main law for protecting Indigenous culture and heritage at the federal level, the following laws may also provide some protections:

- **Native Title Act 1993** (Cth), which provides certain rights to Aboriginal people who are registered native title claimants, and a range of rights if a native title claim is successful.
- **Environmental Protection and Biodiversity Conservation Act 1999** (Cth), which establishes the National Heritage List for places that are of

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'outstanding' heritage value to the nation and the Commonwealth Heritage List for lands and waters of significance. However, few Aboriginal sites are recognised.

- **Protection of Movable Cultural Heritage Act 1986 (Cth)** includes legislation that prevents objects of cultural heritage significance, such as those that are sacred to Aboriginal peoples, from being exported out of Australia

How does the ATSIHP Act protect Aboriginal cultural heritage?

The ATSIHP Act gives the Federal Minister with responsibility for the Act, currently the Minister for the Environment, the power to make declarations for the protection of Aboriginal objects and areas.

Any Aboriginal or Torres Strait Islander person or their representative can apply to the Minister to request the protection of an object or area of "*particular significance to Aboriginals in accordance with Aboriginal tradition*".

Where the Federal Minister is satisfied that the object or area is under threat of injury or desecration, he or she may make a declaration for its protection.

The Department of the Environment has published a detailed guide on the application process, available at:

<http://www.environment.gov.au/resource/guide-aboriginal-and-torres-strait-islander-heritage-protection-act-1984-cth>

Are there any Federal protections for areas and objects under immediate threat?

There are powers for emergency declarations to be made where there is a serious and immediate threat of injury or desecration to an object or area.^v

Aboriginal and Torres Strait Islander peoples can request that the Federal Minister for the Environment make an emergency declaration protecting areas and objects that are under '*serious and immediate threat of injury or desecration, or being used in a manner inconsistent with Aboriginal tradition*'.^{vi}

The declaration has effect for up to 30 days, but the Minister can extend it for a further 30 days.

Proposed law reforms

A comprehensive review of the ATSIHP Act took place in 1996. This Review recognised that the Act was failing to protect cultural heritage and recommended major changes^{vii}. However, none of the Review's recommendations have been implemented.

In August 2009, the Australian Government decided to undertake another review of the ATSIHP Act, acknowledging again that: "*The ATSIHP Act has not proven to be an effective means of protecting traditional areas and objects*".^{viii} A discussion paper was released that proposed a number of changes, including the introduction of minimum standards, and an accreditation scheme for State and Territory laws.

NSWALC prepared a comprehensive submission, *Respect and Protect*^{ix} addressing the issues raised in the Federal Government's discussion paper, recommending that any reforms must not erode the current protections available under the ATSIHP Act.

Australian Government response to submissions

In August 2011, the Federal Government announced that they would consider incorporating the requirements of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* into the *Environment Protection and Biodiversity Conservation Act 1999*.^x To date, no further details about the next stage of the reform process have been provided.

Where can I get more information?

Visit the 'Culture and Heritage' pages of the NSWALC website at www.alc.org.au or contact the NSWALC Policy and Programs Unit on 02 9689 4444.

ⁱ A current version of the ATSIHP Act can be accessed at: http://www.austlii.edu.au/au/legis/cth/consol_act/aatsihpa1984549

ⁱⁱ Department of Environment and Heritage, 'The Aboriginal and Torres Strait Islander Heritage Protection Act 1984: Guide to purposes, applications and decision-making'.

ⁱⁱⁱ *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*; s4

^{iv} See page 4 of the Discussion Paper: '*Indigenous heritage law reform*'

^v See sections 9 & 18 of the ATSIHP Act.

^{vi} ATSIHP Act, s 9.

^{vii} Justice Elizabeth Evatt's 1996 Review of the ATSIHP Act outlines a range of reasons why the Act is considered ineffective, including its lack of detail, lack of Aboriginal involvement and lack of respect for Aboriginal customs. A summary of the Evatt Review can be accessed at: <http://www.austlii.edu.au/au/journals/AILR/1997/38.html>

^{viii} See page 4 of the Discussion Paper: '*Indigenous heritage law reform*'

^{ix} NSWALC's submission *Respect and Protect* is available online at <http://www.alc.org.au/culture-and-heritage/cmwth-heritage-law-reforms.aspx>

^x Australian Government response to the Report of the Independent Review of the EPBC Act (see page 105) available at:

<http://www.environment.gov.au/epbc/publications/epbc-review-govt-response.html>