

**Authorised Version No. 020**  
**Aboriginal Heritage Act 2006**

**No. 16 of 2006**

Authorised Version incorporating amendments as at  
1 August 2016

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**Authorised Version No. 020**  
**Aboriginal Heritage Act 2006**

**No. 16 of 2006**

Authorised Version incorporating amendments as at  
1 August 2016

**The Parliament of Victoria enacts as follows:**

**Part 1—Preliminary**

**1 Purposes**

The main purposes of this Act are—

- (a) to provide for the protection of Aboriginal cultural heritage and Aboriginal intangible heritage in Victoria; and
- (b) to empower traditional owners as protectors of their cultural heritage on behalf of Aboriginal people and all other peoples; and
- (c) to strengthen the ongoing right to maintain the distinctive spiritual, cultural, material and economic relationship of traditional owners with the land and waters and other resources with which they have a connection under traditional laws and customs; and
- (d) to promote respect for Aboriginal cultural heritage, contributing to its protection as part of the common heritage of all peoples and to the sustainable development and management of land and of the environment.

S. 1  
substituted by  
No. 11/2016  
s. 3.

**2 Commencement**

This Act comes into operation on a day or days to be proclaimed.

### 3 Objectives

The objectives of this Act are—

- (a) to recognise, protect and conserve Aboriginal cultural heritage in Victoria in ways that are based on respect for Aboriginal knowledge and cultural and traditional practices;
- (b) to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage;
- (c) to accord appropriate status to traditional owners, including a preference to appoint traditional owner bodies corporate as registered Aboriginal parties;
- (d) to promote the management of Aboriginal cultural heritage as an integral part of land and natural resource management;
- (e) to promote public awareness and understanding of Aboriginal cultural heritage in Victoria;
- (f) to establish an Aboriginal cultural heritage register to record Aboriginal cultural heritage;
- (g) to establish processes for the timely and efficient assessment of activities that have the potential to harm Aboriginal cultural heritage;
- (h) to promote the use of agreements that provide for the management and protection of Aboriginal cultural heritage;
- (i) to establish mechanisms that enable the resolution of disputes relating to the protection of Aboriginal cultural heritage;

S. 3(c)  
substituted by  
No. 11/2016  
s. 4(1).

(j) to provide appropriate sanctions and penalties to prevent harm to Aboriginal cultural heritage;

S. 3(j)  
amended by  
No. 11/2016  
s. 4(2).

(k) to recognise, protect and conserve Aboriginal intangible heritage by recording it on the Victorian Aboriginal Heritage Register.

S. 3(k)  
inserted by  
No. 11/2016  
s. 4(3).

#### 4 Definitions

(1) In this Act—

*Aboriginal ancestral remains* means the whole or part of the bodily remains of an Aboriginal person but does not include—

S. 4(1) def. of  
*Aboriginal  
ancestral  
remains*  
inserted by  
No. 11/2016  
s. 5(1).

- (a) a body, or the remains of a body, buried in a public cemetery that is still used for the interment of human remains; or
- (b) an object made from human hair or from any other bodily material that is not readily recognisable as being bodily material; or
- (c) any human tissue—
  - (i) dealt with or to be dealt with in accordance with the **Human Tissue Act 1982** or any other law of a State, a Territory or the Commonwealth relating to medical treatment or the use of human tissue; or
  - (ii) otherwise lawfully removed from an Aboriginal person;

*Aboriginal cultural heritage* means Aboriginal places, Aboriginal objects and Aboriginal ancestral remains;

S. 4(1) def. of  
*Aboriginal  
cultural  
heritage*  
amended by  
No. 11/2016  
s. 5(2).

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S. 4(1) def. of  
*Aboriginal  
Cultural  
Heritage Fund*  
inserted by  
No. 11/2016  
s. 5(1).

*Aboriginal Cultural Heritage Fund* means the  
fund established under Part 10A;

S. 4(1) def. of  
*Aboriginal  
cultural  
heritage land  
management  
agreement*  
inserted by  
No. 11/2016  
s. 5(1).

*Aboriginal cultural heritage land management  
agreement* means an agreement entered into  
under Division 1A of Part 5;

S. 4(1) def. of  
*Aboriginal  
heritage  
officer*  
inserted by  
No. 11/2016  
s. 5(1).

*Aboriginal heritage officer* means a person  
appointed as an Aboriginal heritage officer  
under Division 1A of Part 11;

S. 4(1) def. of  
*Aboriginal  
human  
remains*  
repealed by  
No. 11/2016  
s. 5(9).

\* \* \* \* \*

S. 4(1) def. of  
*Aboriginal  
intangible  
heritage*  
inserted by  
No. 11/2016  
s. 5(1).

*Aboriginal intangible heritage* has the meaning  
given by section 79B;

S. 4(1) def. of  
*Aboriginal  
intangible  
heritage  
agreement*  
inserted by  
No. 11/2016  
s. 5(1).

*Aboriginal intangible heritage agreement* means  
an agreement entered into under Part 5A;

***Aboriginal object*** means—

- (a) an object in Victoria or the coastal waters of Victoria that—
  - (i) relates to the Aboriginal occupation of any part of Australia, whether or not the object existed prior to the occupation of that part of Australia by people of non-Aboriginal descent; and
  - (ii) is of cultural heritage significance to Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria; or
- (b) an object, material or thing in Victoria or the coastal waters of Victoria—
  - (i) that is removed or excavated from an Aboriginal place; and
  - (ii) is of cultural heritage significance to Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria—

but does not include—

- (c) an object that has been made, or is likely to have been made, for the purpose of sale (other than an object made for barter or exchange in accordance with Aboriginal tradition); or
- (d) Aboriginal ancestral remains;

S. 4(1) def. of  
*Aboriginal  
object*  
amended by  
No. 11/2016  
s. 5(3).

S. 4(1) def. of  
*Aboriginal person*  
repealed by  
No. 11/2016  
s. 5(9), new  
def. of  
*Aboriginal person*  
inserted by  
No. 11/2016  
s. 5(1).

***Aboriginal person*** means a person belonging to the indigenous peoples of Australia;

S. 4(1) def. of  
*Aboriginal tradition*  
amended by  
No. 11/2016  
s. 5(4).

***Aboriginal place*** has the meaning given by section 5;

***Aboriginal tradition*** means—

- (a) the body of traditions, knowledge, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people; and
- (b) any such traditions, knowledge, observances, customs or beliefs relating to particular persons, areas, objects or relationships;

***activity*** means the development or use of land;

***approved cultural heritage management plan*** means a cultural heritage management plan approved under this Act;

***approved form*** means a form approved by the Secretary under section 190;

S. 4(1) def. of  
*authorised officer*  
inserted by  
No. 11/2016  
s. 5(1).

***authorised officer*** means a person appointed as an authorised officer under Division 1 of Part 11;

S. 4(1) def. of  
*buy*  
repealed by  
No. 11/2016  
s. 5(9).

\* \* \* \* \*



***Catchment Management Authority*** means an Authority within the meaning of the **Catchment and Land Protection Act 1994**;

S. 4(1) def. of *Catchment Management Authority* inserted by No. 11/2016 s. 5(1).

***coastal waters of Victoria*** has the same meaning as the expression "coastal waters of the State" has in relation to Victoria under the Coastal Waters (State Powers) Act 1980 of the Commonwealth;

***committee of management*** means a committee of management appointed under the **Crown Land (Reserves) Act 1978**;

S. 4(1) def. of *committee of management* inserted by No. 11/2016 s. 5(1).

***contravene*** includes fail to comply with;

***coroner*** has the same meaning as in the **Coroners Act 2008**;

S. 4(1) def. of *coroner* inserted by No. 11/2016 s. 5(1).

***Council*** means the Aboriginal Heritage Council established under Part 9;

\* \* \* \* \*

S. 4(1) def. of *cultural heritage advisor* repealed by No. 11/2016 s. 5(9).

***cultural heritage agreement*** has the meaning given by section 68;

***cultural heritage audit*** has the meaning given by section 80;

***cultural heritage management plan*** has the meaning given by section 42;

***cultural heritage permit*** means a cultural heritage permit granted under this Act;

*cultural heritage significance* includes—

- (a) archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance; and
- (b) significance in accordance with Aboriginal tradition;

*Department* means the Department of Premier and Cabinet;

S. 4(1) def. of *Department* repealed by No. 11/2016 s. 5(9), new def. of *Department* inserted by No. 11/2016 s. 5(1).

*development*, in relation to land, includes the following kinds of development—

- (a) the construction or exterior alteration or exterior decoration of a building;
- (b) the demolition or removal of a building or works;
- (c) the construction or carrying out of works;
- (d) the subdivision or consolidation of land, including buildings and airspace;
- (e) the placing or relocation of a building or works on land;
- (f) the construction or putting up for display of signs or hoardings;

*environmental and ecological knowledge*, in relation to Aboriginal tradition, includes knowledge of medicinal and other properties of flora and fauna, minerals and other elements of the environment;

S. 4(1) def. of *environmental and ecological knowledge* inserted by No. 11/2016 s. 5(1).

*Executive Director of Heritage Victoria* means the Executive Director within the meaning of the **Heritage Act 1995**;

S. 4(1) def. of *Executive Director of Heritage Victoria* inserted by No. 11/2016 s. 5(1).

*harm*, in relation to Aboriginal cultural heritage, includes damage, deface, desecrate, destroy, disturb, injure or interfere with;

S. 4(1) def. of *harm* substituted by No. 11/2016 s. 5(5).

*heritage advisor* means a person who has the qualifications and experience, or experience or knowledge, required under section 189;

S. 4(1) def. of *heritage advisor* inserted by No. 11/2016 s. 5(1).

*heritage place* has the same meaning as in the **Heritage Act 1995**;

S. 4(1) def. of *heritage place* inserted by No. 11/2016 s. 5(1).

*human tissue* includes an organ, or part, of a human body or a substance extracted from, or from a part of, a human body;

\* \* \* \* \*

S. 4(1) def. of *inspector* repealed by No. 11/2016 s. 5(9).

*interim protection declaration* means an interim protection declaration made under this Act;

*land use activity agreement* has the same meaning as in the **Traditional Owner Settlement Act 2010**;

S. 4(1) def. of *land use activity agreement* inserted by No. 11/2016 s. 5(1).

S. 4(1) def. of  
*municipal  
council*  
inserted by  
No. 11/2016  
s. 5(1).

*municipal council* means a Council within  
the meaning of the **Local Government  
Act 1989**;

*Museum of Victoria* means the premises from  
time to time used by the Museums Board for  
its activities under the **Museums Act 1983**;

*Museums Board* means the Museums Board of  
Victoria established by section 10 of the  
**Museums Act 1983**;

*Native Title Act* means the Native Title Act 1993  
of the Commonwealth;

S. 4(1) def. of  
*native title  
agreement*  
amended by  
No. 11/2016  
s. 5(6).

*native title agreement* means an indigenous land  
use agreement registered on the Register of  
Indigenous Land Use Agreements under the  
Native Title Act that is made between a  
group of Aboriginal persons and the Minister  
on behalf of the State;

*native title party* has the meaning given by  
section 6;

*ongoing protection declaration* means an ongoing  
protection declaration made under this Act;

S. 4(1) def. of  
*Parks Victoria*  
inserted by  
No. 11/2016  
s. 5(1).

*Parks Victoria* has the same meaning as in the  
**Parks Victoria Act 1998**;

S. 4(1) def. of  
*police officer*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 1.1).

*police officer* has the same meaning as in the  
**Victoria Police Act 2013**;

*preliminary Aboriginal heritage test* means a test prepared under Division 2A of Part 4;

S. 4(1) def. of *preliminary Aboriginal heritage test* inserted by No. 11/2016 s. 5(1).

*public cemetery* has the same meaning as in the **Cemeteries and Crematoria Act 2003**;

S. 4(1) def. of *public cemetery* inserted by No. 11/2016 s. 5(1).

*public land manager* means any of the following—

S. 4(1) def. of *public land manager* inserted by No. 11/2016 s. 5(1).

- (a) a committee of management;
- (b) the Secretary to the Department of Environment, Land, Water and Planning;
- (c) a municipal council;
- (d) Parks Victoria;
- (e) VicRoads;
- (f) VicTrack;
- (g) a water authority;

*recognition and settlement agreement* has the same meaning as in the **Traditional Owner Settlement Act 2010**;

S. 4(1) def. of *recognition and settlement agreement* inserted by No. 62/2010 s. 92.

*Register* means the Victorian Aboriginal Heritage Register established under section 144;

S. 4(1) def. of  
*registered  
Aboriginal  
intangible  
heritage*  
inserted by  
No. 11/2016  
s. 5(1).

***registered Aboriginal intangible heritage*** means  
Aboriginal intangible heritage recorded by  
the Secretary in the Register;

S. 4(1) def. of  
*registered  
Aboriginal  
intangible  
heritage  
agreement*  
inserted by  
No. 11/2016  
s. 5(1).

***registered Aboriginal intangible heritage  
agreement*** means an Aboriginal intangible  
heritage agreement recorded by the Secretary  
in the Register;

***registered Aboriginal party*** means a body that is  
registered under Part 10;

***registered native title body corporate*** has the  
same meaning as in the Native Title Act;

***registered native title claimant*** has the same  
meaning as in the Native Title Act;

***registered native title holder*** means—

- (a) a registered native title body corporate;  
or
- (b) an entity, other than a registered native  
title body corporate, that is the subject  
of a determination of native title under  
the Native Title Act and is registered on  
the National Native Title Register  
established under that Act as holding  
native title rights and interests;

S. 4(1) def. of  
*rehabilitate*  
inserted by  
No. 11/2016  
s. 5(1).

***rehabilitate***, in relation to land, means works  
using hand tools—

- (a) to improve the condition of the land; or
- (b) to prevent degradation or erosion of the  
land; or
- (c) to revegetate the land;

***relevant registered Aboriginal party*** means—

- (a) in relation to a cultural heritage management plan, a registered Aboriginal party that is registered for the area to which the plan relates;
- (b) in relation to a cultural heritage agreement, a registered Aboriginal party that is a party to the agreement;
- (c) in relation to a cultural heritage permit, a registered Aboriginal party that, under section 39, provides advice to the Secretary on the application for the permit;
- (d) in relation to an interim or ongoing protection declaration or an application for that declaration, a registered Aboriginal party for the area—
  - (i) in which the Aboriginal place to which the declaration or application relates is located; or
  - (ii) from which the Aboriginal object to which the declaration or application relates originated;
- (e) in any other case, a registered Aboriginal party that the Secretary is satisfied is a relevant registered Aboriginal party in the circumstances of that case;

***sacred*** means sacred according to Aboriginal tradition;

***secret*** means secret according to Aboriginal tradition;

S. 4(1) def. of  
*secret or  
sacred object*  
inserted by  
No. 11/2016  
s. 5(1).

*secret or sacred object* includes an Aboriginal object directly associated with a traditional Aboriginal burial;

S. 4(1) def. of  
*sell*  
amended by  
No. 11/2016  
s. 5(7).

*Secretary* means the Secretary to the Department;

*sell*, in relation to an Aboriginal object, means—

- (a) dispose of by sale, barter or exchange;  
or
- (b) agree, or offer, to dispose of by sale,  
barter or exchange; or
- (c) advertise or expose for the purpose of  
sale, barter or exchange; or
- (d) consign, or have possession of on  
consignment, for the purpose of sale,  
barter or exchange; or
- (e) do anything referred to in  
paragraphs (a) to (d) through an  
online auction house;

*sponsor*, in relation to a cultural heritage management plan, means—

- (a) if the plan is required under this Act in  
relation to an activity, the person who is  
seeking to undertake that activity; and
- (b) in any other case, the person seeking  
the preparation of the plan;

*State entity* means a person or body that represents the State;

S. 4(1) def. of  
*stop order*  
amended by  
No. 11/2016  
s. 5(8).

*stop order* means a stop order issued under Division 2 of Part 6;



*survey for Aboriginal cultural heritage* means—

- (a) a survey of land, other than by disturbing or excavating the land, to discover Aboriginal cultural heritage; or
- (b) a survey of land for the purposes of a preliminary Aboriginal heritage test;

S. 4(1) def. of *survey for Aboriginal cultural heritage* inserted by No. 11/2016 s. 5(1).

\* \* \* \* \*

S. 4(1) def. of *traditional or familial links* repealed by No. 11/2016 s. 5(9).

*traditional owner* has the meaning given by section 7;

S. 4(1) def. of *traditional owner* inserted by No. 11/2016 s. 5(1).

*traditional owner group entity* has the same meaning as in the **Traditional Owner Settlement Act 2010**;

S. 4(1) def. of *traditional owner group entity* inserted by No. 62/2010 s. 92.

*24-hour stop order* means a 24-hour stop order issued under Division 3 of Part 6;

S. 4(1) def. of *24-hour stop order* inserted by No. 11/2016 s. 5(1).

*university* means any of the following—

- (a) Australian Catholic University;
- (b) Deakin University;
- (c) Federation University Australia;
- (d) La Trobe University;
- (e) Monash University;

S. 4(1) def. of *university* inserted by No. 11/2016 s. 5(1).

- (f) Royal Melbourne Institute of Technology;
- (g) Swinburne University of Technology;
- (h) The University of Melbourne;
- (i) Victoria University;

*use*, in relation to land, includes use or proposed use for the purpose for which the land has been, is being or may be developed;

S. 4(1) def. of *VicRoads* inserted by No. 11/2016 s. 5(1).

*VicRoads* means the Roads Corporation within the meaning of section 3 of the **Transport Integration Act 2010**;

S. 4(1) def. of *VicTrack* inserted by No. 11/2016 s. 5(1).

*VicTrack* means Victorian Rail Track established by section 8 of the **Rail Corporations Act 1996** and continued under section 116 of the **Transport Integration Act 2010**;

S. 4(1) def. of *water authority* inserted by No. 11/2016 s. 5(1).

*water authority* means an Authority within the meaning of the **Water Act 1989**;

*works* includes—

- (a) any physical intervention, excavation or action that may result in a change to the structure, appearance or physical nature of a place; and
  - (b) any change to the natural or existing condition or topography of land; and
  - (c) the removal or destruction of trees; and
  - (d) the removal of vegetation or topsoil.
- (2) If under the **Public Administration Act 2004** the name of the Department of Premier and Cabinet is changed, a reference in the definition of

S. 4(2) amended by No. 11/2016 s. 5(10).

"Department" in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to that Department by its new name.

- (3) For the purposes of this Act, an object originates from an area whether it is still in its original location in that area or has been removed from that location.

## 5 What is an Aboriginal place?

- (1) For the purposes of this Act, an Aboriginal place is an area in Victoria or the coastal waters of Victoria that is of cultural heritage significance to Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria.

S. 5(1)  
amended by  
No. 11/2016  
s. 6(1).

- (2) For the purposes of subsection (1), *area* includes any one or more of the following—
- (a) an area of land;
  - (b) an expanse of water;
  - (c) a natural feature, formation or landscape;
  - (d) an archaeological site, feature or deposit;
  - (e) the area immediately surrounding any thing referred to in paragraphs (c) and (d), to the extent that it cannot be separated from the thing without diminishing or destroying the cultural heritage significance attached to the thing by Aboriginal people;
  - (f) land set aside for the purpose of enabling Aboriginal ancestral remains to be re-interred or otherwise deposited on a permanent basis;
  - (g) a building or structure.

S. 5(2)(f)  
amended by  
No. 11/2016  
s. 6(2).

## **6 Who is a native title party for an area?**

- (1) For the purposes of this Act, a body is a native title party for an area if it is any of the following—
- (a) a registered native title claimant for the area;
  - (b) a person who was a registered native title claimant for the area, but only if—
    - (i) the person's claim has failed, but there is no other registered native title claimant for the area, and there is not, and never has been, a native title holder for the area; or
    - (ii) the person has surrendered the person's native title in respect of the area under a native title agreement; or
    - (iii) the person's native title has been compulsorily acquired or has otherwise been extinguished;
  - (c) a registered native title holder for the area;
  - (d) a person who was a registered native title holder for the area, but only if—
    - (i) the person has surrendered the person's native title in respect of the area under a native title agreement; or
    - (ii) the person's native title has been compulsorily acquired or has otherwise been extinguished.
- (2) A registered native title claimant or a person referred to in subsection (1)(b) is a native title party for the whole area included within the outer boundaries of the area in relation to which the application was made under the Native Title Act for a determination of native title, regardless of

the nature and extent of the claimant's claims in relation to any particular part of the whole area.

- (3) A registered native title holder or a person referred to in subsection (1)(d) is a native title party for the whole area included within the outer boundaries of the area in relation to which the application was made under the Native Title Act for a determination of native title, regardless of the extent to which native title was found to exist in relation to any particular part of the whole area.

## **7 Traditional owners**

- (1) For the purposes of this Act, a person is a traditional owner of an area if—
- (a) the person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and
  - (b) the person—
    - (i) has responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from, the area; or
    - (ii) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from, the area.
- (2) For the purposes of this Act, a person is a traditional owner of Aboriginal ancestral remains if the person is an Aboriginal person who—
- (a) has responsibility under Aboriginal tradition for the remains; and

**S. 7**  
**substituted by**  
**No. 11/2016**  
**s. 7.**

- (b) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for the remains.
- (3) For the purposes of this Act, a person is a traditional owner of a secret or sacred object if the person is an Aboriginal person who—
  - (a) has responsibility under Aboriginal tradition for the object; and
  - (b) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for the object.

## **8 Heritage significance not affected by damage**

For the purposes of this Act, Aboriginal cultural heritage does not cease to be Aboriginal cultural heritage if it is damaged or modified.

## **9 Act does not affect operation of Coroners Act 2008**

Subject to section 19A, nothing in this Act affects the operation of the **Coroners Act 2008**.

## **10 Native title rights and interests**

- (1) Nothing in this Act is intended to affect native title rights and interests otherwise than in accordance with the Native Title Act.
- (2) The provisions of this Act must be interpreted in a way that does not prejudice native title rights and interests to the extent that those rights and interests are recognised and protected by the Native Title Act.
- (3) In this section, *affect* and *native title rights and interests* have the same meanings as in the Native Title Act.

S. 9 (Heading)  
amended by  
No. 77/2008  
s. 129(Sch. 2  
item 1.1).

S. 9  
amended by  
Nos 77/2008  
s. 129(Sch. 2  
item 1.2),  
11/2016 s. 8.

**11 Act binds the Crown**

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## **Part 2—Ownership and custody of Aboriginal cultural heritage**

### **Division 1—Underlying principles**

#### **12 Principles**

S. 12  
amended by  
No. 11/2016  
s. 9(4) (ILA  
s. 39B(1)).

(1) The following principles underlie this Part—

S. 12(1)(a)  
amended by  
No. 11/2016  
s. 9(1).

(a) as far as practicable, Aboriginal cultural heritage should be owned by and returned to traditional owners of the area from which the Aboriginal cultural heritage is reasonably believed to have originated if it is any of the following—

S. 12(1)(a)(i)  
amended by  
No. 11/2016  
s. 9(2).

(i) Aboriginal ancestral remains;

(ii) secret or sacred Aboriginal objects;

S. 12(1)(aa)  
inserted by  
No. 11/2016  
s. 9(3).

(aa) as far as practicable, registered Aboriginal intangible heritage should be owned by any registered Aboriginal party, registered native title holder or traditional owner group entity applying to register that heritage on behalf of traditional owners of the area from which the Aboriginal intangible heritage is reasonably believed to have originated;

(b) Aboriginal cultural heritage of the kind referred to in paragraph (a) that is in the custody of the State should continue to be protected by the State until it can be transferred into the protection of its Aboriginal owners.



(2) In this section—

*own* includes collective ownership and custodianship as understood by traditional owners in accordance with Aboriginal tradition.

S. 12(2)  
inserted by  
No. 11/2016  
s. 9(4).

## Division 2—Aboriginal ancestral remains

Pt 2 Div. 2  
(Heading)  
substituted by  
No. 11/2016  
s. 10.

### Note

Section 13 of this Act, as in force before its repeal by section 11 of the **Aboriginal Heritage Amendment Act 2016**, made certain Aboriginal people the owners of Aboriginal ancestral remains.

Note to Pt 2  
Div. 2  
inserted by  
No. 11/2016  
s. 10.

\* \* \* \* \*

S. 13  
repealed by  
No. 11/2016  
s. 11.

## 14 Reporting and transfer of Aboriginal ancestral remains in custody of public entities and universities

S. 14  
substituted by  
No. 11/2016  
s. 12.

(1) Within 2 years of the commencement of section 12 of the **Aboriginal Heritage Amendment Act 2016**, a public entity or a university must—

- (a) notify the Council in writing of any Aboriginal ancestral remains that are in its possession on the commencement of that section; and
- (b) give a report in the prescribed form to the Council, including a list and details of the Aboriginal ancestral remains.

Penalty: 3000 penalty units.

### Note

Section 187A applies to an offence against this subsection.

- (2) The Council must, within 90 days of receiving a report under subsection (1), give notice of the report—
- (a) to any relevant traditional owner of the Aboriginal ancestral remains referred to in the report; and
  - (b) to any relevant registered Aboriginal party.
- (3) A public entity or a university must take all reasonable steps to transfer the Aboriginal ancestral remains into the custody of the Council as soon as practicable after giving a report to the Council under subsection (1).
- (4) This section applies in addition to any other provision of this Act relating to the reporting and transfer of Aboriginal ancestral remains to the Council.
- (5) In this section—
- public entity* has the same meaning as in the  
**Public Administration Act 2004.**

Ss 15, 16  
repealed by  
No. 11/2016  
s. 13.

\* \* \* \* \*

S. 17  
(Heading)  
amended by  
No. 11/2016  
s. 14(1).

## 17 Reporting Aboriginal ancestral remains by persons other than coroner

- (1) This section applies to a person if the person—
- (a) knows of the existence and location of human remains; and
  - (b) knows that the human remains are, or are reasonably likely to be, Aboriginal ancestral remains.

S. 17(1)(b)  
amended by  
No. 11/2016  
s. 14(2).

(2) This section does not apply to an Aboriginal person—

S. 17(2)  
substituted by  
No. 11/2016  
s. 14(3).

(a) who is the rightful owner of the Aboriginal ancestral remains; or

(b) who reasonably believes that transferring the remains would be contrary to Aboriginal tradition.

(3) A person to whom this section applies must—

(a) as soon as practicable, report the existence of the human remains to the Council; and

S. 17(3)(a)  
amended by  
No. 11/2016  
s. 14(4).

(b) give the Council all details about the location and nature of the human remains that the Council reasonably requires.

S. 17(3)(b)  
amended by  
No. 11/2016  
s. 14(5).

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

Note to  
s. 17(3)  
inserted by  
No. 11/2016  
s. 14(6).

(4) It is a defence to proceedings under subsection (3) if the person had reasonable cause to believe that the Council was aware of the existence and location of the human remains.

S. 17(4)  
amended by  
No. 11/2016  
s. 14(7).

**18 Council must determine how to act on report**

S. 18  
(Heading)  
amended by  
No. 11/2016  
s. 15(1).

(1) This section applies if the Council—

(a) receives a report under section 17; and

S. 18(1)  
amended by  
No. 11/2016  
s. 15(2).

S. 18(1)(b)  
amended by  
No. 11/2016  
s. 15(3).

(b) is satisfied that the report relates to  
Aboriginal ancestral remains.

S. 18(2)  
amended by  
No. 11/2016  
s. 15(4).

(2) The Council must—

(a) inform the person who gave the report of the  
person's obligations under section 19  
(if applicable); and

S. 18(2)(b)  
amended by  
No. 11/2016  
s. 15(5).

(b) after taking reasonable steps to consult with  
any Aboriginal person or body the Council  
believes may have an interest in the  
Aboriginal ancestral remains, determine the  
appropriate course of action to be taken in  
relation to the Aboriginal ancestral remains.

## **19 Transfer of Aboriginal ancestral remains to Council**

S. 19  
(Heading)  
amended by  
No. 11/2016  
s. 16(1).

(1) This section applies to a person who—

S. 19(1)(a)  
amended by  
No. 11/2016  
s. 16(2).

(a) is in possession of Aboriginal ancestral  
remains that are not presently part of, or  
contained within, an Aboriginal place; and

S. 19(1)(b)  
amended by  
No. 11/2016  
s. 16(3).

(b) knows or ought reasonably to know, or is  
reckless as to whether, the Aboriginal  
ancestral remains are Aboriginal ancestral  
remains—

but does not apply—

S. 19(1)(d)  
amended by  
No. 11/2016  
s. 16(4).

(c) to the State; or  
  
(d) to an Aboriginal person who is the rightful  
owner of the Aboriginal ancestral remains;  
or

(e) to an Aboriginal person who reasonably believes that transferring the Aboriginal ancestral remains would be contrary to Aboriginal tradition; or

S. 19(1)(e)  
inserted by  
No. 11/2016  
s. 16(5).

(f) to a coroner.

S. 19(1)(f)  
inserted by  
No. 11/2016  
s. 16(5).

(2) The person must, as soon as practicable, take all reasonable steps to transfer the Aboriginal ancestral remains into the custody of the Council.

S. 19(2)  
amended by  
No. 11/2016  
s. 16(6).

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
600 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

Note to  
s. 19(2)  
inserted by  
No. 11/2016  
s. 16(7).

**19A Transfer of Aboriginal ancestral remains to Council by coroner**

S. 19A  
inserted by  
No. 11/2016  
s. 17.

A coroner who has reported to the Council that a body is, or is likely to be, Aboriginal ancestral remains must, as soon as practicable, transfer the remains into the custody of the Council.

**Note**

A coroner is required under sections 16A and 23(4) of the **Coroners Act 2008** to report to the Council if, in investigating a death, the coroner believes that the body is, or is likely to be, Aboriginal ancestral remains, or if a preliminary examination performed by a medical investigator determines that the body is, or is likely to be, Aboriginal ancestral remains.

S. 20  
substituted by  
No. 11/2016  
s. 18.

## **20 What must the Council do with transferred Aboriginal ancestral remains?**

- (1) If Aboriginal ancestral remains are transferred to the Council under sections 14, 19, 19A or 178, the Council must—
  - (a) transfer the remains to any relevant traditional owner of the remains, or to any relevant registered Aboriginal party that the Council is satisfied is entitled to and willing to take possession, custody or control of the remains; or
  - (b) transfer the remains to the Museums Board for safekeeping; or
  - (c) otherwise deal with the remains as the Council thinks appropriate.
- (2) The Museums Board must accept for safekeeping any Aboriginal ancestral remains transferred to the Board under subsection (1).

S. 20A  
inserted by  
No. 11/2016  
s. 18.

## **20A Reporting of interment of Aboriginal ancestral remains outside of an Aboriginal place**

A person who interments Aboriginal ancestral remains outside of an Aboriginal place must, as soon as practicable, report the location of the interment to the Secretary.

## **Division 3—Secret or sacred Aboriginal objects**

S. 21  
(Heading)  
amended by  
No. 11/2016  
s. 19(1).

## **21 Ownership of secret or sacred objects before the Aboriginal Heritage Amendment Act 2016**

S. 21(1)(b)  
amended by  
No. 11/2016  
s. 19(2).

- (1) This section applies to an Aboriginal object that—
  - (a) is a secret or sacred object; and
  - (b) is, immediately before the commencement of this section, in the custody of a State entity, or, on or after that commencement but before the commencement of section 20 of the

**Aboriginal Heritage Amendment Act 2016**, comes into the custody of a State entity.

- (2) Aboriginal people who have a traditional or familial link with the object, if they are not already the owners of the object, become the owners—
  - (a) if the object was in the custody of a State entity immediately before the commencement of this section, on that commencement; or
  - (b) in any other case, when the object comes into the custody of a State entity.

**21A Ownership of secret or sacred objects after the Aboriginal Heritage Amendment Act 2016**

S. 21A  
inserted by  
No. 11/2016  
s. 20.

- (1) This section applies to an Aboriginal object that is a secret or sacred object that—
  - (a) is, on the commencement of this section, in the custody of a person (other than an Aboriginal person who is the rightful owner of the object) or, after that commencement, comes into the custody of that person; or
  - (b) on or after the commencement of this section, comes into the custody of a State entity.
- (2) The traditional owners of an area in which the object is reasonably believed to have originated, if they are not already the owners of the object, become the owners—
  - (a) if the object was in the custody of a person (other than an Aboriginal person who is the rightful owner of the object) on the commencement of this section, on that commencement; or

- (b) if the object was in the custody of a State entity on the commencement of this section, on that commencement; or
  - (c) in any other case, when the object comes into the custody of the person or the State entity.
- (3) A person who has custody of an Aboriginal object that is a secret or sacred object but who is not the owner of the object must, as soon as practicable, take all reasonable steps to transfer the object into the custody of the Council.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
600 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

S. 21B  
inserted by  
No. 11/2016  
s. 20.

**21B What must the Council do with transferred secret or sacred objects?**

- (1) If an Aboriginal object that is a secret or sacred object is transferred to the Council under section 21A, the Council must—
  - (a) transfer the object to an Aboriginal person or a registered Aboriginal party that the Council is satisfied is entitled to and willing to take possession, custody or control of the object; or
  - (b) transfer the object to the Museums Board for safekeeping; or
  - (c) otherwise deal with the object as the Council thinks appropriate.
- (2) The Museums Board must accept for safekeeping any object transferred to the Board under subsection (1).



## **22 Return of secret or sacred objects by State entity**

- (1) An Aboriginal person who, whether by virtue of this Act or otherwise, owns a secret or sacred Aboriginal object that is in the custody of a State entity may ask that entity—
  - (a) to return the object to him or her; or
  - (b) to continue to be the custodian of the object.
- (2) If the State entity is satisfied that the person who makes a request under subsection (1) is the owner of the Aboriginal object, the entity must comply with the request to the greatest extent practicable.
- (3) The State entity may seek the advice of the Council in relation to a request under subsection (1).
- (4) A person who owns an Aboriginal object is not limited to making only one request under subsection (1).

## **23 Return of secret or sacred objects by other entities**

A traditional owner of a secret or sacred Aboriginal object held or controlled by a university, museum or other institution may—

- (a) on the initiative of the traditional owner, or in conjunction with one or more other Aboriginal persons, negotiate directly with the university, museum or other institution; or
- (b) ask the Minister to negotiate with the university, museum or other institution on behalf of the traditional owner—

for the return of the secret or sacred Aboriginal object.

S. 23  
amended by  
No. 11/2016  
s. 21(1).

S. 23(a)  
amended by  
No. 11/2016  
s. 21(2).

S. 23(b)  
amended by  
No. 11/2016  
s. 21(3).

## **Division 4—Aboriginal places and objects**

### **24 Reporting discovery of Aboriginal places and objects**

- (1) This section applies if—
- (a) a person discovers an Aboriginal place or object; and
  - (b) the person knows that the place or object is an Aboriginal place or object.
- (2) The person must report the discovery to the Secretary as soon as practicable unless, at the time of making the discovery, the person had reasonable cause to believe that the Register contained a record of the place or object.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

**Note to  
s. 24(2)  
inserted by  
No. 11/2016  
s. 134(1).**

#### **Note**

Section 187A applies to an offence against this subsection.

- (3) If a discovery of an Aboriginal place or object is made in the course of works being carried out on any land, the person in charge of the works is deemed for the purposes of this section to be the person who discovered the place or object.

### **25 Continued use of surface of land**

- (1) This section applies if an Aboriginal place or object is located on the surface of land and—
- (a) under the tenure on which the land is held, the owner or occupier of the land is entitled to the use and enjoyment of the surface of the land; or

- (b) a person is otherwise entitled to the use and enjoyment of the surface of the land.
- (2) Despite the existence of the Aboriginal place or object, the owner, occupier or other person is entitled to the use and enjoyment of the land to the extent that the person does not contravene section 27 or 28.

### **Division 5—Role of the Museums Board**

Pt 2 Div. 5  
(Heading)  
amended by  
No. 11/2016  
s. 22.

#### **26 Role of Museums Board**

S. 26  
(Heading)  
amended by  
No. 11/2016  
s. 23(1).

- (1) The Museums Board may accept the custody of Aboriginal cultural heritage.
- (2) While the Museums Board has custody of any Aboriginal cultural heritage transferred to it under this Act, the Museums Board must ensure that the heritage is lodged at the Museum of Victoria.
- (2A) Subsection (1) does not apply to any Aboriginal ancestral remains or secret or sacred Aboriginal objects transferred to the Museums Board for safekeeping under this Act.
- (3) Section 25 of the **Museums Act 1983** does not apply to Aboriginal ancestral remains or secret or sacred Aboriginal objects.

S. 26(2A)  
inserted by  
No. 11/2016  
s. 23(2).

S. 26(3)  
amended by  
No. 11/2016  
s. 23(3).

## **Part 3—Protection of Aboriginal cultural heritage**

### **Division 1—Protection from harm**

#### **27 Harming Aboriginal cultural heritage unlawful**

S. 27(1)  
substituted by  
No. 11/2016  
s. 24(1).

- (1) A person is guilty of an offence if—
- (a) the person by an act or omission harms Aboriginal cultural heritage; and
  - (b) at the time of the act or omission the person knew that the act or omission was likely to harm Aboriginal cultural heritage.

- (2) A person who is guilty of an offence under subsection (1) is liable to a penalty not exceeding—

- (a) in the case of a natural person, 1800 penalty units;
- (b) in the case of a body corporate, 10 000 penalty units.

S. 27(3)  
substituted by  
No. 11/2016  
s. 24(2).

- (3) A person is guilty of an offence if—
- (a) the person by an act or omission harms Aboriginal cultural heritage; and
  - (b) at the time of the act or omission the person was reckless as to whether the act or omission was likely to harm Aboriginal cultural heritage.

- (4) A person who is guilty of an offence under subsection (3) is liable to a penalty not exceeding—

- (a) in the case of a natural person, 1200 penalty units;
- (b) in the case of a body corporate, 6000 penalty units.

- (5) A person is guilty of an offence if—
- (a) the person by an act or omission harms Aboriginal cultural heritage; and
  - (b) at the time of the act or omission the person was negligent as to whether the act or omission was likely to harm Aboriginal cultural heritage.
- (6) A person who is guilty of an offence under subsection (5) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 600 penalty units;
  - (b) in the case of a body corporate, 3000 penalty units.
- (7) An offence under this section is an indictable offence.

S. 27(5)  
substituted by  
No. 11/2016  
s. 24(3).

**Notes**

1. The provisions of Division 12 of Part I of the **Crimes Act 1958** (which deal with attempts) apply to indictable offences against this Act.
2. Section 187A applies to an offence against subsection (1), (3) or (5).

Note to s. 27  
substituted as  
Notes by  
No. 11/2016  
s. 24(4).

**28 A person must not harm Aboriginal cultural heritage**

A person must not do an act that harms or is likely to harm Aboriginal cultural heritage.

Penalty: In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
300 penalty units.

S. 28  
substituted by  
No. 11/2016  
s. 25.

**Note**

Section 187A applies to an offence against this section.

## 29 When is harm permitted?

A person who does an act that harms or is likely to harm Aboriginal cultural heritage does not commit an offence under section 27 or 28 if—

- (a) the person is acting—
  - (i) in accordance with a cultural heritage permit or approved cultural heritage management plan that applies to the Aboriginal cultural heritage; or
  - (ia) in accordance with an Aboriginal cultural heritage land management agreement; or
  - (ii) in accordance with Aboriginal tradition as it relates to the Aboriginal cultural heritage; or
- (b) the person does the act in the course of preparing a cultural heritage management plan or an Aboriginal cultural heritage land management agreement in accordance with this Act; or
- (c) the harm is the result of doing an act that is necessary because of an emergency; or
- (d) the person is a coroner or a person assisting the coroner who does the act in the course of determining whether human remains are Aboriginal ancestral remains.

S. 29(a)(ia)  
inserted by  
No. 11/2016  
s. 26(1).

S. 29(b)  
amended by  
No. 11/2016  
s. 26(2).

S. 29(c)  
amended by  
No. 11/2016  
s. 26(3).

S. 29(d)  
inserted by  
No. 11/2016  
s. 26(4).

## 30 Order to repair or restore Aboriginal cultural heritage

- (1) This section applies if a court accepts a plea of guilty from a person in relation to, or finds a person guilty of, or convicts a person of, an offence under this Division in relation to Aboriginal cultural heritage.

(2) In addition to any other sentence imposed in respect of the offence, the court may order the person to pay to the State or the Council or a relevant registered Aboriginal party, an amount of money for or towards—

S. 30(2)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 1.1).

- (a) the cost of any repair or restoration of the Aboriginal cultural heritage needing to be carried out; and
- (b) the cost of any repair or restoration of anything else that is not the Aboriginal cultural heritage, but that is associated with the Aboriginal cultural heritage and also needs to be repaired or restored because of the offence.

(3) The court may also order the person to take any reasonable steps that the court thinks appropriate for any restoration of land that needs to be done because of the offence.

S. 30(3)  
amended by  
No. 11/2016  
s. 27.

## **Division 2—Acquisition and grant of land**

### **31 Acquisition of Aboriginal place**

- (1) The Minister may acquire, by agreement or compulsory acquisition, any land that contains an Aboriginal place if the Minister is satisfied that—
- (a) the Aboriginal place is of such cultural heritage significance to Aboriginal people that it is irreplaceable; and
  - (b) no other practicable arrangements can be made to ensure the proper protection and maintenance of the Aboriginal place.

- (2) Subject to subsections (3) and (4), the **Land Acquisition and Compensation Act 1986** applies to a compulsory acquisition by the Minister under this section and for that purpose—
- (a) the **Aboriginal Heritage Act 2006** is the specified Act; and
  - (b) the Minister is the Authority.
- (3) Despite anything to the contrary in the **Land Acquisition and Compensation Act 1986**, land acquired by the Minister under this section vests in the Crown.
- (4) A person is not entitled to compensation under the **Land Acquisition and Compensation Act 1986** or this Act for the value of an Aboriginal object or Aboriginal ancestral remains on or under the surface of the land acquired under this section.

S. 31(4)  
amended by  
No. 11/2016  
s. 28.

### 32 Grant of land

- (1) The Governor in Council, on behalf of the Crown, may grant to any registered Aboriginal party or other Aboriginal person or body for an estate in fee simple any land acquired under section 31.
- (2) A Crown grant under this section is subject to any terms, conditions, covenants, exceptions, reservations and limitations that the Governor in Council may determine.
- (3) This section applies despite anything to the contrary in the **Land Act 1958**.



### **Division 3—Control of activities**

#### **33 Possession of Aboriginal object**

- (1) A person must not have in the person's possession an Aboriginal object if the person knows, or ought reasonably to know, that the object is an Aboriginal object.

Penalty: In the case of a natural person,  
120 penalty units;  
In the case of a body corporate,  
600 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

**Note to  
s. 33(1)  
inserted by  
No. 11/2016  
s. 134(1).**

- (2) A person who has an Aboriginal object in the person's possession does not commit an offence under subsection (1) if—
- (a) the person is acting—
    - (i) under the authority of another provision of this Act that applies to the Aboriginal cultural heritage; or
    - (ii) in accordance with a cultural heritage permit, approved cultural heritage management plan or cultural heritage agreement that applies to the Aboriginal cultural heritage; or
  - (b) the person is the owner of the Aboriginal cultural heritage; or
  - (c) the person is acting with the consent of the owner of the Aboriginal cultural heritage; or
  - (d) the person's possession of the object is necessary because of an emergency.

### 34 Control of activities

- (1) Subject to this section, a person must not—
- (a) disturb or excavate any land for the purpose of uncovering or discovering Aboriginal cultural heritage; or
  - (b) carry out scientific research on an Aboriginal place or remove an Aboriginal object from that place for the purpose of that research; or
  - (c) sell an Aboriginal object; or
  - (d) remove an Aboriginal object from Victoria—  
other than in accordance with the terms of a cultural heritage permit if the person knows, or ought reasonably to know, or is reckless as to whether, the cultural heritage is Aboriginal cultural heritage.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
600 penalty units.

S. 34(1)(c)  
amended by  
No. 11/2016  
s. 29(1).

Note to  
s. 34(1)  
substituted as  
Notes by  
No. 11/2016  
s. 29(2).

#### Notes

1. Certain permits cannot be obtained in relation to Aboriginal ancestral remains or secret or sacred Aboriginal objects: see section 37(1). The protection of Aboriginal ancestral remains and secret or sacred Aboriginal objects is dealt with in Part 2.
2. Section 187A applies to an offence against this subsection.

(2) Subsection (1) does not apply—

(a) to anything done in the course of preparing a cultural heritage management plan in accordance with Part 4 or an Aboriginal cultural heritage land management agreement; or

S. 34(2)(a)  
amended by  
No. 11/2016  
s. 29(3).

(b) to anything done in accordance with an approved cultural heritage management plan or an Aboriginal cultural heritage land management agreement; or

S. 34(2)(b)  
amended by  
No. 11/2016  
s. 29(4).

(c) to a public entity in respect of an Aboriginal object or a collection of Aboriginal objects that the public entity removes from Victoria for the purpose of—

(i) lending the object or collection to a person or body located outside Victoria; or

(ii) returning the object or collection to a person or body outside Victoria that had lent the object or collection to the public entity.

(3) In this section, *public entity* means—

(a) the Museums Board; or

(b) the Council of Trustees of the National Gallery of Victoria (within the meaning of the **National Gallery of Victoria Act 1966**);  
or

(c) a university; or

(d) a gallery or museum conducted by a body established for a public purpose.

S. 34A  
inserted by  
No. 11/2016  
s. 30.

### **34A Surveys for Aboriginal cultural heritage**

- (1) A person intending to carry out a survey for Aboriginal cultural heritage must give written notice of the person's intention to carry out the survey—
  - (a) to each relevant registered Aboriginal party;  
and
  - (b) to the Secretary (unless the Secretary is the person intending to carry out the survey);  
and
  - (c) to the owner or occupier of any land within the area to which the survey relates.
- (2) A notice under subsection (1) must—
  - (a) contain the name and contact details of the person intending to carry out the survey for Aboriginal cultural heritage; and
  - (b) contain a description of the proposed activity to which the survey relates; and
  - (c) clearly identify the area in respect of which the survey is to be prepared; and
  - (d) specify the dates within which the survey is proposed to be undertaken.
- (3) On receiving a notice under subsection (1), a registered Aboriginal party may, within 14 days, notify the person intending to carry out the survey whether the party wishes to participate in the survey.
- (4) A registered Aboriginal party that notifies the person under subsection (3) may participate in the conduct of the survey.

- (5) A person who carries out a survey for Aboriginal cultural heritage must give a copy of any relevant documentation to the Secretary for recording on the Register by the earlier of—
- (a) 30 days after producing the final report relating to the survey; or
  - (b) within 12 months after giving notice under subsection (1).

Penalty: In the case of a natural person,  
10 penalty units;  
In the case of a body corporate,  
50 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

- (6) If a person intending to carry out a survey for Aboriginal cultural heritage gives a notice under subsection (1) but does not carry out the survey, the person must notify the Secretary that the survey was not carried out.
- (7) This section does not apply to a person intending to carry out—
- (a) a survey for Aboriginal cultural heritage within an area to which an Aboriginal cultural heritage land management agreement applies; or
  - (b) a survey for the purposes of a cultural heritage management plan.
- (8) In this section—

**relevant documentation** means any site records, photographs, maps and plans relating to the survey for Aboriginal cultural heritage, and a copy of any final report.

### 35 Forfeiture of Aboriginal object to Crown

S. 35(1)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 1.2).

- (1) On conviction for an offence against section 34 involving an Aboriginal object, in addition to any other sentence imposed in respect of the offence, the court by which the person was convicted—
  - (a) must, if the object is owned by the person; and
  - (b) may in all other cases—order that the object be forfeited to the Crown.
- (2) In this section, *conviction* includes a plea of guilty or a finding of guilt by a court, even if a conviction is not recorded.

## Division 4—Cultural heritage permits

### 35A Definition

S. 35A  
inserted by  
No. 11/2016  
s. 31.

In this Division—

*approval body*, in relation to an application for a cultural heritage permit, means—

- (a) a relevant registered Aboriginal party; or
- (b) if there is no relevant registered Aboriginal party—the Secretary; or
- (c) if the applicant is a registered Aboriginal party or the Secretary—the Council.

### 36 Application for cultural heritage permit

S. 36(1)  
amended by  
No. 11/2016  
s. 32(1).

- (1) A person may apply to an approval body for a cultural heritage permit authorising the person to do one or more of the following—
  - (a) disturb or excavate any land for the purpose of uncovering or discovering Aboriginal cultural heritage;

- |  |  |
|--|--|
| (b) carry out research on an Aboriginal place or Aboriginal object, including the removal of an Aboriginal object from Victoria for the purposes of that research; | S. 36(1)(b) substituted by No. 11/2016 s. 32(2). |
| (c) carry out an activity that will, or is likely to, harm Aboriginal cultural heritage;   |  |
| (d) sell an Aboriginal object;   | S. 36(1)(d) amended by No. 11/2016 s. 32(3).     |
| (e) remove an Aboriginal object from Victoria;   | S. 36(1)(e) amended by No. 11/2016 s. 32(4).     |
| (f) rehabilitate land at an Aboriginal place, including land containing burial grounds for Aboriginal ancestral remains;   | S. 36(1)(f) inserted by No. 11/2016 s. 32(5).    |
| (g) inter Aboriginal ancestral remains at an Aboriginal place.   | S. 36(1)(g) inserted by No. 11/2016 s. 32(5).    |
- (2) An application must—
- (a) be made in the approved form; and
  - (b) be accompanied by the relevant prescribed fee (if any).

### **37 Restrictions on grant of permit**

- |   |   |
|---|---|
| (1) A cultural heritage permit authorising the applicant to do anything referred to in section 36(1)(c) to (e) must not be granted in respect of Aboriginal ancestral remains or an Aboriginal object that is a secret or sacred Aboriginal object. | S. 37(1) substituted by No. 11/2016 s. 33(1). |
|---|---|

S. 37(1A)  
inserted by  
No. 11/2016  
s. 33(1).

(1A) The Secretary must consult with the Council before issuing a cultural heritage permit if the Secretary is the approval body and the application is for a permit to do anything referred to in section 36(1)(a) and (b) in respect of Aboriginal ancestral remains.

(2) A cultural heritage permit must not be granted for an activity for which a cultural heritage management plan is required under this Act.

S. 37(3)  
inserted by  
No. 11/2016  
s. 33(2).

(3) A cultural heritage permit must not be granted in respect of Aboriginal intangible heritage.

Ss 38, 39  
repealed by  
No. 11/2016  
s. 34.

\* \* \* \* \*

#### 40 Determination of application

S. 40(1)  
substituted by  
No. 11/2016  
s. 35(1).

(1) An approval body must consider every application for a cultural heritage permit to that body.

S. 40(2)  
amended by  
No. 11/2016  
s. 35(2).

(2) After considering an application, the approval body may decide—  
(a) to grant the cultural heritage permit; or  
(b) to refuse to grant the cultural heritage permit.

S. 40(3)  
substituted by  
No. 11/2016  
s. 35(3).

(3) An approval body must decide to grant or refuse to grant a cultural heritage permit within 30 days of receiving an application.

S. 40(3A)  
inserted by  
No. 11/2016  
s. 35(3).

(3A) An approval body may request the applicant to provide any additional information that the body reasonably considers necessary to assist the body's decision.



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- (3B) A request under subsection (3A) must be made in writing and include the following information—
- (a) the information to be provided;
  - (b) the date by which the information is to be provided, being at least 30 days after the request;
  - (c) a statement that the application will lapse if the information is not provided by that date.
- (3C) The period referred to in subsection (3)—
- (a) ceases to run when the approval body requests the additional information; and
  - (b) recommences to run when the information is provided to the approval body.
- (3D) The period referred to in subsection (3)—
- (a) ceases to run when the Secretary consults with the Council under subsection (3G); and
  - (b) recommences to run when the Council gives written advice to the Secretary or after 30 days, whichever is earlier.
- (3E) If the approval body fails to decide to grant or refuse to grant a cultural heritage permit in accordance with this section, the approval body is taken to have refused to grant the permit.
- (3F) If the approval body is the Secretary, the Secretary must consult with, and consider the views of, any Aboriginal person or Aboriginal body that the Secretary considers relevant when considering the application.
- (3G) If the application is to rehabilitate land containing burials of Aboriginal ancestral remains or to inter Aboriginal ancestral remains, and there is no relevant registered Aboriginal party, the Secretary must consult with the Council when considering the application.

S. 40(3B)  
inserted by  
No. 11/2016  
s. 35(3).

S. 40(3C)  
inserted by  
No. 11/2016  
s. 35(3).

S. 40(3D)  
inserted by  
No. 11/2016  
s. 35(3).

S. 40(3E)  
inserted by  
No. 11/2016  
s. 35(3).

S. 40(3F)  
inserted by  
No. 11/2016  
s. 35(3).

S. 40(3G)  
inserted by  
No. 11/2016  
s. 35(3).

S. 40(4)  
amended by  
No. 11/2016  
s. 35(4).

- (4) If the grant of a cultural heritage permit would authorise an activity that would, or would be likely to, harm Aboriginal cultural heritage, the approval body must, before granting the permit, consider—
- (a) the nature of the Aboriginal cultural heritage; and
  - (b) the impact, or the likely impact, of the activity on the Aboriginal cultural heritage; and
  - (c) the extent to which the harm to the Aboriginal cultural heritage could be minimised.

S. 41  
substituted by  
No. 11/2016  
s. 36.

#### **41 Conditions on cultural heritage permits**

- (1) The approval body may include in the cultural heritage permit any conditions that the body reasonably considers appropriate, including—
- (a) a condition that the activity authorised by the cultural heritage permit be supervised by a heritage advisor; or
  - (b) a condition that any Aboriginal cultural heritage found in the course of the activity authorised by the cultural heritage permit be conserved in a way specified in the permit; or
  - (c) a condition that specified things are to be done to the satisfaction of the approval body.
- (2) The approval body must not include in the cultural heritage permit a condition that the applicant pay or give money or money's worth to the registered Aboriginal party.

**41A Offence to fail to comply with cultural heritage permit**

S. 41A  
inserted by  
No. 11/2016  
s. 36.

The holder of a cultural heritage permit must comply with the conditions of the permit.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
150 penalty units.

**Note**

Section 187A applies to an offence against this section.

**41B Transfer of cultural heritage permits**

S. 41B  
inserted by  
No. 11/2016  
s. 36.

- (1) The holder of a cultural heritage permit may transfer the permit to another person with the written approval of the approval body.
- (2) If the approval body is the Secretary, the Secretary must consult with, and consider the views of, any Aboriginal person or Aboriginal body that the Secretary considers relevant before approving the transfer of a cultural heritage permit.

**41C Amendments to cultural heritage permits**

S. 41C  
inserted by  
No. 11/2016  
s. 36.

This Division applies to a proposed amendment to a cultural heritage permit as if the proposed amendment were an application for a cultural heritage permit.

**41D Taking effect of cultural heritage permits**

S. 41D  
inserted by  
No. 11/2016  
s. 36.

A cultural heritage permit takes effect when a copy of the permit is lodged with the Secretary after being approved by the approval body.

## **Part 4—Cultural heritage management plans**

### **Division 1—What is a cultural heritage management plan?**

#### **42 What is a cultural heritage management plan?**

- (1) For the purposes of this Act, the preparation of a cultural heritage management plan for an area involves—
  - (a) an assessment of the area to determine the nature of any Aboriginal cultural heritage present in the area; and
  - (b) a written report setting out—
    - (i) the results of the assessment; and
    - (ii) conditions to be complied with before, during and after an activity to manage and protect the Aboriginal cultural heritage identified in the assessment.
- (2) The written report is the cultural heritage management plan.

S. 42(1)(b)(ii)  
amended by  
No. 11/2016  
s. 37.

#### **43 Procedure for assessment**

- (1) An assessment for the purposes of a cultural heritage management plan must comply with the prescribed standards.
- (2) Without limiting the range of activities that may be undertaken during an assessment of an area for the purposes of a cultural heritage management plan, the assessment may include—
  - (a) research into information relating to Aboriginal cultural heritage; and
  - (b) a survey for Aboriginal cultural heritage; and

S. 43(2)(b)  
substituted by  
No. 11/2016  
s. 38.

- (c) the disturbance or excavation of land to uncover or discover Aboriginal cultural heritage.

**44 Who may prepare a plan?**

- (1) Any person, other than the Minister, may be the sponsor of a cultural heritage management plan.
- (2) Without limiting subsection (1), the following may sponsor a cultural heritage management plan—
  - (a) the Secretary;
  - (b) a municipal council;
  - (c) a registered Aboriginal party;
  - (d) a representative of a registered Aboriginal party appointed for that purpose by the party and acting on behalf of the party;
  - (e) the proponent of an activity;
  - (f) a representative of a proponent of an activity appointed for that purpose by the proponent and acting on behalf of the proponent.

**45 Voluntary cultural heritage management plan**

A person may prepare a cultural heritage management plan even if the plan is not required under this Act.

**45A Amendments to approved cultural heritage management plans**

- (1) Subject to subsection (2), this Division applies to a proposed amendment to an approved cultural heritage management plan as if the proposed amendment were a new cultural heritage management plan.
- (2) An assessment of an area under section 42(1)(a) is not required for a proposed amendment to an approved cultural heritage management plan if the

S. 45A  
inserted by  
No. 11/2016  
s. 39.

assessment for the purposes of the cultural heritage management plan before it was approved included the matters specified in the proposed amendment.

## **Division 2—When is a cultural heritage management plan required?**

### **46 Mandatory cultural heritage management plans**

S. 46  
amended by  
No. 11/2016  
s. 40(3) (ILA  
s. 39B(1)).

- (1) A cultural heritage management plan is required under this Part for a proposed activity if—
  - (a) the regulations require the preparation of the plan for the activity; or
  - (b) the Minister directs the preparation of a plan for the activity under section 48; or
  - (c) a plan is required for the activity under section 49; or
  - (d) a plan is required for the activity under section 49A; or
  - (e) the Secretary receives an application for the certification of a preliminary Aboriginal heritage test determining that a proposed activity requires the preparation of a cultural heritage management plan, and the Secretary certifies that the test is correct.

S. 46(1)(c)  
amended by  
No. 56/2009  
s. 264(Sch. 2  
item 1.1).

S. 46(1)(d)  
inserted by  
No. 56/2009  
s. 264(Sch. 2  
item 1.2),  
amended by  
No. 11/2016  
s. 40(1).

S. 46(1)(e)  
inserted by  
No. 11/2016  
s. 40(2).

S. 46(2)  
inserted by  
No. 11/2016  
s. 40(3).

- (2) A person is guilty of an offence if—
  - (a) the person commences an activity for which a cultural heritage management plan is required under this Part; and

- (b) a cultural heritage management plan for the activity has not been approved under Division 5; and
  - (c) at the time of commencing the activity, the person knew the activity required a cultural heritage management plan.
- (3) A person who is guilty of an offence under subsection (2) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 240 penalty units;
  - (b) in the case of a body corporate, 1200 penalty units.
- (4) A person is guilty of an offence if—
- (a) the person commences an activity for which a cultural heritage management plan is required under this Part; and
  - (b) a cultural heritage management plan for the activity has not been approved under Division 5; and
  - (c) at the time of commencing the activity, the person was reckless as to whether the activity required a cultural heritage management plan.
- (5) A person who is guilty of an offence under subsection (4) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 120 penalty units;
  - (b) in the case of a body corporate, 600 penalty units.

S. 46(3)  
inserted by  
No. 11/2016  
s. 40(3).

S. 46(4)  
inserted by  
No. 11/2016  
s. 40(3).

S. 46(5)  
inserted by  
No. 11/2016  
s. 40(3).

S. 46(6)  
inserted by  
No. 11/2016  
s. 40(3).

- (6) A person is guilty of an offence if—
- (a) the person commences an activity for which a cultural heritage management plan is required under this Part; and
  - (b) a cultural heritage management plan for the activity has not been approved under Division 5; and
  - (c) at the time of commencing the activity, the person was negligent as to whether the activity required a cultural heritage management plan.

S. 46(7)  
inserted by  
No. 11/2016  
s. 40(3).

- (7) A person who is guilty of an offence under subsection (6) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 60 penalty units;
  - (b) in the case of a body corporate, 300 penalty units.

Note to s. 46  
inserted by  
No. 11/2016  
s. 40(3).

**Note**

Section 187A applies to an offence against subsection (2), (4) or (6).

**47 Regulations may require plan**

The regulations may specify the circumstances in which a cultural heritage management plan is required for an activity or class of activity.

**48 Minister may require plan**

- (1) The Minister may direct a person who proposes to carry out an activity to prepare a cultural heritage management plan before commencing the activity.

S. 48(2)  
repealed by  
No. 11/2016  
s. 41.

\* \* \* \* \*



- (3) If the Minister gives a direction to a person under this section, the Minister must, within 14 days after giving the direction, give notice of the direction to the responsible authority for the land on which the proposed activity is to be carried out.
- (4) In this section, *responsible authority* has the same meaning as in the **Planning and Environment Act 1987**.

**49 Plan required if Environment Effects Statement required**

- (1) This section applies if a proponent or other person is required to prepare an Environment Effects Statement under the **Environment Effects Act 1978** in respect of any works.
- (2) The proponent or other person must, before commencing the works, also prepare a cultural heritage management plan for the area in which the works are to be carried out.
- (3) In this section—

*Environment Effects Statement* and *proponent* have the same meanings as in the **Environment Effects Act 1978**;

*works* includes *public works* within the meaning of the **Environment Effects Act 1978**.

**49A Plan required if impact management plan or comprehensive impact statement is required**

- (1) This section applies if a project proponent is required to prepare an impact management plan or comprehensive impact statement in relation to a declared project.
- (2) The project proponent must not commence works until a cultural heritage management plan for the area in which the works are to be carried out has been approved.

S. 49A  
inserted by  
No. 56/2009  
s. 264(Sch. 2  
item 1.3).

- (3) In this section, *declared project*, *comprehensive impact statement*, *impact management plan*, *project proponent* and *works* have the same meaning as in the **Major Transport Projects Facilitation Act 2009**.

Pt 4 Div. 2A  
(Heading and  
ss 49B, 49C)  
inserted by  
No. 11/2016  
s. 42.

## **Division 2A—Preliminary Aboriginal heritage tests**

S. 49B  
inserted by  
No. 11/2016  
s. 42.

### **49B Application for certification of preliminary Aboriginal heritage test**

- (1) A person proposing an activity may prepare a preliminary Aboriginal heritage test for the purposes of determining whether the proposed activity requires the person to prepare a cultural heritage management plan.
- (2) A person who prepares a preliminary Aboriginal heritage test may apply to the Secretary for certification of the test.
- (3) An application under subsection (2) must be made in the prescribed form and be accompanied by the prescribed fee (if any).

S. 49C  
inserted by  
No. 11/2016  
s. 42.

### **49C Certification of preliminary Aboriginal heritage test**

- (1) After receiving an application for the certification of a preliminary Aboriginal heritage test under section 49B, the Secretary must certify that the test is correct or refuse to certify the test.
- (2) The Secretary must certify a preliminary Aboriginal heritage test or refuse to certify the test within 21 days of receiving the application.
- (3) The Secretary may request the applicant to provide any additional information that the Secretary reasonably considers necessary to assist the Secretary's decision.

- (4) A request under subsection (3) must be made in writing and include the following information—
- (a) the information to be provided;
  - (b) the date by which the information is to be provided, being at least 30 days after the request;
  - (c) a statement that the application will lapse if the information is not provided by that date.
- (5) The period referred to in subsection (2)—
- (a) ceases to run when the Secretary requests the additional information; and
  - (b) recommences to run when the information is provided to the Secretary.

### **Division 3—Other authorisations suspended until plan prepared**

#### **50 Definitions**

In this Division—

*decision maker*, in relation to statutory authorisation, means a person or body empowered under an Act or regulations to grant that authorisation;

*earth resource authorisation* means any of the following—

- (a) an approval given under section 40 of the **Mineral Resources (Sustainable Development) Act 1990**;
- (b) an extractive industry work authority granted under section 77I of the **Mineral Resources (Sustainable Development) Act 1990**;

S. 50 def. of *earth resource authorisation* amended by Nos 63/2006 s. 61(Sch. item 1.1), 6/2009 s. 42(1), 10/2010 s. 800(Sch. 6 item 1(a)), 11/2016 s. 43(1).

- (c) a written consent given under section 138 of the **Petroleum Act 1998**;
- (d) the acceptance under Division 3 of Part 9 of the **Pipelines Act 2005** of an Environment Management Plan;
- (e) a written consent given under section 193 of the **Greenhouse Gas Geological Sequestration Act 2008**;
- (f) a written consent given under section 80 of the **Geothermal Energy Resources Act 2005**;
- (g) the acceptance by the Minister under the regulations made under the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** of an environment plan;

S. 50 def. of *earth resource law* amended by Nos 63/2006 s. 61(Sch. item 1.2), 6/2009 s. 42(2), 10/2010 s. 800(Sch. 6 item 1(b)), 11/2016 s. 43(2).

*earth resource law* means any of the following—

- (a) the **Mineral Resources (Sustainable Development) Act 1990**;
- \* \* \* \* \*
- (c) the **Petroleum Act 1998**;
- (d) the **Pipelines Act 2005**;
- (e) the **Greenhouse Gas Geological Sequestration Act 2008**;
- (f) the **Geothermal Energy Resources Act 2005**;
- (g) the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** and any regulations made under that Act;

*statutory authorisation* means any of the following—

- (a) a permit under the **Planning and Environment Act 1987** to use or develop land for all or part of an activity;
- (b) an amendment to a permit referred in paragraph (a) if the amendment allows a change to the use or development of the land for all or part of the activity;
- (c) an earth resource authorisation other than an authorisation approving an area work plan within the meaning of section 41AD(4) of the **Mineral Resources (Sustainable Development) Act 1990**;
- (d) an amendment to an earth resource authorisation (other than an amendment to an authorisation that approves a variation to an area work plan within the meaning of section 41AD(4) of the **Mineral Resources (Sustainable Development) Act 1990**) if the amendment allows a change to the activity authorised by that authorisation;
- (e) an approval under any Act or regulations to develop land for all or part of an activity, other than an approval—
  - (i) under the **Planning and Environment Act 1987**; or
  - (ii) under an earth resource law; or

S. 50 def. of  
*statutory authorisation*  
amended by  
Nos 57/2009  
s. 42, 55/2010  
s. 89.

- (iii) that is required for a purpose that relates to a purpose for which an earth resource authorisation is also required;
- (f) the amendment to an approval included in this definition by paragraph (e) that allows a change to the development of the land for all or part of an activity.

### **51 Application of Division**

This Division applies if a sponsor proposes to carry out an activity—

- (a) for which a cultural heritage management plan is required under this Part; and
- (b) for which the sponsor must also obtain a statutory authorisation before the sponsor can carry out the activity.

### **52 Plan must be prepared before authorisation given**

- (1) The decision maker must not grant a statutory authorisation for the activity unless a cultural heritage management plan is approved under this Part in respect of the activity.

#### **Note**

This section does not prevent a sponsor from lodging an application for a statutory authorisation before a cultural heritage management plan is approved.

- (2) The sponsor must give a copy of the approved cultural heritage management plan to the decision maker.
- (3) The decision maker must not grant a statutory authorisation for the activity if the activity would be inconsistent with the approved cultural heritage management plan.

- (4) If the decision maker is required to decide whether to grant the statutory authorisation within a certain period, that period is deemed not to commence until the decision maker receives a copy of the approved cultural heritage management plan.
- (5) Subsection (4) does not affect any period for making a decision that is preliminary to the decision whether to grant the statutory authorisation.
- (5A) This section applies to a proposed amendment to an approved cultural heritage management plan as if the proposed amendment were a new cultural heritage management plan.
- (6) This section applies despite anything to the contrary in any other Act.

S. 52(5A)  
inserted by  
No. 11/2016  
s. 44.

#### **Division 4—Preparation of cultural heritage management plans**

##### **53 Cultural heritage management plan to be prepared in accordance with prescribed standards**

- (1) The sponsor of a cultural heritage management plan must ensure that the plan is prepared in accordance with the prescribed standards.
- (2) The sponsor of a cultural heritage management plan must ensure that all activities undertaken during the assessment of an area for the purposes of a cultural heritage management plan comply with the regulations.

##### **54 Notice of intention to prepare cultural heritage management plan**

- (1) The sponsor of a cultural heritage management plan must give written notice of the sponsor's intention to prepare the plan—

Aboriginal Heritage Act 2006  
No. 16 of 2006  
Part 4—Cultural heritage management plans

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- S. 54(1)(c)  
amended by  
No. 11/2016  
s. 45(1).
- S. 54(1)(d)  
inserted by  
No. 11/2016  
s. 45(2).
- S. 54(3)(d)  
amended by  
No. 11/2016  
s. 45(3).
- S. 54(3)(e)  
inserted by  
No. 11/2016  
s. 45(4).
- S. 54(4)  
inserted by  
No. 11/2016  
s. 45(5).
- (a) to each relevant registered Aboriginal party;  
and
  - (b) to the Secretary (unless the Secretary is the sponsor); and
  - (c) to the owner or occupier of any land within the area to which the plan relates; and
  - (d) to any municipal council whose municipal district includes an area to which the plan relates.
- (2) The sponsor must give the notice referred to in subsection (1) before commencing the preparation of the plan.
- (3) A notice under this section must—
- (a) contain the name and contact details of the sponsor; and
  - (b) contain a description of the proposed activity to which the plan relates; and
  - (c) clearly identify the area in respect of which the plan is to be prepared; and
  - (d) specify the dates within which the plan is proposed to be prepared; and
  - (e) be accompanied by the prescribed fee (if any).
- (4) If the proposed activity in the plan is to be carried out in an area for which there is no registered Aboriginal party, a notice under this section may include details of Aboriginal people or Aboriginal groups with whom the sponsor intends to consult.



**55 Registered Aboriginal parties may elect to evaluate plan**

- (1) This section applies if a registered Aboriginal party receives notice under this Division of an intention to prepare a cultural heritage management plan.
- (2) Within 14 days of receiving the notice, the registered Aboriginal party must give written notice to the sponsor specifying whether or not it intends to evaluate the plan.
- (3) If the sponsor of a cultural heritage management plan is a registered Aboriginal party, the party cannot evaluate the plan.
- (4) Despite subsection (3), any other registered Aboriginal party that receives notice of an intention to prepare a cultural heritage management plan may evaluate the plan.

S. 55(3)  
inserted by  
No. 11/2016  
s. 46.

S. 55(4)  
inserted by  
No. 11/2016  
s. 46.

**56 Sponsor to notify Secretary of intention of registered Aboriginal party**

- (1) If the sponsor of a cultural heritage management plan gives notice to a registered Aboriginal party under section 54, the sponsor must notify the Secretary if the registered Aboriginal party—
  - (a) declines under section 55 to evaluate the plan; or
  - (b) fails to respond to the notice from the sponsor within 14 days after receiving the notice.
- (2) This section does not apply if the sponsor is the Secretary.

### **57 Newly registered Aboriginal parties**

- (1) This section applies if a body becomes a registered Aboriginal party for the area to which a proposed cultural heritage management plan relates—
- (a) after the date on which—
    - (i) the relevant sponsor gave notice to the Secretary under section 54; or
    - (ii) if the Secretary is the sponsor, the Secretary gave notice under section 54; and
  - (b) before the commencement of an assessment of the area for the purposes of the cultural heritage management plan.
- (2) As soon as possible, the Secretary must give the sponsor the contact details of the registered Aboriginal party.
- (3) Subsection (2) does not apply if the Secretary is the sponsor.
- (4) Sections 54, 55 and 56 apply as if the registered Aboriginal party had been registered for the area to which the plan relates at the time—
- (a) the sponsor gave notice to the Secretary under section 54; or
  - (b) if the Secretary is the sponsor, the Secretary gave notice under section 54.

S. 57(1)(b)  
substituted by  
No. 11/2016  
s. 47.

### **58 Engagement of heritage advisor**

The sponsor of a cultural heritage management plan must engage a heritage advisor to assist in the preparation of the plan.

S. 58  
(Heading)  
amended by  
No. 11/2016  
s. 48(1).

S. 58  
amended by  
No. 11/2016  
s. 48(2).

**59 Obligations of sponsor and registered Aboriginal party**

- (1) This section applies if a registered Aboriginal party gives notice under section 55 of its intention to evaluate a cultural heritage management plan.
- (2) The sponsor must make reasonable efforts to consult with the registered Aboriginal party before beginning the assessment and during the preparation of the plan.
- (3) The registered Aboriginal party must use reasonable efforts to co-operate with the sponsor in the preparation of the plan.

**60 Registered Aboriginal party may also advise**

A registered Aboriginal party that gives notice under section 55 of its intention to evaluate a cultural heritage management plan may also do all or any of the following—

- (a) consult with the sponsor in relation to the assessment of the area for the purposes of the plan;
- (b) consult with the sponsor in relation to the conditions to be included in the plan;
- (c) participate in the conduct of the assessment.

S. 60(b)  
amended by  
No. 11/2016  
s. 49.

**60A Activity advisory groups**

- (1) The Secretary may appoint an activity advisory group for a proposed activity if—
  - (a) the Secretary receives a notice of intention to prepare a cultural heritage management plan under section 54; and
  - (b) the proposed activity in the plan is to be carried out in an area for which there is no registered Aboriginal party.

S. 60A  
inserted by  
No. 11/2016  
s. 50.

- (2) If the Secretary appoints an activity advisory group under subsection (1), the Secretary must do so within 21 days of receiving a notice of intention to prepare a cultural heritage management plan.
- (3) The Secretary must notify the sponsor of a cultural heritage management plan of the appointment of an activity advisory group for the proposed activity in the plan as soon as practicable after appointing the group.
- (4) The function of an activity advisory group is to advise the Secretary on the proposed activity and its impact on Aboriginal cultural heritage.
- (5) For the purposes of performing its function, an activity advisory group may do any of the following—
  - (a) consult with the sponsor and the heritage advisor in relation to the assessment of the area for the purposes of the plan;
  - (b) consult with the sponsor and the heritage advisor in relation to the conditions to be included in the plan;
  - (c) participate in the conduct of the assessment.
- (6) The sponsor of a cultural heritage management plan and the heritage advisor must make reasonable efforts to consult with the activity advisory group before beginning the assessment and during the preparation of the plan.
- (7) The Secretary may appoint representatives of any relevant traditional owners to an activity advisory group.
- (8) A member of an activity advisory group is appointed on the terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment.

## **Division 5—Approval of cultural heritage management plans**

### **61 Matters to be considered in relation to a plan**

The following matters are to be considered in assessing whether a cultural heritage management plan relating to an activity is to be approved—

- (a) whether the activity will be conducted in a way that avoids harm to Aboriginal cultural heritage;
- (b) if it does not appear to be possible to conduct the activity in a way that avoids harm to Aboriginal cultural heritage, whether the activity will be conducted in a way that minimises harm to Aboriginal cultural heritage;
- (c) any specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, both during and after the activity;
- (d) any contingency plans required in relation to disputes, delays and other obstacles that may affect the conduct of the activity;
- (e) requirements relating to the custody and management of Aboriginal cultural heritage during the course of the activity.

### **62 Application to registered Aboriginal party for approval**

- (1) This section applies if one or more registered Aboriginal parties have given notice under section 55 of their intention to evaluate a cultural heritage management plan.
- (2) The sponsor must apply to each of those registered Aboriginal parties for approval of the plan.

S. 62(3A)  
inserted by  
No. 11/2016  
s. 51.

(3) An application under subsection (2) must be accompanied by the relevant prescribed fee (if any).

(3A) An application under subsection (2) to more than one registered Aboriginal party is taken to be received by each of the parties on the date on which all of the parties have received the prescribed fee, or if there is no prescribed fee, the application.

(4) The sponsor and each registered Aboriginal party referred to in subsection (1) must make every reasonable effort to reach agreement on the matters set out in section 61.

### **63 Decision by registered Aboriginal party**

(1) A registered Aboriginal party must, within 30 days after receiving an application under section 62—

(a) decide—

(i) to approve the plan; or

(ii) to refuse to approve the plan; and

(b) give written notice of the decision to the sponsor and each other registered Aboriginal party referred to in section 62.

S. 63(1A)  
inserted by  
No. 11/2016  
s. 52(1).

(1A) A registered Aboriginal party may request the sponsor to provide any additional information that the party reasonably considers necessary to assist the party's decision.

S. 63(1B)  
inserted by  
No. 11/2016  
s. 52(1).

(1B) A request under subsection (1A) must be made in writing and include the following information—

(a) the information to be provided;

(b) the date by which the information is to be provided, being at least 30 days after the request;

- (c) a statement that the application will lapse if the information is not provided by that date.
- (1C) The period referred to in subsection (1)—
- (a) ceases to run when the registered Aboriginal party requests the additional information; and
  - (b) recommences to run when the information is provided to the registered Aboriginal party.
- (2) If a dispute in relation to the cultural heritage management plan is referred to the Chairperson of the Council under Subdivision 1 of Division 1 of Part 8, the period referred to in subsection (1) ceases to run until the Chairperson certifies in writing that the dispute has been resolved or that alternative dispute resolution has failed, or is unlikely, to resolve the dispute.
- (3) A registered Aboriginal party must refuse to approve the plan if it has not been prepared in accordance with the standards prescribed for the purposes of section 53.
- (4) A registered Aboriginal party may otherwise only refuse to approve the plan if the registered Aboriginal party is not satisfied that the plan adequately addresses the matters set out in section 61.
- (5) The sponsor may agree to accept the decision of a registered Aboriginal party to approve the plan or refuse the plan after the period referred to in subsection (1), but only if the sponsor has not already made an application to the Secretary under section 65(1)(b)(iv).

**S. 63(1C)**  
inserted by  
**No. 11/2016**  
s. 52(1).

**S. 63(5)**  
inserted by  
**No. 11/2016**  
s. 52(2).

**64 When does a plan approved by a registered Aboriginal party take effect?**

- (1) Subject to subsection (2), a cultural heritage management plan takes effect as an approved cultural heritage management plan when—
  - (a) it is approved by each registered Aboriginal party to which an application is required to be made under section 62; and
  - (b) the sponsor lodges the following with the Secretary—
    - (i) a copy of the plan; and
    - (ii) a copy of each notice of approval received by the sponsor under section 63(1)(b).
- (2) If the approval of more than one registered Aboriginal party is required in relation to a cultural heritage management plan and one or more of those parties fails to comply with section 63(1) within the required time and each of the other registered Aboriginal parties has approved the plan, the plan takes effect as an approved cultural heritage management plan when the sponsor lodges the following with the Secretary—
  - (a) a copy of the plan; and
  - (b) a copy of each notice of approval received by the sponsor under section 63(1)(b).

**65 Approval by Secretary**

- (1) A sponsor may apply to the Secretary for approval of a cultural heritage management plan if—
  - (a) the sponsor is not the Secretary; and



- (b) one of the following applies—
- (i) there is no relevant registered Aboriginal party in relation to the plan;
  - (ii) no relevant registered Aboriginal party has given notice to the sponsor under section 55 within the time required by that section;
  - (iii) all of the relevant registered Aboriginal parties have given the sponsor notice under section 55 that they do not wish to evaluate the plan;
  - (iv) no relevant registered Aboriginal party has given notice to the sponsor under section 63(1) within the time required by that section.

(1A) An application under this section must be accompanied by the prescribed fee (if any).

**S. 65(1A)**  
inserted by  
No. 11/2016  
s. 53(1).

(2) Within 30 days after receiving the application, the Secretary must decide whether to approve the plan or to refuse to approve the plan.

(2A) The Secretary may request the sponsor to provide any additional information that the Secretary reasonably considers necessary to assist the Secretary's decision.

**S. 65(2A)**  
inserted by  
No. 11/2016  
s. 53(2).

(2B) A request under subsection (2A) must be made in writing and include the following information—

**S. 65(2B)**  
inserted by  
No. 11/2016  
s. 53(2).

- (a) the information to be provided;
- (b) the date by which the information is to be provided, being at least 30 days after the request;
- (c) a statement that the application will lapse if the information is not provided by that date.

S. 65(2C)  
inserted by  
No. 11/2016  
s. 53(2).

- (2C) The period referred to in subsection (2)—
- (a) ceases to run when the Secretary requests the additional information; and
  - (b) recommences to run when the information is provided to the Secretary.

S. 65(2D)  
inserted by  
No. 11/2016  
s. 53(2).

- (2D) Subject to subsection (2E), the Secretary is taken to have refused to approve the plan if the Secretary fails to decide whether to approve the plan or to refuse to approve the plan within the period referred to in subsection (1).

S. 65(2E)  
inserted by  
No. 11/2016  
s. 53(2).

- (2E) The Secretary may decide to approve the plan or to refuse the plan after the period referred to in subsection (1) with the agreement of the sponsor.

S. 65(3)  
substituted by  
No. 11/2016  
s. 53(3).

- (3) In considering the application, the Secretary must consult with, and consider the views of—
- (a) any Aboriginal person or Aboriginal body that the Secretary considers relevant to the application; or
  - (b) any activity advisory group appointed by the Secretary under section 60A.
- (4) The Secretary must refuse to approve the plan if it has not been prepared in accordance with the standards prescribed for the purposes of section 53.
- (5) The Secretary may otherwise only refuse to approve the plan if the Secretary is not satisfied that the plan adequately addresses the matters set out in section 61.
- (6) A cultural heritage management plan approved by the Secretary takes effect on that approval.

## **66 Approval by Council**

- (1) If the Secretary is the sponsor of a cultural heritage management plan, the Secretary may apply to the Council for approval of the plan if—

- (a) there is no relevant registered Aboriginal party in relation to the plan; or
- (b) no relevant registered Aboriginal party has given notice to the Secretary under section 55 within the time required by that section; or
- (c) all of the relevant registered Aboriginal parties have given the Secretary notice under section 55 that they do not wish to evaluate the plan; or
- (d) no relevant registered Aboriginal party has given notice to the Secretary under section 63(1) within the time required by that section.

(1A) An application under this section must be accompanied by the prescribed fee (if any).

S. 66(1A)  
inserted by  
No. 11/2016  
s. 54(1).

(1B) If a registered Aboriginal party is the sponsor of a cultural heritage management plan, the party may apply to the Council for approval of the plan.

S. 66(1B)  
inserted by  
No. 11/2016  
s. 54(1).

**Note**

If a registered Aboriginal party is the sponsor of a cultural heritage management plan and there is more than one registered Aboriginal party for the area to which the plan relates, an application must also be made under section 62.

(2) Within 60 days after receiving the application, the Council must decide whether to approve or to refuse to approve the plan.

(2A) The Council may request the sponsor to provide any additional information that the Council reasonably considers necessary to assist the Council's decision.

S. 66(2A)  
inserted by  
No. 11/2016  
s. 54(2).

(2B) A request under subsection (2A) must be made in writing and include the following information—

S. 66(2B)  
inserted by  
No. 11/2016  
s. 54(2).

- (a) the information to be provided;

S. 66(2C)  
inserted by  
No. 11/2016  
s. 54(2).

- (b) the date by which the information is to be provided, being at least 30 days after the request;
  - (c) a statement that the application will lapse if the information is not provided by that date.
- (2C) The period referred to in subsection (2)—
- (a) ceases to run when the Council requests the additional information; and
  - (b) recommences to run when the information is provided to the Council.
- (3) In considering the application, the Council must consult with, and consider the views of, any Aboriginal person or Aboriginal body that the Council considers relevant to the application.
- (4) The Council must refuse to approve the plan if it has not been prepared in accordance with the standards prescribed for the purposes of section 53.
- (5) The Council may otherwise only refuse to approve the plan if the Council is not satisfied that the plan adequately addresses the matters set out in section 61.
- (6) A cultural heritage plan approved by the Council takes effect on that approval.

S. 66A  
inserted by  
No. 11/2016  
s. 55.

**66A Amendments to approved cultural heritage management plans**

- (1) Subject to this section, Division 4 and this Division apply to a proposed amendment to an approved cultural heritage management plan as if the proposed amendment were a cultural heritage management plan.
- (2) A proposed amendment to an approved cultural heritage management plan that is, in the opinion of the relevant authority, a minor amendment to

the plan, may be approved by the relevant authority within 14 days of receiving the proposed amendment.

- (3) The relevant authority must give written notice of its decision to approve or refuse to approve a proposed amendment to an approved cultural heritage management plan to the sponsor, and any relevant registered Aboriginal party.
- (4) An application to amend an approved cultural heritage management plan must be made in the prescribed form and accompanied by the prescribed fee (if any).
- (5) An approved cultural heritage management plan cannot be amended 5 years or more after first being approved under this Division.
- (6) In this section—

*relevant authority*, in relation to an application for a proposed amendment to an approved cultural heritage management plan, means—

- (a) a relevant registered Aboriginal party; or
- (b) if there is no relevant registered Aboriginal party—the Secretary; or
- (c) if the applicant is a registered Aboriginal party or the Secretary—the Council.

## **Division 6—General**

### **67 Sponsor must give assessment documentation to Secretary**

- (1) The sponsor of an approved cultural heritage management plan (other than the Secretary) must, within 14 days after the approval of the plan, give to the Secretary in the approved form (if any) all assessment documentation relating to Aboriginal

cultural heritage prepared or obtained in the course of the conduct of the assessment for the plan.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

(2) If the sponsor of a cultural heritage management plan (other than the Secretary) decides to discontinue the preparation of the plan, or the activity to which the plan relates, at any time before the plan or activity is completed, the sponsor must give the following to the Secretary within 14 days after deciding to discontinue the plan or activity—

(a) notice of the decision to discontinue;

(b) in the approved form (if any), all assessment documentation relating to Aboriginal cultural heritage prepared or obtained in the course of the preparation of the plan.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

(3) In this section, *assessment documentation* includes site records, photographs, maps, plans and any prescribed documentation relating to the assessment for the cultural heritage management plan or the plan itself.

S. 67A  
inserted by  
No. 11/2016  
s. 56.

**67A Sponsor must comply with approved cultural heritage management plan**

(1) The sponsor of an approved cultural heritage management plan is guilty of an offence if—

- (a) the sponsor by an act or omission fails to comply with the conditions of the approved cultural heritage management plan; and
  - (b) at the time of the act or omission the sponsor knew that the act or omission failed to comply with the conditions of the plan.
- (2) A sponsor of an approved cultural heritage management plan who is guilty of an offence under subsection (1) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 600 penalty units;
  - (b) in the case of a body corporate, 3000 penalty units.
- (3) The sponsor of an approved cultural heritage management plan is guilty of an offence if—
- (a) the sponsor by an act or omission fails to comply with the conditions of the approved cultural heritage management plan; and
  - (b) at the time of the act or omission the sponsor was reckless as to whether the act or omission failed to comply with the conditions of the plan.
- (4) A sponsor of an approved cultural heritage management plan who is guilty of an offence under subsection (3) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 300 penalty units;
  - (b) in the case of a body corporate, 1500 penalty units.

- (5) The sponsor of an approved cultural heritage management plan is guilty of an offence if—
- (a) the sponsor by an act or omission fails to comply with the conditions of the approved cultural heritage management plan; and
  - (b) at the time of the act or omission the sponsor was negligent as to whether the act or omission failed to comply with the conditions of the plan.
- (6) A sponsor of an approved cultural heritage management plan who is guilty of an offence under subsection (5) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 60 penalty units;
  - (b) in the case of a body corporate, 300 penalty units.

**Note**

Section 187A applies to an offence against subsection (1), (3) or (5).



## **Part 5—Cultural heritage agreements**

### **Division 1—Making and amendment of agreements**

#### **68 What is a cultural heritage agreement?**

- (1) For the purposes of this Act, a cultural heritage agreement is an agreement between 2 or more persons relating to the management or protection of Aboriginal cultural heritage.
- (2) Without limiting the matters that may be dealt with by a cultural heritage agreement, a cultural heritage agreement may deal with any of the following—
  - (a) the protection, maintenance or use of land containing an Aboriginal place;
  - (b) the protection, maintenance or use of Aboriginal objects;
  - (c) rights of access to, or use of, Aboriginal places or objects by Aboriginal people;
  - (d) the restoration and preservation of Aboriginal places or objects.
- (3) Despite subsections (1) and (2), a cultural heritage agreement may not deal with any activity for which a cultural heritage permit or a cultural heritage management plan is required under this Act.
- (4) A cultural heritage agreement has effect as an agreement under seal.

**S. 68(2)(d)**  
**amended by**  
**No. 11/2016**  
**s. 57.**

## **69 Parties to a cultural heritage agreement**

- (1) Any person may be a party to a cultural heritage agreement, including—
  - (a) the Secretary; and
  - (b) if the agreement relates to Crown land, any person responsible for the management of that land; and
  - (c) if the agreement relates to other land, the owner of that land.
- (2) At least one of the parties to a cultural heritage agreement must be a registered Aboriginal party.

## **70 Form of cultural heritage agreement**

- (1) A cultural heritage agreement must be in the approved form.
- (2) A cultural heritage agreement may provide for the person who owns or possesses the Aboriginal cultural heritage the subject of the agreement to be bound by the covenants specified in the agreement.
- (3) If a cultural heritage agreement relates to an Aboriginal place, the agreement must include a map, plan or description of the boundaries of the land affected by the agreement.
- (4) A map included in a cultural heritage agreement under subsection (3) must comply with the prescribed standards (if any).

## **71 Amendment of cultural heritage agreement**

A cultural heritage agreement may be amended by agreement between the parties (an *amending agreement*).

**72 Agreement of no effect without consent of registered Aboriginal parties**

- (1) A cultural heritage agreement or amending agreement that relates to an Aboriginal place does not take effect until each registered Aboriginal party for the area in which the Aboriginal place is located consents in writing to the making of the agreement or amending agreement.
- (2) A cultural heritage agreement or an amending agreement that relates to an Aboriginal object does not take effect until each registered Aboriginal party for the area from which the Aboriginal object is reasonably believed to have originated consents in writing to the making of the agreement or amending agreement.

**73 When does a cultural heritage agreement begin?**

Subject to section 72, a cultural heritage agreement may provide that it comes into effect—

- (a) on the execution of the agreement; or
- (b) on the happening of a specified event; or
- (c) at a specified time.

**74 When does a cultural heritage agreement end?**

A cultural heritage agreement may provide that it ends wholly or in part or as to any part of any land—

- (a) on the happening of a specified event; or
- (b) at a specified time; or
- (c) by agreement between the parties.

Pt 5 Div. 1A  
(Heading and  
ss 74A–74J)  
inserted by  
No. 11/2016  
s. 58.

## **Division 1A—Aboriginal cultural heritage land management agreements**

S. 74A  
inserted by  
No. 11/2016  
s. 58.

### **74A What is an Aboriginal cultural heritage land management agreement?**

- (1) A public land manager may enter into an Aboriginal cultural heritage land management agreement with a registered Aboriginal party for the purposes of managing or protecting Aboriginal cultural heritage in a specified area in the conduct of land management activities.
- (2) An Aboriginal cultural heritage land management agreement must not deal with any activity for which a cultural heritage management plan is required under this Act.

S. 74B  
inserted by  
No. 11/2016  
s. 58.

### **74B Aboriginal cultural heritage land management agreement to be prepared in accordance with prescribed standards**

Each party to an Aboriginal cultural heritage land management agreement must ensure that the agreement is prepared in accordance with the prescribed standards.

S. 74C  
inserted by  
No. 11/2016  
s. 58.

### **74C Conditions of Aboriginal cultural heritage land management agreement**

An Aboriginal cultural heritage land management agreement must include the prescribed conditions (if any).

S. 74D  
inserted by  
No. 11/2016  
s. 58.

### **74D Notice of intention to enter into an Aboriginal cultural heritage land management agreement**

- (1) Before entering into an Aboriginal cultural heritage land management agreement, the registered Aboriginal party that is a party to the

proposed agreement must give written notice to the Secretary of the party's intention to enter into the agreement.

- (2) A notice under subsection (1) must include the following—
- (a) the date by which the agreement is to be prepared;
  - (b) the parties to the agreement;
  - (c) any assessment to be undertaken as part of the agreement's preparation, including an assessment of an area to determine the nature of any Aboriginal cultural heritage in the area.

**74E Copy of Aboriginal cultural heritage land management agreement must be given to Secretary**

S. 74E  
inserted by  
No. 11/2016  
s. 58.

- (1) A public land manager that has entered into an Aboriginal cultural heritage land management agreement must, within 14 days of entering into the agreement, give a copy of the relevant documentation to the Secretary.
- (2) In this section—

*relevant documentation* means any site records, photographs, maps and plans relating to an Aboriginal cultural heritage land management agreement and a copy of the agreement.

**74F Amendments to Aboriginal cultural heritage land management agreements**

S. 74F  
inserted by  
No. 11/2016  
s. 58.

Sections 74D and 74E apply to a proposed amendment to an Aboriginal cultural heritage land management agreement as if the proposed amendment were a notice of intention to enter into an Aboriginal cultural heritage land management agreement.

S. 74G  
inserted by  
No. 11/2016  
s. 58.

**74G Offence to fail to comply with Aboriginal cultural heritage land management agreement**

- (1) A party to an Aboriginal cultural heritage land management agreement is guilty of an offence if—
  - (a) the party by an act or omission fails to comply with the conditions of the Aboriginal cultural heritage land management agreement; and
  - (b) at the time of the act or omission the party knew that the act or omission failed to comply with the conditions of the agreement.
- (2) A party to an Aboriginal cultural heritage land management agreement who is guilty of an offence under subsection (1) is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 600 penalty units;
  - (b) in the case of a body corporate, 3000 penalty units.
- (3) A party to an Aboriginal cultural heritage land management agreement is guilty of an offence if—
  - (a) the party by an act or omission fails to comply with the conditions of the Aboriginal cultural heritage land management agreement; and
  - (b) at the time of the act or omission the party was reckless as to whether the act or omission failed to comply with the conditions of the agreement.

- (4) A party to an Aboriginal cultural heritage land management agreement who is guilty of an offence under subsection (3) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 300 penalty units;
  - (b) in the case of a body corporate, 1500 penalty units.
- (5) A party to an Aboriginal cultural heritage land management agreement is guilty of an offence if—
- (a) the party by an act or omission fails to comply with the conditions of the Aboriginal cultural heritage land management agreement; and
  - (b) at the time of the act or omission the party was negligent as to whether the act or omission failed to comply with the conditions of the agreement.
- (6) A party to an Aboriginal cultural heritage land management agreement who is guilty of an offence under subsection (5) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 60 penalty units;
  - (b) in the case of a body corporate, 300 penalty units.

**Note**

Section 187A applies to an offence against subsection (1), (3) or (5).

S. 74H  
inserted by  
No. 11/2016  
s. 58.

**74H Application of Aboriginal cultural heritage land management agreement if registration of registered Aboriginal party revoked or suspended**

- (1) An Aboriginal cultural heritage land management agreement is terminated if the registration of a registered Aboriginal party that is a party to the agreement is revoked under Division 2 of Part 10.
- (2) If the registration of a registered Aboriginal party that is a party to an Aboriginal cultural heritage land management agreement is suspended, the registered Aboriginal party is taken not to be a party to the agreement during the period of suspension.

S. 74I  
inserted by  
No. 11/2016  
s. 58.

**74I When does an Aboriginal cultural heritage land management agreement begin?**

An Aboriginal cultural heritage land management agreement may provide that it comes into effect—

- (a) on the execution of the agreement; or
- (b) on the happening of a specified event; or
- (c) at a specified time.

S. 74J  
inserted by  
No. 11/2016  
s. 58.

**74J When does an Aboriginal cultural heritage land management agreement end?**

An Aboriginal cultural heritage land management agreement may provide that it ends wholly or in part or as to any part of any land—

- (a) on the happening of a specified event; or
- (b) at a specified time; or
- (c) by agreement between the parties.



## **Division 2—Lodgement and registration of agreements**

### **75 Cultural heritage agreements to be lodged with Secretary**

- (1) The relevant registered Aboriginal party must lodge a copy of a cultural heritage agreement with the Secretary without delay after the agreement is made.
- (2) The relevant registered Aboriginal party must notify the Secretary in writing without delay of any amendment to or ending of a cultural heritage agreement.
- (3) This section does not apply in relation to a cultural heritage agreement to which the Secretary is a party.

### **76 Registration of cultural heritage agreements**

- (1) This section applies if a cultural heritage agreement relating to land contains a provision requiring its registration under this section.
- (2) The Secretary must apply to the Registrar of Titles for the registration of any cultural heritage agreement that relates to an activity on land other than Crown land and to which the owner of the land is a party.
- (3) An application under this section must be in a form approved by the Registrar of Titles and include a copy of the cultural heritage agreement to which it relates.
- (4) The Registrar of Titles must make a recording of the cultural heritage agreement in the Register kept under the **Transfer of Land Act 1958**.

### **77 Effect of registration**

After the making of a recording in the Register kept under the **Transfer of Land Act 1958**—

- (a) the burden of any covenant in the cultural heritage agreement runs with the land affected; and
- (b) the Secretary or the relevant registered Aboriginal party may enforce the covenant against any person deriving title from any person who entered into the covenant as if it were a restrictive covenant despite the fact that it may be positive in nature or that it is not for the benefit of any land of the Secretary or the relevant registered Aboriginal party.

### **78 Governor in Council may release covenant**

- (1) If the owner of any land who is bound by a covenant in a cultural heritage agreement is unable to reach agreement with the Secretary or the relevant registered Aboriginal party for the release of the covenant, the Governor in Council may determine the matter.
- (2) The Secretary, the relevant registered Aboriginal party or the owner (as the case requires) must give effect to a determination under subsection (1) of the Governor in Council.

### **79 Cancellation or amendment of registration**

- (1) This section applies to a cultural heritage agreement that is recorded in the Register kept under the **Transfer of Land Act 1958**.

- (2) The Secretary must advise the Registrar of Titles without delay of—
  - (a) the ending of the agreement relating wholly or in part or as to any part of the land; or
  - (b) an amendment to the agreement.
- (3) The Registrar of Titles must, as appropriate, cancel in whole or in part or alter the recording of the cultural heritage agreement in the Register kept under the **Transfer of Land Act 1958**.

Pt 5A  
(Heading and  
ss 79A–79L)  
inserted by  
No. 11/2016  
s. 59.

## **Part 5A—Aboriginal intangible heritage**

S. 79A  
inserted by  
No. 11/2016  
s. 59.

### **79A Application of Part**

Nothing in this Part applies to anything done by an Aboriginal person in accordance with Aboriginal tradition.

S. 79B  
inserted by  
No. 11/2016  
s. 59.

### **79B What is Aboriginal intangible heritage?**

- (1) For the purposes of this Act, Aboriginal intangible heritage means any knowledge of or expression of Aboriginal tradition, other than Aboriginal cultural heritage, and includes oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts, and environmental and ecological knowledge, but does not include anything that is widely known to the public.
- (2) Aboriginal intangible heritage also includes any intellectual creation or innovation based on or derived from anything referred to in subsection (1).

S. 79C  
inserted by  
No. 11/2016  
s. 59.

### **79C Registration of Aboriginal intangible heritage**

- (1) A registered Aboriginal party, registered native title holder or a traditional owner group entity may apply to the Secretary for details of any Aboriginal intangible heritage to be recorded on the Register.
- (2) An application under subsection (1) must be made in the prescribed form and include details of any consultation undertaken by the applicant with any relevant traditional owners.

- (3) The Secretary must decide to approve or refuse to approve an application within 90 days of receiving the application.
- (4) In considering the application, the Secretary must consult with, and consider the views of, the applicant and any Aboriginal person or Aboriginal body that the Secretary considers relevant to the application.
- (5) The Secretary may request the applicant to provide any additional information that the Secretary reasonably considers necessary to assist the Secretary's decision.
- (6) A request under subsection (5) must be made in writing and include the following information—
  - (a) the information to be provided;
  - (b) the date by which the information is to be provided, being at least 30 days after the request;
  - (c) a statement that the application will lapse if the information is not provided by that date.
- (7) The period referred to in subsection (3)—
  - (a) ceases to run when the Secretary requests the additional information; and
  - (b) recommences to run when the information is provided to the Secretary.

**79D Aboriginal intangible heritage agreements**

- (1) For the purposes of this Act, an Aboriginal intangible heritage agreement is an agreement relating to registered Aboriginal intangible heritage made between any person or body and—
  - (a) a registered Aboriginal party; or
  - (b) a registered native title holder; or
  - (c) a traditional owner group entity.

S. 79D  
inserted by  
No. 11/2016  
s. 59.

- (2) An Aboriginal intangible heritage agreement may deal with any of the following—
- (a) the management, protection or conservation of Aboriginal intangible heritage;
  - (b) the research or publication of Aboriginal intangible heritage;
  - (c) the development or commercial use of Aboriginal intangible heritage;
  - (d) the rights of traditional owners to use and commercially exploit Aboriginal intangible heritage, including anything produced from the research and development of Aboriginal intangible heritage;
  - (e) the compensation to be paid to traditional owners for the research, development and commercial use of Aboriginal intangible heritage.
- (3) An Aboriginal intangible heritage agreement cannot deal with any activity for which a cultural heritage permit or cultural heritage management plan is required under this Act.
- (4) An Aboriginal intangible heritage agreement has effect as an agreement under seal.

S. 79E  
inserted by  
No. 11/2016  
s. 59.

#### **79E Form of Aboriginal intangible heritage agreement**

An Aboriginal intangible heritage agreement must be in the prescribed form and include the following information—

- (a) the parties to the Aboriginal intangible heritage agreement and the period for which the agreement applies;
- (b) a description of the Aboriginal intangible heritage to which the agreement relates;

- (c) any other information the registered Aboriginal party, registered native title holder or traditional owner group entity reasonably considers necessary.

**79F Registration of Aboriginal intangible heritage agreements**

S. 79F  
inserted by  
No. 11/2016  
s. 59.

- (1) After entering into an Aboriginal intangible heritage agreement, the parties to the agreement must, without delay, give a copy of the agreement to the Secretary for recording on the Register
- (2) The parties to an Aboriginal intangible heritage agreement must, without delay, notify the Secretary in writing of any amendment to or termination of the agreement.

**79G Offence to use registered Aboriginal intangible heritage for commercial purposes**

S. 79G  
inserted by  
No. 11/2016  
s. 59.

- (1) A person must not knowingly use any registered Aboriginal intangible heritage for commercial purposes without the consent of the relevant registered Aboriginal party, registered native title holder or traditional owner group entity.

Penalty: In the case of a natural person,  
1800 penalty units;

In the case of a body corporate,  
10 000 penalty units.

- (2) A person must not recklessly use any registered Aboriginal intangible heritage for commercial purposes without the consent of the relevant registered Aboriginal party, registered native title holder or traditional owner group entity.

Penalty: In the case of a natural person,  
1200 penalty units;

In the case of a body corporate,  
6000 penalty units.

- (3) This section does not apply to any Aboriginal intangible heritage that is the subject of a registered Aboriginal intangible heritage agreement.

**Note**

Section 187A applies to an offence against subsection (1) or (2).

S. 79H  
inserted by  
No. 11/2016  
s. 59.

**79H Offence to fail to comply with a registered Aboriginal intangible heritage agreement**

- (1) A party to a registered Aboriginal intangible heritage agreement is guilty of an offence if—
- (a) the party does an act that fails to comply with the conditions of the Aboriginal intangible heritage agreement; and
  - (b) at the time of doing the act the party knew that the act failed to comply with the conditions of the agreement.
- (2) A party to a registered Aboriginal intangible heritage agreement who is guilty of an offence under subsection (1) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 600 penalty units;
  - (b) in the case of a body corporate, 3000 penalty units.
- (3) A party to a registered Aboriginal intangible heritage agreement is guilty of an offence if—
- (a) the party does an act that fails to comply with the conditions of the Aboriginal intangible heritage agreement; and
  - (b) at the time of doing the act the party was reckless as to whether the act failed to comply with the conditions of the agreement.



- (4) A party to a registered Aboriginal intangible heritage agreement who is guilty of an offence under subsection (3) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 300 penalty units;
  - (b) in the case of a body corporate, 1500 penalty units.
- (5) A party to a registered Aboriginal intangible heritage agreement is guilty of an offence if—
- (a) the party does an act that fails to comply with the conditions of the Aboriginal intangible heritage agreement; and
  - (b) at the time of doing the act the party was negligent as to whether the act failed to comply with the conditions of the agreement.
- (6) A party to a registered Aboriginal intangible heritage agreement who is guilty of an offence under subsection (5) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 60 penalty units;
  - (b) in the case of a body corporate, 300 penalty units.

**Note**

Section 187A applies to an offence against subsection (1), (3) or (5).

**79I Application of Aboriginal intangible heritage agreement if registration of certain parties revoked or suspended**

S. 79I  
inserted by  
No. 11/2016  
s. 59.

- (1) An Aboriginal intangible heritage agreement is terminated if a party to the agreement is a registered Aboriginal party, registered native title holder or traditional owner group entity, and the

registration of that registered Aboriginal party is revoked under Division 2 of Part 10, or that registered native title holder or traditional owner group entity ceases to be a body corporate.

- (2) If the registration of a registered Aboriginal party that is a party to an Aboriginal cultural heritage land management agreement is suspended, the registered Aboriginal party is taken not to be a party to the agreement during the period of suspension.

S. 79J  
inserted by  
No. 11/2016  
s. 59.

**79J When does an Aboriginal intangible agreement begin?**

An Aboriginal intangible heritage agreement may provide that it comes into effect—

- (a) on the execution of the agreement; or
- (b) on the happening of a specified event; or
- (c) at a specified time.

S. 79K  
inserted by  
No. 11/2016  
s. 59.

**79K When does an Aboriginal intangible heritage agreement end?**

An Aboriginal intangible heritage agreement may provide that it ends wholly or in part—

- (a) on the happening of a specified event; or
- (b) at a specified time; or
- (c) by agreement between the parties.

S. 79L  
inserted by  
No. 11/2016  
s. 59.

**79L Evidentiary provision regarding Aboriginal intangible heritage**

In any proceedings under this Act, the recording of details of Aboriginal intangible heritage in the Register, or the recording of details of an Aboriginal intangible heritage agreement in the Register, is evidence of the existence of that Aboriginal intangible heritage.

## **Part 6—Cultural heritage audits, stop orders and improvement notices**

Pt 6 (Heading)  
substituted by  
No. 11/2016  
s. 60.

### **Division 1—Cultural heritage audits**

#### **80 What is a cultural heritage audit?**

For the purposes of this Act, a cultural heritage audit is an assessment of the impact of an activity on Aboriginal cultural heritage.

#### **81 When can a cultural heritage audit be ordered?**

- (1) The Minister may order a cultural heritage audit to be carried out if, on the advice of the Secretary, the Council or an authorised officer, the Minister reasonably believes that—

S. 81(1)  
amended by  
No. 11/2016  
s. 61(1).

- (a) the sponsor of an approved cultural heritage management plan has contravened, or is likely to contravene, the conditions in the plan; or
- (b) the holder of a cultural heritage permit has contravened, or is likely to contravene a condition of the permit; or
- (c) the impact on Aboriginal cultural heritage of an activity to which an approved cultural heritage management plan or a cultural heritage permit applies will be greater than that determined at the time the plan was approved or the permit was granted.

S. 81(1)(a)  
amended by  
No. 11/2016  
s. 61(2).

- (2) The Minister must give notice of a decision to order a cultural heritage audit—
- (a) if the audit relates to an approved cultural heritage management plan, to the sponsor of the plan and each registered Aboriginal party that evaluated the plan; or

- (b) if the audit relates to a cultural heritage permit, to the holder of the permit and each relevant registered Aboriginal party.

## **82 Requirement of cultural heritage audit**

In ordering a cultural heritage audit under section 81, the Minister must specify—

- (a) the matters to be addressed by the audit; and  
(b) the period within which the audit is to be completed.

## **83 Conduct of cultural heritage audit**

S. 83(1)  
amended by  
No. 11/2016  
s. 62(1).

- (1) A cultural heritage audit must be conducted by or under the direction of an authorised officer.

S. 83(2)  
amended by  
No. 11/2016  
s. 62(2).

- (2) The Secretary may direct the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit to which a cultural heritage audit relates to engage a heritage advisor to conduct the audit.

S. 83(3)  
amended by  
No. 11/2016  
s. 62(3).

- (3) If the Secretary directs a sponsor or the holder of a cultural heritage permit to engage a heritage advisor to conduct a cultural heritage audit, the sponsor must comply with the direction.

Penalty: In the case of a natural person,  
120 penalty units;

In the case of a body corporate,  
600 penalty units.

Note to  
s. 83(3)  
inserted by  
No. 11/2016  
s. 62(4).

### **Note**

Section 187A applies to an offence against this subsection.

- (4) A person engaged as a heritage advisor to conduct a cultural heritage audit must comply with—
- S. 83(4)  
amended by  
No. 11/2016  
s. 62(5)(a).
- (a) a direction of an authorised officer requiring the person to give the authorised officer a written report of the findings of the audit;  
and
- S. 83(4)(a)  
amended by  
No. 11/2016  
s. 62(5)(b).
- (b) any other reasonable direction of the authorised officer.
- S. 83(4)(b)  
amended by  
No. 11/2016  
s. 62(5)(c).
- (5) If the Secretary directs the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit to engage a heritage advisor to conduct a cultural heritage audit, the sponsor or holder must pay the fees and reasonable expenses of the heritage advisor in conducting the audit.
- S. 83(5)  
substituted by  
No. 11/2016  
s. 62(6).
- (6) The Secretary must reimburse any fees or expenses incurred by the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit under subsection (5) if the cultural heritage audit finds that the sponsor or holder has not contravened the plan or permit.
- S. 83(6)  
inserted by  
No. 11/2016  
s. 62(6).

#### **84 Report of cultural heritage audit**

- (1) An authorised officer who conducts, or directs the conduct of, a cultural heritage audit must give a written report of the findings of the audit to the Minister.
- S. 84(1)  
amended by  
No. 11/2016  
s. 63(1).
- (2) The report may—
- (a) identify any apparent contravention of an approved cultural heritage management plan or cultural heritage permit;

S. 84(2)(b)  
amended by  
No. 11/2016  
s. 63(2).

(b) recommend amendments to the conditions of the approved cultural heritage management plan or the conditions of the cultural heritage permit applying to the activity to which the audit relates;

S. 84(2)(c)  
amended by  
No. 11/2016  
s. 63(3).

(c) recommend arrangements for the access of authorised officers to the location at which the activity is being carried out;

(d) recommend other measures in relation to the conduct of the activity to avoid or minimise harm to Aboriginal cultural heritage.

### **85 Approval of report of audit**

- (1) The Minister may approve the report of a cultural heritage audit.
- (2) The Minister must not approve the report of a cultural heritage audit on an approved cultural heritage management plan unless the Minister is satisfied that the recommendations included in the report are consistent with the standards prescribed for the purposes of section 53.

### **86 Notification and effect of approval**

- (1) This section applies if the Minister approves the report of a cultural heritage audit.
- (2) The Minister must give notice of the approval—
  - (a) to any registered Aboriginal party for the area in which the activity to which the audit relates is being carried out; and
  - (b) if the audit relates to an approved cultural heritage management plan, to the sponsor of the plan; and
  - (c) if the audit relates to a cultural heritage permit, to the holder of the permit.

- (3) If the audit relates to an approved cultural heritage management plan and the report of the audit recommends amendments to the conditions of the plan—
- (a) the Minister may amend the plan in accordance with the recommendations; and
  - (b) the plan, as amended, becomes the approved cultural heritage management plan for the purposes of this Act.
- (4) If the audit relates to a cultural heritage permit and the report of the audit recommends amendments to the conditions of the permit—
- (a) the Secretary must amend the conditions of the permit in accordance with the recommendations; and
  - (b) the permit, as amended, becomes the cultural heritage permit for the purposes of this Act.

S. 86(3)  
amended by  
No. 11/2016  
s. 64.

## **Division 2—Stop orders**

### **87 When can a stop order be issued?**

- (1) Subject to section 95A, the Minister or an authorised officer may issue a stop order to a person if—
- (a) the person is carrying out, or proposes to carry out, any act; and
  - (b) the Minister or authorised officer is satisfied that there are reasonable grounds for believing that the carrying out of the act is harming, or is likely to harm, Aboriginal cultural heritage; and
  - (c) the Minister or authorised officer is satisfied that there are reasonable grounds for believing that the Aboriginal cultural heritage could not be properly protected unless a stop order is issued.

S. 87(1)  
substituted by  
No. 11/2016  
s. 65.

S. 87(1A)  
inserted by  
No. 11/2016  
s. 65.

(1A) The Minister or an authorised officer must not issue a stop order to a person in relation to an act that is being carried out or is proposed to be carried out in accordance with any of the following—

- (a) a cultural heritage permit; or
- (b) an approved cultural heritage management plan; or
- (c) an Aboriginal cultural heritage land management agreement.

(2) A stop order must be in the approved form.

### **88 Stop order required for cultural heritage audit**

If the Minister orders a cultural heritage audit, the Minister must issue a stop order to the person carrying out the activity to which the audit relates requiring the person to stop the activity immediately.

### **89 What can a stop order do?**

(1) A stop order issued to a person may—

- (a) require the person to stop immediately the act specified in the order; or
- (b) prohibit the person from doing the act specified in the order.

(2) Nothing in a stop order prevents action being taken to give effect to recommendations in the report of a cultural heritage audit conducted while the stop order is in force.

S. 89(1)(a)  
amended by  
No. 11/2016  
s. 66(1).

S. 89(1)(b)  
amended by  
No. 11/2016  
s. 66(2).



## **90 How is a stop order delivered?**

- (1) A stop order must be delivered to the person to whom it applies—
  - (a) in person; or
  - (b) if it is not reasonably practicable to deliver it in person, by affixing it to a prominent position at the place where the act is being carried out or is to be carried out; or
  - (c) if the person is a body corporate, by giving it to the person apparently supervising or in charge of the act to which the stop order relates.
- (2) The Minister (or a person authorised by the Minister) or an authorised officer may enter any land or premises at any time for the purpose of delivering a stop order in accordance with this section.

S. 90(1)(b)  
amended by  
No. 11/2016  
s. 67(1).

S. 90(1)(c)  
amended by  
No. 11/2016  
s. 67(2).

S. 90(2)  
amended by  
No. 11/2016  
s. 67(3).

## **91 How long does a stop order operate?**

- (1) Subject to subsection (2), unless it is sooner revoked, a stop order operates from the time it is issued until the end of the earlier of—
  - (a) 30 days; or
  - (b) the period specified in the order.
- (2) A stop order issued in relation to a cultural heritage audit operates until the Minister revokes the order under section 93.

## **92 Extension of stop order**

Before a stop order ceases to operate, the Minister may extend the stop order once only for a further period of up to 14 days.

### 93 Revocation of stop order

- (1) A stop order may be revoked—
- (a) if issued by the Minister—by the Minister;  
or
  - (b) if issued by an authorised officer—by the  
Minister or the authorised officer.

S. 93(1)(b)  
amended by  
No. 11/2016  
s. 68.

- (2) The Minister must revoke a stop order issued in relation to a cultural heritage audit after the report of the audit is approved under section 85.

S. 94  
amended by  
No. 11/2016  
s. 69.

### 94 Further stop order

If a stop order has been issued in respect of an act, the Minister or an authorised officer may only issue a further stop order to a person in respect of that act if the circumstances relating to that act have substantially changed.

### 95 Offence to fail to comply with stop order

- (1) A person issued with a stop order must not engage in any conduct that the person knows is conduct that contravenes the stop order.

Penalty: In the case of a natural person,  
1800 penalty units;

In the case of a body corporate,  
10 000 penalty units.

Note to  
s. 95(1)  
inserted by  
No. 11/2016  
s. 134(1).

#### Note

Section 187A applies to an offence against this subsection.

- (2) An offence under this section is an indictable offence.

#### Note

The provisions of Division 12 of Part I of the **Crimes Act 1958** (which deal with attempts) apply to indictable offences against this Act.

### **Division 3—24-hour stop orders**

Pt 6 Div. 3  
(Heading and  
ss 95A–95C)  
inserted by  
No. 11/2016  
s. 70.

#### **95A 24-hour stop orders**

S. 95A  
inserted by  
No. 11/2016  
s. 70.

- (1) An authorised officer or an Aboriginal heritage officer may issue a 24-hour stop order to a person if—
  - (a) the person is carrying out, or proposes to carry out, an act; and
  - (b) the authorised officer or Aboriginal heritage officer is satisfied that there are reasonable grounds for believing that the carrying out of the act is harming, or is likely to harm, Aboriginal cultural heritage; and
  - (c) the authorised officer or Aboriginal heritage officer is satisfied that there are reasonable grounds for believing that the Aboriginal cultural heritage could not be properly protected unless a 24-hour stop order is issued.
- (2) An authorised officer or an Aboriginal heritage officer must not issue a 24-hour stop order to a person in relation to an act that is being carried out or is proposed to be carried out in accordance with any of the following—
  - (a) a cultural heritage permit; or
  - (b) an approved cultural heritage management plan; or
  - (c) an Aboriginal cultural heritage land management agreement.
- (3) A 24-hour stop order must be in the approved form.

- (4) A 24-hour stop order issued to a person may—
  - (a) require the person to stop immediately the act specified in the order; or
  - (b) prohibit the person from doing the act specified in the order.
- (5) A 24-hour stop order must be delivered to the person to whom it applies—
  - (a) in person; or
  - (b) if it is not reasonably practicable to deliver it in person, by affixing it to a prominent position at the place where the act is being carried out or is to be carried out; or
  - (c) if the person is a body corporate, by giving it to the person apparently supervising or in charge of the act to which the order relates.
- (6) An authorised officer or an Aboriginal heritage officer may enter any land or premises at any time for the purpose of delivering a 24-hour stop order in accordance with this section.
- (7) A 24-hour stop order operates from the time it is issued for a period of 24 hours.
- (8) An authorised officer or an Aboriginal heritage officer must not issue consecutive 24-hour stop orders to a person in relation to the same act.

S. 95B  
inserted by  
No. 11/2016  
s. 70.

#### **95B Cancellation of 24-hour stop order**

- (1) An authorised officer or an Aboriginal heritage officer who issues a 24-hour stop order may cancel the 24-hour stop order.
- (2) Notice of cancellation of a 24-hour stop order must be served on the person affected.

- (3) A 24-hour stop order that has been issued to a person by an authorised officer or an Aboriginal heritage officer and that is in operation is cancelled if the Minister or an authorised officer issues a stop order to the person under section 87 in relation to the same act.

**95C Offence to fail to comply with 24-hour stop order**

- (1) A person issued with a 24-hour stop order must not engage in any conduct that the person knows is conduct that contravenes the stop order.

Penalty: In the case of a natural person,  
1800 penalty units;

In the case of a body corporate,  
10 000 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

- (2) An offence under this section is an indictable offence.

**Note**

The provisions of Division 12 of Part I of the **Crimes Act 1958** (which deal with attempts) apply to indictable offences against this Act.

**Division 4—Improvement notices**

**95D Improvement notices**

- (1) This Division applies if an authorised officer or an Aboriginal heritage officer believes on reasonable grounds that the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit has contravened this Act and that the contravention is likely to be repeated.

S. 95C  
inserted by  
No. 11/2016  
s. 70.

Pt 6 Div. 4  
(Heading and  
ss 95D–95H)  
inserted by  
No. 11/2016  
s. 71.

S. 95D  
inserted by  
No. 11/2016  
s. 71.

- (2) The authorised officer or the Aboriginal heritage officer may serve on the sponsor or holder an improvement notice requiring the sponsor or holder to remedy the contravention or likely contravention, or the matters or acts causing the contravention or likely contravention.
- (3) An improvement notice must—
  - (a) state the basis for the authorised officer's or Aboriginal heritage officer's service of the notice; and
  - (b) specify the provision of the Act in respect of which that belief is held; and
  - (c) specify a date within which the sponsor or holder is required to remedy the contravention or likely contravention or the matters or acts causing the contravention or likely contravention; and
  - (d) set out the penalty for contravening the notice.
- (4) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or likely contravention or the matters or acts causing the contravention or likely contravention to which the notice relates.

S. 95E  
inserted by  
No. 11/2016  
s. 71.

**95E Proceedings for offences not affected by improvement notices**

The service of an improvement notice does not affect any proceedings for an offence against this Act in connection with any matter in respect of which the improvement notice was served.

**95F Offence to fail to comply with improvement notice**

S. 95F  
inserted by  
No. 11/2016  
s. 71.

- (1) The sponsor of a cultural heritage management plan or the holder of a cultural heritage permit issued with an improvement notice must not engage in any conduct that the sponsor or holder knows is conduct that contravenes the improvement notice.

Penalty: In the case of a natural person,  
500 penalty units;

In the case of a body corporate,  
2500 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

- (2) An offence under this section is an indictable offence.

**Note**

The provisions of Division 12 of Part I of the **Crimes Act 1958** (which deal with attempts) apply to indictable offences against this Act.

**95G Amendment of improvement notices**

S. 95G  
inserted by  
No. 11/2016  
s. 71.

- (1) An authorised officer or an Aboriginal heritage officer who serves an improvement notice on the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit may amend the improvement notice by serving on the sponsor or holder a notice setting out the terms of the amendment.
- (2) A notice of an amendment of an improvement notice must—
- (a) state the name of the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit or holder on whom the notice is served; and

(b) state the reasons for the amendment; and

(c) state that it is served under this section.

S. 95H  
inserted by  
No. 11/2016  
s. 71.

### **95H Cancellation of improvement notices**

- (1) An authorised officer or an Aboriginal heritage officer who serves an improvement notice on the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit may cancel the improvement notice.
- (2) Notice of cancellation of an improvement notice must be served on the sponsor or holder affected.



## **Part 7—Protection declarations**

### **Division 1—Interim protection declarations**

#### **96 Interim protection declarations**

- (1) The Minister may make an interim protection declaration in relation to a place or object if the Minister is satisfied that—
  - (a) the place or object is an Aboriginal place or object; and
  - (b) it is appropriate, having regard to the importance of maintaining the relationship between Aboriginal people and the place or object, that an interim protection declaration be made in relation to the place or object.
- (2) An interim protection declaration may be made—
  - (a) on the application of the Council; or
  - (b) on the application of a relevant registered Aboriginal party; or
  - (c) on the Minister's own initiative.

#### **97 What must an interim protection declaration provide for?**

An interim protection declaration must—

- (a) be in the approved form; and
- (b) clearly identify the Aboriginal place or object to which it relates; and
- (c) specify the measures to be taken for the protection of the Aboriginal place or object; and

- (d) if appropriate, specify the person responsible for taking the measures specified under paragraph (c); and
- (e) contain the prescribed information (if any).

**Example**

An interim protection declaration could specify measures that restrict or prohibit access to, or interference with, an Aboriginal place or object.

**98 Period of interim protection declaration**

- (1) Subject to subsection (2), an interim protection declaration operates from the time it is made until the end of the earlier of—
  - (a) 3 months after the day on which it is made; or
  - (b) the period specified in the declaration.
- (2) Before an interim protection declaration ceases to operate, the Minister may extend the declaration once only for a further period of up to 3 months on his or her own initiative, or at the request of the Council or a registered Aboriginal party for the area to which the Aboriginal place or object the subject of the declaration relates.

**99 Amendment or revocation of interim protection declaration**

The Minister may, at any time, amend or revoke an interim protection declaration—

- (a) on the application of the Council; or
- (b) on the application of a relevant registered Aboriginal party; or
- (c) on the Minister's own initiative.

### **100 Minister to consult**

Before making, amending, extending or revoking an interim protection declaration, the Minister must—

- (a) consult with the Council about the proposal; and
- (b) give any person who the Minister reasonably considers is likely to be affected by the proposal 14 days' written notice of the proposal; and
- (c) give each person to whom notice is given under paragraph (b) the opportunity to be heard with respect to the proposal.

### **101 Publication of declaration**

- (1) The Minister must publish in the Government Gazette and in a newspaper circulating generally in the area to which an interim protection declaration relates—
  - (a) the interim protection declaration; or
  - (b) an amendment to the interim protection declaration; or
  - (c) notice of the extension or revocation of the interim protection declaration.
- (2) A declaration, amendment, extension or revocation does not take effect until the declaration or amendment or the notice of extension or revocation is published in the Government Gazette.

**102 Offence to contravene interim protection declaration**

- (1) A person is guilty of an offence if—
  - (a) the person engages in conduct that contravenes an interim protection declaration; and
  - (b) at the time of engaging in the conduct, the person knew of the existence of the declaration.
- (2) A person who is guilty of an offence under subsection (1) is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 1800 penalty units;
  - (b) in the case of a body corporate, 10 000 penalty units.
- (3) A person is guilty of an offence if—
  - (a) the person engages in conduct that contravenes an interim protection declaration; and
  - (b) at the time of engaging in the conduct, the person was reckless as to the existence of the declaration.
- (4) A person who is guilty of an offence under subsection (3) is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 1200 penalty units;
  - (b) in the case of a body corporate, 6000 penalty units.

- (5) In this section, *engage in conduct* means—
- (a) to do an act; or
  - (b) omit to do an act.

- (6) An offence under this section is an indictable offence.

**Note**

The provisions of Division 12 of Part I of the **Crimes Act 1958** (which deal with attempts) apply to indictable offences against this Act.

- (7) A person who engages in conduct that contravenes an interim protection declaration does not commit an offence under this section if the conduct in which the person engaged was necessary because of an emergency.

**Note**

Section 187A applies to an offence against subsection (1) or (3).

**Note to s. 102  
inserted by  
No. 11/2016  
s. 134(2).**

## **Division 2—Ongoing protection declarations**

### **103 Ongoing protection declarations**

- (1) The Minister may make an ongoing protection declaration in relation to a place or object if the Minister is satisfied that—
- (a) the place or object is an Aboriginal place or object; and
  - (b) it is appropriate, having regard to the importance of maintaining the relationship between Aboriginal people and the place or object, that an ongoing protection declaration be made in relation to the place or object.

- (2) An ongoing protection declaration may be made—
- (a) on the application of the Council; or
  - (b) on the application of a relevant registered Aboriginal party; or
  - (c) on the Minister's own initiative.

**104 What must an ongoing protection declaration provide for?**

An ongoing protection declaration must—

- (a) be in the approved form; and
- (b) clearly identify the Aboriginal place or object to which it relates; and
- (c) specify the measures to be taken for the protection of the Aboriginal place or object; and
- (d) if appropriate, specify the person responsible for taking the measures specified under paragraph (c); and
- (e) contain the prescribed information (if any).

**Example**

An ongoing protection declaration could specify measures that restrict or prohibit access to, or interference with, an Aboriginal place or object.

**105 Amendment or revocation of ongoing protection declaration**

The Minister may, at any time, amend or revoke an ongoing protection declaration—

- (a) on the application of the Council; or
- (b) on the application of a relevant registered Aboriginal party; or
- (c) on the Minister's own initiative.

### **106 Minister to consult**

Before making, amending or revoking an ongoing protection declaration, the Minister must—

- (a) consult with the Council about the proposal; and
- (b) give any person who the Minister reasonably considers is likely to be affected by the proposal 14 days' written notice of the proposal; and
- (c) give each person to whom notice is given under paragraph (b) the opportunity to be heard with respect to the proposal to make, amend or revoke the declaration.

### **107 Publication of declaration**

(1) The Minister must publish in the Government Gazette and in a newspaper circulating generally in the area to which an ongoing protection declaration relates—

- (a) the ongoing protection declaration; or
- (b) an amendment to the ongoing protection declaration; or
- (c) notice of the revocation of the ongoing protection declaration.

(2) A declaration, amendment or revocation does not take effect until the declaration, amendment or notice of the revocation is published in the Government Gazette.

### **108 Offence to contravene ongoing protection declaration**

(1) A person is guilty of an offence if—

- (a) the person engages in conduct that contravenes an ongoing protection declaration; and

- (b) at the time of engaging in the conduct, the person knew of the existence of the declaration.
- (2) A person who is guilty of an offence under subsection (1) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 1800 penalty units;
  - (b) in the case of a body corporate, 10 000 penalty units.
- (3) A person is guilty of an offence if—
- (a) the person engages in conduct that contravenes an ongoing protection declaration; and
  - (b) at the time of engaging in the conduct, the person was reckless as to the existence of the declaration.
- (4) A person who is guilty of an offence under subsection (3) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 1200 penalty units;
  - (b) in the case of a body corporate, 6000 penalty units.
- (5) In this section, *engage in conduct* means—
- (a) to do an act; or
  - (b) omit to do an act.
- (6) An offence under this section is an indictable offence.

**Note**

The provisions of Division 12 of Part I of the **Crimes Act 1958** (which deal with attempts) apply to indictable offences against this Act.



- (7) A person who engages in conduct that contravenes an ongoing protection declaration does not commit an offence under this section if the conduct in which the person engaged was necessary because of an emergency.

**Note**

Section 187A applies to an offence against subsection (1) or (3).

**Note to s. 108  
inserted by  
No. 11/2016  
s. 134(2).**

### **Division 3—General**

#### **109 Declaration has effect**

An interim protection declaration, or an ongoing protection declaration, that relates to an Aboriginal place or object has effect despite anything to the contrary in any of the following—

- (a) any other Act or law;
- (b) an approved cultural heritage management plan;
- (c) a cultural heritage agreement;
- (d) any other agreement.

#### **110 Notices relating to declarations**

- (1) This section applies to an Aboriginal place that is subject to an interim protection declaration or an ongoing protection declaration.
- (2) A relevant registered Aboriginal party may cause notices to be placed on or near the Aboriginal place which indicate that the place is subject to the interim protection declaration or ongoing protection declaration.
- (3) If there is no relevant registered Aboriginal party, the Secretary may cause notices to be placed on or near the Aboriginal place which indicate that the place is subject to the interim protection declaration or ongoing protection declaration.

- (4) A relevant registered Aboriginal party or the Secretary (as the case requires) may authorise any person to enter the Aboriginal place for the purpose of placing a notice under this section or repairing, replacing or removing a notice placed under this section.
- (5) A person authorised under subsection (4) may enter the Aboriginal place for the purpose of placing a notice under this section or repairing, replacing or removing a notice placed under this section.
- (6) A person must not destroy, damage, remove or interfere with a notice fixed under this section without the authorisation of the relevant registered Aboriginal party or the Secretary.

Penalty: In the case of a natural person,  
10 penalty units;  
In the case of a body corporate,  
50 penalty units.

**Note to  
s. 110(6)  
inserted by  
No. 11/2016  
s. 134(1).**

**Note**

Section 187A applies to an offence against this subsection.

## **Part 8—Disputes regarding Aboriginal cultural heritage**

### **Division 1—Disputes regarding cultural heritage management plans**

#### **Subdivision 1—Alternative dispute resolution**

##### **111 Meaning of *dispute***

In this Subdivision, *dispute* means a dispute between 2 or more registered Aboriginal parties, or between the sponsor of a cultural heritage management plan and a registered Aboriginal party, arising in relation to the evaluation of a plan for which approval is sought under section 62, but does not include a dispute arising in relation to the evaluation of a plan for which approval is sought under section 65 or 66.

S. 111  
substituted by  
No. 11/2016  
s. 72.

##### **112 What alternative dispute resolution includes**

- (1) Alternative dispute resolution under this Subdivision includes preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that—
  - (a) the parties are fully aware of their rights and obligations; and
  - (b) there is full and open communication between the parties concerning the dispute.
- (2) In this Subdivision—
  - (a) a reference to alternative dispute resolution includes a reference to mediation; and
  - (b) a reference to a person conducting alternative dispute resolution includes a reference to a mediator conducting mediation.

### **113 Referral of disputes for alternative dispute resolution**

S. 113(2)  
amended by  
No. 11/2016  
s. 73(1).

- (1) A registered Aboriginal party or a sponsor of a cultural heritage management plan (or both) may refer a dispute to the Chairperson of the Council for alternative dispute resolution.
- (2) The Chairperson may (within 30 days after the date on which a dispute is referred under subsection (1)) arrange for the dispute to be the subject of—
  - (a) mediation by a mediator; or
  - (b) another appropriate form of alternative dispute resolution by a suitably qualified person.

S. 113(2A)  
inserted by  
No. 11/2016  
s. 73(2).

- (2A) The Chairperson may not arrange for the dispute to be the subject of alternative dispute resolution if the Chairperson reasonably believes that the dispute is unlikely to be resolved by alternative dispute resolution.
- (3) A mediation or other alternative dispute resolution must take place within 30 days after the date on which the dispute is referred under subsection (1).

### **114 Costs of alternative dispute resolution**

- (1) The costs of alternative dispute resolution under this Subdivision are to be paid by the parties as follows—
  - (a) in the proportions that the parties agree among themselves; or
  - (b) if the parties cannot agree, in equal shares.
- (2) In this section, *costs* of alternative dispute resolution means the fees and expenses of the person conducting the alternative dispute resolution.

**115 Statements made during alternative dispute resolution not admissible**

A statement or admission made in the course of alternative dispute resolution under this Subdivision is not admissible in any legal proceedings.

**Subdivision 2—Dispute resolution in VCAT**

**116 Sponsor may apply to VCAT**

- (1) The sponsor of a cultural heritage management plan may apply to VCAT for review of a decision of a registered Aboriginal party under section 63 to refuse to approve the plan—
  - (a) if each relevant registered Aboriginal party has refused to approve the plan under section 63; or
  - (b) if—
    - (i) a relevant registered Aboriginal party has decided to refuse to approve the plan under section 63; and
    - (ii) the dispute arising from that decision has been referred to the Chairperson of the Council for alternative dispute resolution under Subdivision 1; and
    - (iii) the Chairperson has certified in writing that alternative dispute resolution under Subdivision 1 has failed, or is unlikely, to resolve the dispute.
- (2) The sponsor of a cultural heritage management plan may apply to VCAT for review of a decision of the Secretary under section 65 to refuse to approve the plan.

- (3) An application for a review must be made within 28 days after the later of—
- (a) the day on which the applicant is notified of the decision;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

#### **117 Parties to proceeding**

- (1) The parties to a proceeding under section 116(1) are the sponsor and any relevant registered Aboriginal party.
- (2) The parties to a proceeding under section 116(2) are the sponsor and the Secretary.

#### **118 Decision of VCAT**

On an application under this Division, VCAT may—

- (a) approve the cultural heritage management plan; or
- (b) approve the cultural heritage management plan with amendments to the conditions of the plan; or
- (c) refuse to approve the cultural heritage management plan.

S. 118(b)  
amended by  
No. 11/2016  
s. 74.

#### **119 VCAT to consider certain matters**

- (1) Before reaching a decision on an application under section 116(1), VCAT must consider any matter that the registered Aboriginal party was required to consider when making the decision in respect of which the application was made.

- (2) Before reaching a decision on an application under section 116(2), VCAT must consider any matter that the Secretary was required to consider when making the decision in respect of which the application was made.

**120 VCAT to be satisfied of certain matters**

Before deciding to approve a cultural heritage management plan under this Division, VCAT must be satisfied that the plan makes sufficient provision for the activity to which it relates to be managed so as—

- (a) to avoid harm to Aboriginal cultural heritage in the area to which the plan applies; and
- (b) to the extent that harm cannot be reasonably avoided, to minimise harm to Aboriginal cultural heritage.

**Division 2—Disputes regarding cultural heritage permits**

**121 Applicant for cultural heritage permit may apply to VCAT**

- (1) An applicant for a cultural heritage permit under section 36(1)(c) may apply to VCAT for review of a decision of an approval body—
- (a) to refuse to grant the cultural heritage permit; or
  - (b) to impose a condition on the cultural heritage permit.
- (2) An application for a review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for

S. 121(1)  
amended by  
No. 11/2016  
s. 75.

the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 122  
amended by  
No. 11/2016  
s. 76.

### **122 Parties to proceeding**

The applicant, any relevant registered Aboriginal party and the approval body are parties to a proceeding under this Division.

### **123 Decision of VCAT**

On an application under this Division, VCAT may make an order that—

- (a) the cultural heritage permit must be granted;  
or
- (b) the cultural heritage permit must not be granted; or
- (c) the cultural heritage permit must or must not include a specified condition.

### **124 VCAT to be satisfied of certain matters**

- (1) Before reaching a decision under this Division, VCAT must consider—
  - (a) any matter that the Secretary was required to consider when making the decision in respect of which the application was made; and
  - (b) any matter that a relevant registered Aboriginal party properly considered when deciding to object or not to object to the grant of the permit or to require that a condition be included in the permit.
- (2) Before deciding under this Division to grant, or to impose a condition on, a cultural heritage permit, VCAT must be satisfied that the activity in respect of which the application for the permit was made



will be managed by the applicant so as to minimise harm to Aboriginal cultural heritage.

- (3) Despite section 41(1), VCAT may, subject to the requirements of this section, impose any condition on a cultural heritage permit that it considers to be appropriate.

### **Division 3—Disputes regarding protection declaration decisions**

#### **125 What is a protection declaration decision?**

In this Division *protection declaration decision* means—

- (a) a decision under section 96 to make an interim protection declaration; or
- (b) a decision under section 98 to extend an interim protection declaration; or
- (c) a decision under section 99 to amend or revoke an interim protection declaration; or
- (d) a decision under section 103 to make an ongoing protection declaration; or
- (e) a decision under section 105 to amend or revoke an ongoing protection declaration.

#### **126 Review of protection declaration decisions**

- (1) A person affected, or likely to be affected, by a protection declaration decision may apply to VCAT for a review of the decision.
- (2) An application for a review must be made within 28 days after the later of—
  - (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement

of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

**127 Parties to proceeding**

The applicant, the Minister and any relevant registered Aboriginal party are parties to a proceeding under this Division.

**128 Decision of VCAT**

On an application under this Division in relation to a protection declaration decision, VCAT may—

- (a) confirm the decision; or
- (b) confirm the decision with amendments; or
- (c) set aside the decision and substitute a new decision.

**129 VCAT to have regard to certain matters**

In determining an application under this Division, VCAT must have regard to—

- (a) the importance of maintaining the relationship between Aboriginal people and the place or object to which the application relates; and
- (b) the respective interests of the parties to the application.

## **Part 9—Administration**

### **Division 1—Aboriginal Heritage Council**

#### **130 Establishment of Council**

- (1) The Aboriginal Heritage Council is established.
- (2) The Council—
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal;
  - (c) may sue or be sued in its corporate name;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of the Council must be kept as directed by the Council.
- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

#### **131 Membership**

- (1) The Council consists of not more than 11 members appointed by the Minister.
- (2) The Minister must appoint one of the members of the Council as the first Chairperson of the Council.
- (3) Each member of the Council must be an Aboriginal person who—
  - (a) is a traditional owner or can demonstrate traditional ownership of an area in Victoria; and
  - (b) is resident in Victoria; and

**S. 131(3)(a)**  
**substituted by**  
**No. 11/2016**  
**s. 77.**

- (c) in the opinion of the Minister, has relevant experience or knowledge of Aboriginal cultural heritage in Victoria.
- (4) A member of the Council holds office for the term (not exceeding 3 years) specified in the instrument of his or her appointment, and is eligible for reappointment.

### 132 Functions of the Council

- (1) The Council has the following functions—

S. 132(1)(aa)  
inserted by  
No. 11/2016  
s. 78(1).

- (aa) to be the central coordinating body responsible for the overseeing, monitoring, managing, reporting and returning of Aboriginal ancestral remains in Victoria;

S. 132(1)(a)  
amended by  
No. 11/2016  
s. 78(2).

- (a) to advise the Minister in relation to the protection of Aboriginal cultural heritage in Victoria, including advising the Minister about—

S. 132(1)(a)(i)  
amended by  
No. 11/2016  
s. 78(3).

- (i) the cultural heritage significance of any Aboriginal ancestral remains or Aboriginal place or object;
- (ii) measures for the effective protection and management of Aboriginal cultural heritage in Victoria, including the management of culturally sensitive information relating to that heritage;
- (iii) measures to promote the role of Aboriginal people in the protection and management of Aboriginal cultural heritage and in the administration of this Act;
- (iv) the standards of knowledge, experience, conduct and practice required of persons engaged in research into Aboriginal cultural heritage;

- (v) the training and appointment of authorised officers under this Act;
- (vi) any other matters referred to the Council by the Minister;
- (b) at the Minister's request, to advise and make recommendations to the Minister on the exercise of his or her powers under this Act, including advising the Minister about—
  - (i) the application of interim or ongoing protection declarations;
  - (ii) a proposal by the Minister to require a cultural heritage management plan to be prepared;
  - (iii) whether a cultural heritage audit is necessary;
  - (iv) whether the compulsory acquisition of land is appropriate in any particular case;
  - (v) any other matter relating to the exercise of his or her powers under this Act that the Minister requests the Council to consider;
- (c) to advise the Secretary—
  - (i) on measures to establish appropriate standards and guidelines for the payment to registered Aboriginal parties of fees for doing anything referred to in section 60;
  - (ii) at the Secretary's request, on the exercise of his or her powers under this Act in relation to cultural heritage permits, cultural heritage management plans and cultural heritage agreements.

S. 132(1)(a)(v)  
amended by  
No. 11/2016  
s. 78(4).

- (2) The Council has the following additional functions—
- (a) to receive and determine applications for the registration of Aboriginal parties under Part 10;
  - (b) to consider for approval proposed cultural heritage management plans for which the Secretary is the sponsor, in the circumstances set out in section 66;
  - (c) to promote public awareness and understanding of Aboriginal cultural heritage in Victoria;
  - (ca) to report to the Minister annually on the performance of its functions, including a summary of any reports received by the Council from registered Aboriginal parties;
  - (cb) to advise the Minister administering the **Planning and Environment Act 1987** on proposed amendments to planning schemes which may affect the protection, management or conservation of places or objects of Aboriginal cultural heritage significance;
  - (cc) to oversee and monitor the system of reporting and returning Aboriginal ancestral remains and secret or sacred objects;
  - (cd) to advise the Secretary on cultural heritage permits and cultural heritage management plans related to Aboriginal ancestral remains in areas without a registered Aboriginal party;
  - (ce) to perform functions under this Act in relation to cultural heritage permits, including the granting of permits;

S. 132(2)(c)  
amended by  
No. 11/2016  
s. 78(5).

S. 132(2)(ca)  
inserted by  
No. 11/2016  
s. 78(6).

S. 132(2)(cb)  
inserted by  
No. 11/2016  
s. 78(6).

S. 132(2)(cc)  
inserted by  
No. 11/2016  
s. 78(6).

S. 132(2)(cd)  
inserted by  
No. 11/2016  
s. 78(6).

S. 132(2)(ce)  
inserted by  
No. 11/2016  
s. 78(6).

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| (cf) to manage the Aboriginal Cultural Heritage Fund;  | S. 132(2)(cf) inserted by No. 11/2016 s. 78(6). |
| (cg) to provide advice regarding Aboriginal cultural heritage, including to the Minister and the Secretary;  | S. 132(2)(cg) inserted by No. 11/2016 s. 78(6). |
| (ch) to manage, oversee and supervise the operations of registered Aboriginal parties;   | S. 132(2)(ch) inserted by No. 11/2016 s. 78(6). |
| (ci) to promote and facilitate research into the Aboriginal cultural heritage of Victoria;   | S. 132(2)(ci) inserted by No. 11/2016 s. 78(6). |
| (cj) to nominate information about Aboriginal ancestral remains, Aboriginal secret or sacred objects and Aboriginal places and objects to be restricted information on the Register; | S. 132(2)(cj) inserted by No. 11/2016 s. 78(6). |
| (ck) to publish policy guidelines consistent with the functions of the Council;  | S. 132(2)(ck) inserted by No. 11/2016 s. 78(6). |
| (cl) to report to the Minister every 5 years on the state of Victoria's Aboriginal cultural heritage;  | S. 132(2)(cl) inserted by No. 11/2016 s. 78(6). |
| (d) to carry out any other functions conferred on the Council under this Act.  |   |
| (3) The Council has all the powers necessary to carry out its functions under this Act.  |   |

**132A Delegation of Council's functions**

The Council may, by instrument, delegate any of its functions or powers, except this power of delegation, to—

- (a) the Secretary; or

S. 132A inserted by No. 11/2016 s. 79.

- (b) a member of the Council; or
- (c) a Council advisory committee established under section 142A.

### **133 Functions of the Chairperson**

- (1) The Chairperson of the Council has the following functions—
  - (a) to arrange alternative dispute resolution under section 113; and
  - (b) to carry out any other functions conferred on the Chairperson under this Act.
- (2) The Chairperson has all the powers necessary to carry out his or her functions under this Act.

### **134 Payment of members**

A member of the Council is entitled to be paid the fees and travelling and other allowances fixed from time to time by the Minister in respect of that member.

### **135 Resignation and removal**

- (1) A member of the Council may resign from the office of member by writing signed by the member and delivered to the Minister.
- (2) The Minister may remove a member of the Council from office if—
  - (a) in the opinion of the Minister, the member—
    - (i) becomes incapable of performing his or her functions and duties as a member; or
    - (ii) is negligent in performing his or her functions and duties as a member; or
    - (iii) engages in improper conduct; or



- (b) the member fails to attend 3 consecutive meetings of the Council without the approval of the Chairperson of the Council.
- (3) The office of a member of the Council also becomes vacant if the member—
  - (a) becomes an insolvent under administration; or
  - (b) is convicted in Victoria of an indictable offence or elsewhere of an offence that, if committed in Victoria, would be an indictable offence.

### **136 Acting members**

- (1) If a member of the Council is unable to perform the functions or duties of his or her office, the Minister may appoint a person to act in the place of the member during that period of inability.
- (2) An acting appointment is to be for any term (not exceeding the term of appointment of the member for whom he or she is acting) and on any conditions determined by the Minister.
- (3) The Minister may at any time terminate an acting appointment.
- (4) An acting member of the Council has all the functions of the member for whom he or she is acting.
- (5) An acting member of the Council is entitled to receive any remuneration or travelling or other allowances fixed from time to time by the Minister in respect of that acting member.

S. 137  
substituted by  
No. 11/2016  
s. 80.

### **137 Alternate members**

- (1) The Minister may appoint an alternate member for each member of the Council.
- (2) The Minister must consult with the Council before appointing an alternate member under subsection (1).
- (3) An alternate member must be appointed in the same manner as the member for whom the alternate member is appointed.
- (4) An alternate member may act in place of the member for whom the alternate member is appointed if—
  - (a) the member is absent or unable to perform the duties of the member's office; or
  - (b) the member and the alternate member agree that the alternate member is to act in the member's place; or
  - (c) the member's position is vacant.
- (5) If subsection (4)(c) applies, the alternate member must not act in that position for longer than 6 months.
- (6) An alternate member has all the functions of the member when acting in the place of that member.

S. 137A  
inserted by  
No. 11/2016  
s. 80.

### **137A Terms and conditions for alternate members**

- (1) An alternate member holds office for the term specified in the alternate member's instrument of appointment, being a period of not more than 3 years.
- (2) An alternate member may resign from office by writing signed by the alternate member and addressed to the Minister.

- (3) The Minister may at any time remove an alternate member of the Council from office and appoint another person in the alternate member's place.
- (4) An alternate member, other than an alternate member who is a person employed under Part 3 of the **Public Administration Act 2004**, is entitled to receive the fees, travelling and other allowances from time to time fixed by the Minister in respect of that alternate member.

### **138 Election of Chairperson and Deputy Chairperson**

- (1) The first Chairperson of the Council holds office until the election of a Chairperson under this section.
- (2) At the first meeting of the Council, the members of the Council must elect a Chairperson and a Deputy Chairperson from among its membership.
- (3) The Chairperson and Deputy Chairperson—
  - (a) hold office for one year; and
  - (b) are each eligible for re-election for two further terms of one year.
- (4) Each subsequent Chairperson and Deputy Chairperson must be elected by the members of the Council from among its membership.
- (5) A quorum for a meeting to elect the Chairperson or Deputy Chairperson is at least two-thirds of the members of the Council.
- (6) An election under this section is determined by a majority of votes of the members of the Council at the meeting.

S. 138(3)(b)  
amended by  
No. 11/2016  
s. 81.

### **139 Procedure of the Council**

- (1) Except as provided in sections 138 and 157, a quorum of the Council is a majority of the members for the time being of the Council.
- (2) The Chairperson, or in his or her absence, the Deputy Chairperson, or in the absence of both of them, a member of the Council elected by the members present, must preside at a meeting of the Council.
- (3) A question arising at a meeting of the Council is to be determined by a majority of votes and the person presiding at the meeting has a deliberative vote, and in the case of an equality of votes, a second or casting vote.
- (4) The Council must meet—
  - (a) at least once every 2 months; or
  - (b) more frequently as directed in writing by the Minister.
- (5) Subject to this Act, the Council may regulate its own procedure.

### **140 Effect of a vacancy or defect**

An act or decision of the Council is not invalid only because of—

- (a) a vacancy, including an initial vacancy, in its membership; or
- (b) a defect or irregularity in the appointment of any of its members.

### **141 Immunity from liability**

- (1) A member of the Council is not liable for anything done or omitted to be done in good faith—
  - (a) in carrying out a function or power under this Act or the regulations; or

(b) in the reasonable belief that the act or omission was in the carrying out of a function or power under this Act or the regulations.

(2) Any liability resulting from an act or omission that would, but for subsection (1) attach to a member of the Council attaches instead to the Council.

#### **142 Conflict of interest**

(1) If a member of the Council has a pecuniary or personal interest in the subject-matter of a decision that is to be made by the Council, the member must—

(a) declare his or her interest (including the nature of the interest) to the Council; and

(b) take no further part in the making of the decision by the Council.

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S. 142(2)  
repealed by  
No. 11/2016  
s. 82.

#### **142A Council advisory committees**

(1) The Council may establish any advisory committees the Council considers necessary to advise it on any matter relating to the carrying out of its functions under this Act.

(2) A member of the Council may be a member of an advisory committee established by the Council.

S. 142A  
inserted by  
No. 11/2016  
s. 83.

#### **142B Procedure for advisory committees**

(1) A quorum of a Council advisory committee consists of a majority of the members of the committee for the time being.

(2) Subject to this Act, a Council advisory committee may regulate its own proceedings.

S. 142B  
inserted by  
No. 11/2016  
s. 83.

S. 142C  
inserted by  
No. 11/2016  
s. 83.

### **142C Remuneration**

A member of a Council advisory committee, other than a member who is a person employed under Part 3 of the **Public Administration Act 2004**, is entitled to receive the fees, travelling and other allowances from time to time approved by the Minister in respect of that member on the advice of the Council.

## **Division 2—The Secretary**

### **143 Functions of the Secretary**

- (1) The Secretary has the following functions under this Act—
  - (a) to take whatever measures are reasonably practicable for the protection of Aboriginal cultural heritage;
  - (b) to establish and maintain the Victorian Aboriginal Heritage Register;
  - (c) to grant cultural heritage permits;
  - (d) to approve cultural heritage management plans in the circumstances set out in section 65;
  - (e) to develop, revise and distribute guidelines, forms and other material relating to the protection of Aboriginal cultural heritage and the administration of this Act;
  - (f) to publish, on advice from the Council, appropriate standards and guidelines for the payment of fees to registered Aboriginal parties for doing anything referred to in section 60;
  - (g) to publish standards for the investigation and documentation of Aboriginal cultural heritage in Victoria;

- (h) to manage the enforcement of this Act;
  - (i) to collect and maintain records relating to the use by authorised officers of their powers under this Act; S. 143(1)(i) amended by No. 11/2016 s. 84(1).
  - (j) to facilitate research into the Aboriginal cultural heritage of Victoria;
  - (k) to promote public awareness and understanding of Aboriginal cultural heritage in Victoria;
  - (l) to maintain a map of Victoria which shows each area in respect of which an Aboriginal party is registered under Part 10, and to make the map freely available for inspection by the public;
  - (m) to maintain a list of all Aboriginal parties registered under Part 10 that includes contact details for the parties, and to make the list freely available for inspection by the public;
  - (n) to carry out any other function conferred on the Secretary by or under this Act; S. 143(1)(n) amended by No. 11/2016 s. 84(2).
  - (o) to consider applications for the registration of Aboriginal intangible heritage and make determinations regarding sensitive Aboriginal heritage information; S. 143(1)(o) inserted by No. 11/2016 s. 84(3).
- (2) The Secretary has all powers necessary to carry out his or her functions under this Act.

### **Division 3—Victorian Aboriginal Heritage Register**

#### **144 Victorian Aboriginal Heritage Register**

- (1) The Secretary must establish and maintain a register to be called the Victorian Aboriginal Heritage Register.

- (2) The Secretary may amend or revoke an entry in the Register if the Secretary considers it necessary in order to maintain the accuracy of the information contained in the entry.

S. 144A  
inserted by  
No. 11/2016  
s. 85.

#### **144A Purposes of the Register**

The main purposes of the Register are—

- (a) to be a central repository for Victorian traditional owners to store information about their cultural heritage for the use of current and future generations of Victorians; and
- (b) to include information assisting the management and protection of Aboriginal cultural heritage and Aboriginal intangible heritage; and
- (c) to include information promoting both sustainable land use and development and the management and protection of Aboriginal cultural heritage; and
- (d) to be a repository for information for consideration for land use and land use planning; and
- (e) to be a research and planning tool assisting the consideration of Aboriginal cultural heritage values of particular objects and areas; and
- (f) to facilitate research about the Aboriginal peoples of Victoria.

#### **145 What is in the Register?**

- (1) The Secretary must record details of the following in the Register—
- (a) all known Aboriginal places in Victoria;
  - (ab) all known Aboriginal objects in Victoria;

S. 145(1)(ab)  
inserted by  
No. 11/2016  
s. 86(1).



- (b) all known private collections of Aboriginal objects in Victoria;
- (c) all Aboriginal ancestral remains and interments of Aboriginal ancestral remains reported to the Council or the Secretary under this Act, or delivered to the Council, or known to be in the possession or under the control of any person; S. 145(1)(c) substituted by No. 11/2016 s. 86(2).
- (d) the name, area and contact details of each registered Aboriginal party;
- (e) all cultural heritage permits, approved cultural heritage management plans and cultural heritage agreements, including any amendments to those permits, plans or agreements; S. 145(1)(e) amended by No. 11/2016 s. 86(3).
- (f) all stop orders, interim protection declarations and ongoing protection declarations issued or made under this Act; S. 145(1)(f) amended by No. 11/2016 s. 86(4).
- (g) all Aboriginal cultural heritage land management agreements; S. 145(1)(g) inserted by No. 11/2016 s. 86(5).
- (h) all certified preliminary Aboriginal heritage tests; S. 145(1)(h) inserted by No. 11/2016 s. 86(5).
- (i) all information arising from surveys for Aboriginal cultural heritage; S. 145(1)(i) inserted by No. 11/2016 s. 86(5).
- (j) all known Aboriginal intangible heritage agreements and any Aboriginal intangible heritage approved to be recorded under section 79C. S. 145(1)(j) inserted by No. 11/2016 s. 86(5).

S. 145(2)  
substituted by  
No. 11/2016  
s. 86(6).

- (2) The Secretary may record in the Register any other information regarding Aboriginal cultural heritage or Aboriginal intangible heritage that the Secretary considers necessary in order to protect or manage that heritage.

#### 146 Who may access the Register?

S. 146(1)  
amended by  
No. 11/2016  
s. 87(1).

- (1) Subject to section 146A, the Secretary must allow any of the following persons or bodies to have access to the Register but only for the purpose set out for that person or body—

- (a) a registered Aboriginal party or a person authorised in writing by a registered Aboriginal party—for the purpose of obtaining information relating to the area or areas in respect of which the registered Aboriginal party is registered;
- (b) a member of the Council or a public sector employee (within the meaning of the **Public Administration Act 2004**) whose duties involve the administration of this Act—for the purpose of managing Aboriginal cultural heritage in Victoria or maintaining and updating the Register;
- (c) a person engaged as a heritage advisor for a cultural heritage management plan, preliminary Aboriginal heritage test, Aboriginal cultural heritage land management agreement or a cultural heritage audit—for the purpose of conducting research related to the plan, test, agreement or audit;

S. 146(1)(c)  
substituted by  
No. 11/2016  
s. 87(2).

- (d) a land owner—for the purpose of obtaining information on any Aboriginal cultural heritage that may relate to the owner's land, including a cultural heritage management plan prepared in relation to the land before

S. 146(1)(d)  
amended by  
No. 11/2016  
s. 87(3).

- the land owner became the owner of that land;
- (e) a person who, or a body that, has the control and management of Crown land—for the purpose of obtaining information to assist or enable the person or body to carry out functions or duties associated with the control and management of the land;
  - (f) a person appointed or employed under Division 3 of Part 4 of the **Local Government Act 1989**—for the purpose of carrying out functions or duties associated with the person's employment;
  - (g) a heritage advisor appointed by a proposed developer, purchaser or user of land or by a person specified under paragraph (d), (e) or (f) in relation to land—for the purpose of obtaining information on any Aboriginal cultural heritage that may relate to the land; S. 146(1)(g) amended by No. 11/2016 s. 87(4).
  - (h) a person who applies to the Secretary for the certification of a preliminary Aboriginal heritage test—for the purpose of obtaining information on any Aboriginal cultural heritage that may relate to the land on which the proposed activity is to be carried out; S. 146(1)(h) inserted by No. 11/2016 s. 87(5).
  - (i) a holder of a cultural heritage permit granted under section 36(1)(a) or (b)—for the purpose of obtaining information on any Aboriginal cultural heritage relating to the permit; S. 146(1)(i) inserted by No. 11/2016 s. 87(5).
  - (j) the Executive Director of Heritage Victoria—for the purpose of managing and protecting Aboriginal cultural heritage on or associated with a heritage place; S. 146(1)(j) inserted by No. 11/2016 s. 87(5).

S. 146(1)(k)  
inserted by  
No. 11/2016  
s. 87(5).

(k) a Catchment Management Authority—for the purpose of obtaining information to assist or enable the Authority to carry out functions or duties associated with the control or management of land;

S. 146(1)(l)  
inserted by  
No. 11/2016  
s. 87(5).

(l) the Minister responsible for keeping the Register of Aboriginal Sites and Objects under Part 2 of the Aboriginal Heritage Act 1988 of South Australia—for the purpose of obtaining information to assist with the management and protection of Aboriginal cultural heritage in South Australia in the vicinity of the Victorian border;

S. 146(1)(m)  
inserted by  
No. 11/2016  
s. 87(5).

(m) the Director-General appointed under the National Parks and Wildlife Act 1974 of New South Wales and responsible for maintaining the public register established under section 188F of that Act—for the purpose of obtaining information to assist with the management and protection of Aboriginal cultural heritage in New South Wales in the vicinity of the Victorian border;

S. 146(1)(n)  
inserted by  
No. 11/2016  
s. 87(5).

(n) a person employed under Part 3 of the **Public Administration Act 2004** whose responsibilities include the assessment of applications for planning permits or amendments to planning schemes—for the purpose of obtaining information on any Aboriginal cultural heritage relating to the application;

S. 146(1)(o)  
inserted by  
No. 11/2016  
s. 87(5).

(o) any person—for the purpose of obtaining information as to whether an Aboriginal intangible heritage agreement is required or if an agreement exists.

- (2) The Secretary must not allow any other person to have access to the Register except—
  - (a) if there is a registered Aboriginal party for the area relating to the request, with the written approval of each registered Aboriginal party for that area; or
  - (b) if there is no registered Aboriginal party for the area relating to the request, with the written approval of the Council.
- (3) An application to the Secretary for access to the Register under this section must be accompanied by the prescribed fee (if any).

S. 146(3)  
inserted by  
No. 11/2016  
s. 87(6).

**146A Accessing the Register for sensitive information**

S. 146A  
inserted by  
No. 11/2016  
s. 88.

- (1) The Secretary may, on the recommendation of the Council or a registered Aboriginal party, determine that any information in the Register relating to Aboriginal cultural heritage or Aboriginal intangible heritage is sensitive Aboriginal heritage information.
- (2) The Secretary must not allow a person or body referred to in section 146 to have access to sensitive Aboriginal heritage information without the written approval of the relevant registered Aboriginal party or, if there is no relevant registered Aboriginal party, the Council.
- (3) The Secretary may impose conditions on the access of sensitive Aboriginal heritage information under this section.

**147 Secretary may provide advice to persons or bodies seeking access to Register**

- (1) The Secretary may provide advice to any person as to whether a record exists on the Register in relation to a nominated area of land.

- (2) An application to the Secretary for advice under subsection (1) must be accompanied by the prescribed fee (if any).
- (3) Subject to subsection (4), the advice under subsection (1) must include sufficient detail to identify the nature of the record.
- (4) In providing advice under subsection (1), the Secretary must not provide any information if providing the information would be likely to endanger Aboriginal cultural heritage.

S. 147A  
inserted by  
No. 11/2016  
s. 89.

**147A Offence to knowingly or recklessly use information for prohibited purposes**

- (1) A person or body allowed access to the Register under this Division must not knowingly use any information in the Register for a purpose other than the purpose for which the person or body was allowed access.

Penalty: In the case of a natural person,  
50 penalty units;

In the case of a body corporate,  
250 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

- (2) A person or body allowed access to the Register under this Division must not recklessly use any information in the Register for a purpose other than the purpose for which the person or body was allowed access.

Penalty: In the case of a natural person,  
20 penalty units;

In the case of a body corporate,  
100 penalty units.

**Note**

Section 187A applies to an offence against this subsection.

## **Part 10—Registered Aboriginal parties**

### **Division 1—Functions of registered Aboriginal parties**

#### **148 Functions of a registered Aboriginal party**

A registered Aboriginal party has the following functions—

- (a) to act as a primary source of advice and knowledge for the Minister, Secretary and Council on matters relating to Aboriginal places located in or Aboriginal objects originating from the area for which the party is registered;
- (b) to advise the Minister regarding, and to negotiate, the return of Aboriginal cultural heritage that relates to the area for which the party is registered;
- (c) to consider and advise on applications for cultural heritage permits;
- (d) to evaluate and approve or refuse to approve cultural heritage management plans that relate to the area for which the party is registered;
- (e) to enter into cultural heritage agreements;
- (f) to apply for interim and ongoing protection declarations;
- (fa) to provide general advice regarding Aboriginal cultural heritage relating to the area for which the party is registered;
- (fb) to perform functions under this Act in relation to cultural heritage management plans, cultural heritage permits, cultural heritage agreements, preliminary Aboriginal heritage tests, Aboriginal cultural heritage

S. 148(b)  
amended by  
No. 11/2016  
s. 90(1).

S. 148(fa)  
inserted by  
No. 11/2016  
s. 90(2).

S. 148(fb)  
inserted by  
No. 11/2016  
s. 90(2).

S. 148(fc)  
inserted by  
No. 11/2016  
s. 90(2).

land management agreements and Aboriginal intangible heritage agreements;

(fc) to perform functions under this Act in relation to cultural heritage permits, including the granting of permits;

S. 148(fd)  
inserted by  
No. 11/2016  
s. 90(2).

(fd) to advise the Minister administering the **Planning and Environment Act 1987** on proposed amendments to planning schemes which may affect the protection, management or conservation of places or objects of Aboriginal cultural heritage significance;

S. 148(fe)  
inserted by  
No. 11/2016  
s. 90(2).

(fe) to report to the Council annually on the performance of its functions under this Act, including any fees and charges paid to or imposed by the party in respect of the year;

S. 148(ff)  
inserted by  
No. 11/2016  
s. 90(2).

(ff) to nominate information about Aboriginal cultural heritage to be restricted information on the Register;

(g) to carry out any other functions conferred on registered Aboriginal parties by or under this Act.

#### **149 Registered Aboriginal party must act in good faith**

A registered Aboriginal party must act in good faith in the discharge of its functions and in the exercise of its powers under this Act.

### **Division 2—Application and registration**

#### **150 Application for registration**

S. 150(1)  
amended by  
No. 11/2016  
s. 91(1).

- (1) An application for registration as a registered Aboriginal party must be made to the Council in the prescribed form and include the following—
- (a) the party's name, address and other contact details;



- (b) a description of the area in respect of which the application is made, including details, in the form of a map or a written description, of the boundaries of that area;
  - (c) a statement from the applicant outlining the nature of—
    - (i) the relationship or links of the applicant to the area for which the application is made; or
    - (ii) the applicant's historical or contemporary interest in Aboriginal cultural heritage relating to the area and expertise in managing and protecting Aboriginal cultural heritage in that area;
  - (d) a statement from the applicant setting out how the applicant intends to consider the interests of any Aboriginal people for whom the area in respect of which the application is made has cultural heritage significance, but who are not the traditional owners of the area;
  - (e) any other prescribed information.
- (2) An applicant for registration as a registered Aboriginal party must be a corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth.

S. 150(1)(c)(ii)  
amended by  
No. 11/2016  
s. 91(2).

S. 150(1)(d)  
inserted by  
No. 11/2016  
s. 91(3).

S. 150(1)(e)  
inserted by  
No. 11/2016  
s. 91(3).

S. 150(2)  
substituted by  
No. 11/2016  
s. 91(4).

### **151 Determination of application for registration**

**S. 151(1)**  
amended by  
No. 11/2016  
s. 92(1).

(1) The Council must determine an application for registration as a registered Aboriginal party within 270 days after receiving the application.

**S. 151(1A)**  
inserted by  
No. 11/2016  
s. 92(2).

(1A) The Council may determine the application for a part of the area in respect of which the application is made before determining the application for the whole of the area.

**S. 151(2)**  
substituted by  
No. 11/2016  
s. 92(3).

(2) If an applicant for registration is a registered native title holder for an area in respect of which there is a native title agreement, and the area in respect of which the application is made is within the external perimeter of the area described in the agreement—

- (a) the Council must register the applicant as the registered Aboriginal party for the area in respect of which the application is made; and
- (b) no other applicant can be registered for the area in respect of which the application is made, except another registered native title holder.

**S. 151(2A)**  
inserted by  
No. 62/2010  
s. 93,  
substituted by  
No. 11/2016  
s. 92(4).

(2A) If an applicant for registration is a traditional owner group entity for an area in respect of which the entity has entered into a recognition and settlement agreement, and the area in respect of which the application is made is within the external perimeter of the area described in the agreement—

- (a) the Council must register the applicant as the registered Aboriginal party for the area in respect of which the application is made; and
- (b) no other applicant can be registered for the area in respect of which the application is made, except a registered native title holder.

- (3) Subject to subsection (2), in determining an application, the Council must take the following into account—
- (a) whether the applicant is a native title party for the area to which the application relates;
  - (b) the terms of any native title agreement that the parties to that agreement agree to make available to the Council;
  - (c) whether the applicant is a body representing the traditional owners of the area to which the application relates;
  - (d) whether the applicant is a body representing Aboriginal people that has—
    - (i) a historical or contemporary interest in the Aboriginal cultural heritage relating to the area to which the application relates; and
    - (ii) demonstrated expertise in managing and protecting Aboriginal cultural heritage in that area;
  - (e) the existence of any grant of land in fee simple made by the State or the Commonwealth to an Aboriginal body under a specific power in a State or Commonwealth Act.
  - (f) whether the applicant has entered into an agreement with the State in relation to land and natural resource management in the area to which the application relates;
  - (g) any other matter that the Council considers to be relevant.
- (4) In determining an application, the Council must be satisfied that the applicant is a body corporate.

S. 151(3)(c)  
amended by  
No. 11/2016  
s. 92(5).

S. 151(7)  
inserted by  
No. 11/2016  
s. 92(6).

S. 151(8)  
inserted by  
No. 11/2016  
s. 92(6).

S. 151(9)  
inserted by  
No. 11/2016  
s. 92(6).

S. 151(10)  
inserted by  
No. 11/2016  
s. 92(6).

- (5) In determining an application, the Council may—
  - (a) request further information from the applicant; and
  - (b) obtain assistance from any person that the Council considers has relevant knowledge or expertise.
- (6) The Council may ask the Secretary to assist the applicant to produce a map of the boundaries of the area to which the application relates.
- (7) The Council must not approve an application for registration as a registered Aboriginal party if the applicant is not a traditional owner group entity and there exists a traditional owner group entity for the area to which the application relates.
- (8) The Council may approve an application referred to in subsection (7) with the written consent of the traditional owner group entity for the area.
- (9) The Council may, in writing, ask the applicant for any additional information that the Council reasonably thinks necessary to assist its decision.
- (10) The period referred to in subsection (1)—
  - (a) ceases to run when the Council asks for additional information under subsection (9); and
  - (b) recommences to run when the information is provided to the Council.

## 152 Effect of determination

- (1) If the Council determines that a body is to be the registered Aboriginal party for an area, the determination comes into effect on the day it is made.

- (2) The determination must specify the area for which the body is to be the registered Aboriginal party, which, subject to section 151(2), may be all or part of the area to which the application relates.

### **153 Parties for area**

- (1) Subject to section 151(2), more than one body may be a registered Aboriginal party for a particular area if the Council is satisfied that having more than one registered Aboriginal party for the area—
- (a) will not unduly hinder the ability of any of the registered Aboriginal parties for the area to exercise their powers and carry out their functions under this Act; and
  - (b) will not otherwise hinder the effective operation of this Act.
- (2) If there is more than one registered Aboriginal party for an area then each of those registered Aboriginal parties has the same powers and functions in relation to that area.

### **154 Notice of determination**

- (1) The Council must give written notice to the applicant and the Secretary of the Council's determination that a body is to be a registered Aboriginal party as soon as practicable after the determination is made.
- (2) A notice under subsection (1) must specify the area in respect of which body is the registered Aboriginal party and the date of the determination.
- (3) The Secretary must cause the name and contact details of each registered Aboriginal party and a description of the area for which it is a registered Aboriginal party to be placed on the Register.

S. 154A  
inserted by  
No. 11/2016  
s. 93.

#### **154A Conditions of registration**

- (1) The Council may impose conditions on the registration of a registered Aboriginal party at any time.
- (2) The Council must give written notice to a registered Aboriginal party at least 30 days before imposing a condition under subsection (1).
- (3) The Council must consider any response by the registered Aboriginal party before imposing a condition.
- (4) The Council must give written notice to the registered Aboriginal party of a condition imposed under this section as soon as practicable after imposing the condition.

#### **155 Variation of registration**

- (1) The Council may vary the registration of a registered Aboriginal party with the consent of that party and, if there are other registered Aboriginal parties for that area, with the consent of each of those parties.
- (2) A variation under this section may include a variation to the boundaries of the area for which the registered Aboriginal party is registered.
- (3) The Council must give written notice to the registered Aboriginal party and the Secretary of a variation under this section as soon as practicable after the variation is made.
- (4) The Secretary must make any necessary amendments to the Register.

### **156 Suspension and revocation of registration**

- (1) Subject to section 157, the Council may suspend or revoke the registration of a registered Aboriginal party if the Council believes on reasonable grounds that the party has failed to act in good faith—
- (a) in relation to the consideration of or advice given on applications for cultural heritage permits; or
  - (b) in relation to the evaluation of a cultural heritage management plan; or
  - (c) in relation to the entering into or performance of a cultural heritage agreement; or
  - (d) in the discharge of any of its functions or the exercise of any of its powers under this Act.

(1A) Subject to section 157, the Council may suspend or revoke the registration of a registered Aboriginal party if the party contravenes a condition of registration imposed by the Council under section 154A.

**S. 156(1A)  
inserted by  
No. 11/2016  
s. 94(1).**

- (2) The registration of a registered Aboriginal party is revoked if—
- (a) the party ceases to be a body corporate or is not a corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth at the end of the period referred to in section 158A; or
  - (b) the party is placed under administration or goes into liquidation.

**S. 156(2)(a)  
amended by  
No. 11/2016  
s. 94(2).**

S. 156(3)(b)  
amended by  
No. 11/2016  
s. 94(3).

S. 156(3A)  
inserted by  
No. 62/2010  
s. 94.

(3) The registration of a registered Aboriginal party in respect of an area or part of an area is revoked if—

- (a) a registered native title holder is subsequently registered as a registered Aboriginal party for the area or that part of the area; and
- (b) a determination has been made that native title exists in the area or that part of the area (as the case requires), unless the registered Aboriginal party in respect of the area or part of the area is a registered native title holder.

(3A) The registration of a registered Aboriginal party in respect of an area or part of an area is revoked if a traditional owner group entity is subsequently registered under section 151(2A) as the registered Aboriginal party for the area or that part of the area.

- (4) The Council must suspend or revoke the registration of a registered Aboriginal party at the request of the party.
- (5) The Council must give written notice to the Secretary of a revocation under this section and the Secretary must make any necessary amendments to the Register.

### **157 Procedure for suspension or revocation of registration**

- (1) If the Council proposes to suspend or revoke the registration of a registered Aboriginal party under section 156(1), the Council must give the registered Aboriginal party—
  - (a) at least 28 days' notice of the proposal; and
  - (b) an opportunity to make oral and written submissions to the Council on the proposal.



- (2) A notice under subsection (1) must—
  - (a) be in writing; and
  - (b) advise the registered Aboriginal party—
    - (i) of the proposal to suspend or revoke the registration of the registered Aboriginal party; and
    - (ii) that it may make oral and written submissions to the Council on the proposal at a specified time and place.
- (3) A determination of the Council under section 156(1) to suspend or revoke the registration of a registered Aboriginal party is not valid unless—
  - (a) at least two-thirds of the members for the time being of the Council are present at the meeting at which the decision is made; and
  - (b) the relevant motion is passed by a simple majority of those members.

### **158 Review of decisions of the Council**

- (1) An Aboriginal party may apply to VCAT for review of a determination of the Council under section 156(1) to suspend or revoke the registration of the party.
- (2) An application for a review must be made within 28 days after the later of—
  - (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 158A  
inserted by  
No. 11/2016  
s. 95.

**158A Further registration of existing registered  
Aboriginal parties**

- (1) A registered Aboriginal party registered under this Part before the commencement of section 95 of the **Aboriginal Heritage Amendment Act 2016** must, within 2 years of the commencement of that section, be a corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth.
- (2) A registered Aboriginal party may make a written request to the Council to extend the period referred to in subsection (1) by a period of up to 12 months.

## **Part 10A—Aboriginal Cultural Heritage Fund**

Pt 10A  
(Heading and  
ss 158B–  
158H)  
inserted by  
No. 11/2016  
s. 96.

### **158B Establishment of Aboriginal Cultural Heritage Fund**

S. 158B  
inserted by  
No. 11/2016  
s. 96.

- (1) There is established a fund called the Aboriginal Cultural Heritage Fund.
- (2) The Council must open and maintain an account with an ADI for the purposes of the Aboriginal Cultural Heritage Fund.

### **158C Payments into Aboriginal Cultural Heritage Fund**

S. 158C  
inserted by  
No. 11/2016  
s. 96.

- (1) There must be paid into the Aboriginal Cultural Heritage Fund—
  - (a) any fees paid to the Council or the Secretary under this Act; and
  - (b) any money borrowed by the Council; and
  - (c) any other money received by the Council.
- (2) Any interest earned on money in the Aboriginal Cultural Heritage Fund must be credited to the Aboriginal Cultural Heritage Fund.

### **158D Payments out of the Aboriginal Cultural Heritage Fund**

S. 158D  
inserted by  
No. 11/2016  
s. 96.

- (1) The Secretary may pay out of the Aboriginal Cultural Heritage Fund any money—
  - (a) to provide assistance generally for the protection and management of Aboriginal cultural heritage; or
  - (b) to provide assistance generally for the conservation, protection and management of an area to which a protection declaration relates; or

- (c) to make grants for the purposes of protecting and managing Aboriginal cultural heritage;  
or
  - (d) to do anything else authorised by this Act.
- (2) The Council may pay out of the Aboriginal Cultural Heritage Fund any money—
- (a) to make loans for the purposes of protecting and managing Aboriginal cultural heritage;  
or
  - (b) to acquire any land or other assets authorised by this Act; or
  - (c) to repay any money borrowed by the Council including any charges or interest on that money; or
  - (d) to do anything else authorised by this Act.

S. 158E  
inserted by  
No. 11/2016  
s. 96.

**158E Power of Council to borrow money**

The Council may obtain financial accommodation subject to and in accordance with the powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

S. 158F  
inserted by  
No. 11/2016  
s. 96.

**158F Power of Council to accept gifts**

- (1) The Council may accept a gift of money, land or any other asset for the purposes of protecting and managing Aboriginal cultural heritage.
- (2) Any gift accepted by the Council under subsection (1) is vested in the Crown.

S. 158G  
inserted by  
No. 11/2016  
s. 96.

**158G Acquisition and sale of land by Council**

- (1) The Council may, with the approval of the Minister, acquire any land on which an Aboriginal place is located for the purposes of protecting and maintaining Aboriginal cultural heritage.
- (2) The Council may sell any land acquired by it under subsection (1).

**158H Rates of interest on loans**

Any loan made from the Aboriginal Cultural Heritage Fund must be at a rate of interest approved by the Treasurer (if any).

**S. 158H  
inserted by  
No. 11/2016  
s. 96.**

## Part 11—Enforcement

### Division 1—Authorised officers

Pt 11 Div. 1  
(Heading)  
amended by  
No. 11/2016  
s. 97.

#### 159 Functions of authorised officers

The functions of an authorised officer under this Act include—

S. 159  
(Heading)  
amended by  
No. 11/2016  
s. 98(1).

S. 159  
amended by  
No. 11/2016  
s. 98(2).

S. 159(e)  
amended by  
No. 11/2016  
s. 98(3).

- (a) monitoring compliance with this Act;
- (b) investigating suspected offences against this Act;
- (c) directing the conduct of cultural heritage audits under Part 6;
- (d) issuing and delivering stop orders under Part 6;
- (e) when required by the Secretary, reporting to the Secretary on the carrying out by the authorised officer of his or her functions under this Act.

S. 160  
(Heading)  
amended by  
No. 11/2016  
s. 99(1).

S. 160(1)  
amended by  
No. 11/2016  
s. 99(2).

#### 160 Appointment of authorised officers

- (1) The Minister, after consulting with the Council, may, by writing, appoint any of the following as an authorised officer for a period of up to 5 years—
  - (a) an employee under Part 3 of the **Public Administration Act 2004**;
  - (b) a person who is appointed as an inspector, enforcement officer or authorised officer by or under any other Act.

- (2) The Minister must be satisfied that a person appointed as an authorised officer—
- (a) has an appropriate level of knowledge and experience in the identification and protection of Aboriginal cultural heritage; and
  - (b) has completed, to the satisfaction of the Minister, a course of training specified by the Minister; and
  - (c) is capable of carrying out the duties of an authorised officer under this Act.

S. 160(2)  
amended by  
No. 11/2016  
s. 99(3).

S. 160(2)(c)  
amended by  
No. 11/2016  
s. 99(4).

### **161 Re-appointment of authorised officers**

The Minister, after consulting with the Council, may re-appoint a person as an authorised officer if—

- (a) the person still satisfies the criteria referred to in section 160; and
- (b) the person seeking re-appointment has completed, to the satisfaction of the Minister, a course of training specified by the Minister.

S. 161  
(Heading)  
amended by  
No. 11/2016  
s. 100(1).

S. 161  
amended by  
No. 11/2016  
s. 100(2).

### **162 Suspension and revocation of appointment**

- (1) The Minister, after consulting with the Council, may, in writing, suspend for a specified period or revoke the appointment of an authorised officer under this Act.
- (2) An authorised officer is deemed not to be an authorised officer under this Act during a period of suspension.

S. 162(1)  
amended by  
No. 11/2016  
s. 101(1).

S. 162(2)  
amended by  
No. 11/2016  
s. 101(2).

S. 163  
amended by  
No. 11/2016  
s. 102(1).

### 163 Cessation of appointment

The appointment of an authorised officer under this Act ceases immediately if—

S. 163(a)  
amended by  
No. 11/2016  
s. 102(2).

(a) the authorised officer ceases to be an employee under Part 3 of the **Public Administration Act 2004**; or

S. 163(b)  
substituted by  
No. 11/2016  
s. 102(3).

(b) if the authorised officer was appointed under section 160(1)(b), the authorised officer ceases to be appointed as an inspector, enforcement officer or authorised officer by or under any other Act; or

(c) the Minister revokes the appointment under section 162; or

(d) the person resigns his or her appointment.

### 164 Identity cards

S. 164(1)  
amended by  
No. 11/2016  
s. 103(1).

(1) The Secretary must issue an identity card to each authorised officer.

(2) An identity card issued under subsection (1) must—

(a) be in the approved form; and

(b) contain a recent photograph of the person to whom it is issued.

(3) A person must immediately return his or her identity card to the Secretary if—

S. 164(3)(a)  
amended by  
No. 11/2016  
s. 103(2).

(a) the person ceases to be an authorised officer;  
or

S. 164(3)(b)  
amended by  
No. 11/2016  
s. 103(3).

(b) the appointment of the person as an authorised officer is suspended.

Penalty: 5 penalty units.



**165 Authorised officer to produce identity card**

An authorised officer must produce his or her identity card for inspection—

- (a) before exercising any of his or her powers under this Act, except a requirement made by post; and
- (b) at any time during the exercise of a power under this Act, if asked to do so.

S. 165  
(Heading)  
amended by  
No. 11/2016  
s. 104(1).

S. 165  
amended by  
No. 11/2016  
s. 104(2).

**Division 1A—Aboriginal heritage officers**

Pt 11 Div. 1A  
(Heading and  
ss 165A–  
165E)  
inserted by  
No. 11/2016  
s. 105.

**165A Functions of Aboriginal heritage officers**

The functions of an Aboriginal heritage officer under this Act include—

- (a) monitoring compliance of cultural heritage management plans, cultural heritage permits and Aboriginal cultural heritage land management agreements; and
- (b) issuing and delivering 24-hour stop orders under Part 6.

S. 165A  
inserted by  
No. 11/2016  
s. 105.

**165B Appointment of Aboriginal heritage officers**

- (1) The Minister, after consultation with the Council, may, in writing, appoint an employee of a registered Aboriginal party as an Aboriginal heritage officer.
- (2) The Minister must be satisfied that a person appointed as an Aboriginal heritage officer—
  - (a) has an appropriate level of knowledge and experience in the identification and protection of Aboriginal cultural heritage; and

S. 165B  
inserted by  
No. 11/2016  
s. 105.

- (b) has completed, to the satisfaction of the Minister, a course of training specified by the Minister; and
- (c) is capable of carrying out the duties of an Aboriginal heritage officer under this Act.

S. 165C  
inserted by  
No. 11/2016  
s. 105.

### **165C Suspension and revocation of appointment**

- (1) The Minister, after consulting with the Council, may, in writing, suspend for a specified period or revoke the appointment of an Aboriginal heritage officer under this Act.
- (2) An Aboriginal heritage officer is taken not to be an Aboriginal heritage officer under this Act during a period of suspension.

S. 165D  
inserted by  
No. 11/2016  
s. 105.

### **165D Identity cards**

- (1) The Secretary must issue an identity card to each Aboriginal heritage officer.
- (2) An identity card issued under subsection (1) must—
  - (a) be in the approved form; and
  - (b) contain a recent photograph of the person to whom it is issued.
- (3) A person must immediately return the person's identity card to the Secretary if—
  - (a) the person ceases to be an Aboriginal heritage officer; or
  - (b) the appointment of the person as an Aboriginal heritage officer is suspended.

Penalty: 5 penalty units.

**165E Aboriginal heritage officer to produce identity card**

An Aboriginal heritage officer must produce an identity card for inspection—

- (a) before exercising any powers under this Act, except a requirement made by post; and
- (b) at any time during the exercise of a power under this Act, if asked to do so.

S. 165E  
inserted by  
No. 11/2016  
s. 105.

**Division 2—Powers of authorised officers and  
Aboriginal heritage officers**

Pt 11 Div. 2  
(Heading)  
amended by  
No. 11/2016  
s. 106.

**166 General power to enter land or premises**

- (1) Subject to this section, an authorised officer or Aboriginal heritage officer may enter any land or premises during normal business hours for the purposes of carrying out the authorised officer's or Aboriginal heritage officer's functions under this Act.
- (2) An authorised officer or Aboriginal heritage officer must not enter any land or premises under this section—
  - (a) without the consent of the occupier of the land or premises; and
  - (b) unless the occupier—
    - (i) is present; or
    - (ii) has consented in writing to the authorised officer or Aboriginal heritage officer entering the land or premises without the occupier being present.

S. 166(1)  
amended by  
No. 11/2016  
s. 107(1).

S. 166(2)  
amended by  
No. 11/2016  
s. 107(2).

S. 166(2)(b)(ii)  
amended by  
No. 11/2016  
s. 107(3).

### **167 Obtaining the consent of the occupier**

S. 167(1)  
amended by  
No. 11/2016  
s. 108(1).

(1) For the purposes of obtaining the consent of an occupier of land or premises under section 166 an authorised officer or Aboriginal heritage officer may, without the occupier's consent—

(a) enter the land or premises to an extent that is reasonable in order to contact the occupier;  
or

S. 167(1)(b)  
amended by  
No. 11/2016  
s. 108(2).

(b) enter a part of the land or premises that the authorised officer or Aboriginal heritage officer reasonably considers members of the public would ordinarily be allowed to enter when they wish to contact the occupier.

S. 167(2)  
amended by  
No. 11/2016  
s. 108(3).

(2) When seeking to obtain the consent of an occupier of land or premises under section 166, an authorised officer or Aboriginal heritage officer must inform the occupier—

(a) of the purpose of the entry; and

S. 167(2)(b)  
amended by  
No. 11/2016  
s. 108(4).

(b) if the authorised officer or Aboriginal heritage officer intends to search the land or premises, the purpose of the search; and

(c) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and

(d) that the occupier may refuse to consent to the taking of any copy of or extract from a document found on the premises during the search; and

(e) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

- (3) If an occupier consents to an entry and search, the authorised officer or Aboriginal heritage officer who requested consent must, before entering the land or premises, ask the occupier to sign an acknowledgment stating—
- S. 167(3)  
amended by  
No. 11/2016  
s. 108(5).**
- (a) that the occupier has been informed of the purpose of the search and that any thing seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
  - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of any thing or to the taking of any copy of or extract from a document; and
  - (c) that the occupier has consented to such an entry and search; and
  - (d) the date and time that the occupier consented.
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the authorised officer or Aboriginal heritage officer must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- S. 167(4)  
amended by  
No. 11/2016  
s. 108(6).**
- (a) that the occupier has consented to the seizure or taking of the thing; and
  - (b) the date and time that the occupier consented.
- (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the authorised officer or Aboriginal heritage officer leaves the land or premises.
- S. 167(5)  
amended by  
No. 11/2016  
s. 108(7).**

- (6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

S. 168  
amended by  
No. 11/2016  
s. 109.

### **168 Power to enter land or premises open to public**

An authorised officer or Aboriginal heritage officer may enter and inspect any part of land or premises which, at the time of the entry and inspection, are open to the public.

S. 169  
amended by  
No. 11/2016  
s. 110.

### **169 Power to enter land or premises for audit**

An authorised officer may, during normal business hours, enter any land or premises (other than a private residence) after giving at least 2 days' written notice to the occupier of the land or premises for the purpose of—

- (a) directing a cultural heritage audit; or
- (b) complying with a recommendation of a cultural heritage audit.

### **170 Search powers upon entry**

S. 170(1)  
amended by  
No. 11/2016  
s. 111(1).

- (1) This section sets out the search powers of an authorised officer or Aboriginal heritage officer who enters land or premises under section 166 or 168.

S. 170(2)  
amended by  
No. 11/2016  
s. 111(2).

- (2) The authorised officer or Aboriginal heritage officer may do any of the following for the purpose of ensuring compliance with this Act—
- (a) search any part of the land or premises;
  - (b) inspect, measure, test, photograph or film any part of the land or premises or anything present at, in or on the land or premises;
  - (c) take an extract from, or make a copy of, a document held on the land or at the premises;

(d) bring onto the land or premises any person whose assistance the authorised officer or Aboriginal heritage officer reasonably requires to exercise a power or perform a function or duty under this Act;

S. 170(2)(d)  
amended by  
No. 11/2016  
s. 111(3).

(e) bring onto the land or premises any equipment or materials that the authorised officer or Aboriginal heritage officer reasonably requires to exercise a power or perform a function or duty under this Act.

S. 170(2)(e)  
amended by  
No. 11/2016  
s. 111(4).

### **171 Seizure powers on entry without search warrant**

If an authorised officer or Aboriginal heritage officer enters land or premises under section 166 or 168, the authorised officer or Aboriginal heritage officer may, with the consent of the occupier of the premises, seize any thing that he or she reasonably believes is evidence of the commission of an offence against this Act.

S. 171  
amended by  
No. 11/2016  
s. 112.

### **172 Seizure power without consent**

Despite anything to the contrary in this Part, if an authorised officer or Aboriginal heritage officer enters land or premises in accordance with section 166, 168 or 169 the authorised officer or Aboriginal heritage officer may without the consent of the occupier—

S. 172  
amended by  
No. 11/2016  
s. 113(1).

- (a) seize an Aboriginal object if the authorised officer or Aboriginal heritage officer reasonably believes that the object—
- (i) is being offered for sale, or has been sold, in contravention of section 34; or
  - (ii) is being removed from Victoria, or is at immediate risk of being removed from Victoria, in contravention of section 34; and

S. 172(a)  
amended by  
No. 11/2016  
s. 113(2).

S. 172(b)  
amended by  
No. 11/2016  
s. 113(3).

- (b) seize Aboriginal ancestral remains if the authorised officer or Aboriginal heritage officer reasonably believes that the remains are being held in contravention of section 19.

### 173 Search warrants

S. 173(1)  
amended by  
No. 11/2016  
s. 114(1).

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant under this section in relation to a particular place.

S. 173(2)  
amended by  
Nos 37/2014  
s. 10(Sch.  
item 1.2),  
11/2016  
s. 114(2).

- (2) If the magistrate is satisfied that there are reasonable grounds for believing that an offence against this Act has occurred, or is likely to occur, the magistrate may issue a search warrant authorising the authorised officer and any police officer and other assistants the authorised officer considers necessary—

- (a) to enter the place named or described in the warrant; and  
(b) to search for and seize a thing or things named or described in the warrant.

S. 173(3)  
amended by  
No. 11/2016  
s. 114(3).

- (3) In addition to a thing named or described in the warrant under subsection (2)(b), the authorised officer executing the warrant may seize any other thing, including an Aboriginal object, present at the place if the authorised officer reasonably believes—

- (a) that the thing will afford evidence of the commission of an offence against this Act; and  
(b) that it is necessary to seize the thing to prevent its concealment, loss or destruction.

- (4) In addition to any other requirement, a search warrant issued under this section must state—

- (a) the offence suspected; and  
(b) the place to be searched; and



- (c) a description of the thing for which the search is to be made; and
  - (d) any conditions to which the warrant is subject; and
  - (e) whether entry is authorised to be made at any time or during stated hours; and
  - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and must be in the form set out in the regulations under that Act.
- (6) Subject to any provision to the contrary in this Act, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
- (7) In this section, *place* includes land, premises and a vehicle.

#### **174 Announcement before entry**

- (1) Before executing a search warrant, the authorised officer named in the warrant must—
- (a) announce that he or she is authorised by the warrant to enter the place; and
  - (b) give any person at the place an opportunity to allow entry to the place.
- (2) The authorised officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure—
- (a) the safety of any person; or

S. 174(1)  
amended by  
No. 11/2016  
s. 115(1).

S. 174(2)  
amended by  
No. 11/2016  
s. 115(2).

- (b) that the effective execution of the search warrant is not frustrated.

S. 175  
amended by  
No. 11/2016  
s. 116.

### **175 Copy of search warrant to be given to occupier**

If the occupier or another person who apparently represents the occupier is present at the place when a search warrant is being executed, the authorised officer must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the search warrant.

### **176 Receipt for seized things**

S. 176(1)  
amended by  
No. 11/2016  
s. 117(1).

- (1) If an authorised officer or Aboriginal heritage officer seizes a thing under this Act, he or she must, as soon as practicable, post to the person apparently in the possession or custody of the thing a receipt for the thing seized that—

- (a) identifies the thing; and
- (b) states the name of the authorised officer or Aboriginal heritage officer and the reason why the thing is being seized.

S. 176(1)(b)  
amended by  
No. 11/2016  
s. 117(2).

S. 176(2)  
amended by  
No. 11/2016  
s. 117(3).

- (2) If an authorised officer or Aboriginal heritage officer is unable to discover the identity of the owner or custodian of any thing seized under this Act, the authorised officer or Aboriginal heritage officer must post the receipt to the owner of the place, land or premises from which the thing was seized.

### **177 Security of seized things**

S. 177(1)  
amended by  
No. 11/2016  
s. 118(1).

- (1) If an authorised officer or Aboriginal heritage officer seizes a thing under this Act, he or she must take reasonable steps to ensure that the thing is kept in a secure manner.

- (2) A person must not tamper or interfere with any thing seized under this Act without the approval of an authorised officer or Aboriginal heritage officer.

S. 177(2)  
amended by  
No. 11/2016  
s. 118(2).

Penalty: 10 penalty units.

**178 Seizure of Aboriginal ancestral remains or object**

S. 178  
(Heading)  
amended by  
No. 11/2016  
s. 119(1).

- (1) This section applies if—

(a) an authorised officer or Aboriginal heritage officer seizes human remains or an object under this Act; and

S. 178(1)(a)  
amended by  
No. 11/2016  
s. 119(2).

(b) the authorised officer or Aboriginal heritage officer believes that the human remains are Aboriginal ancestral remains or that the object is an Aboriginal object.

S. 178(1)(b)  
substituted by  
No. 11/2016  
s. 119(3).

- (2) The authorised officer or Aboriginal heritage officer must ensure that, within 7 days after the seizure of the human remains or object, the human remains or object are transferred into the custody of the Secretary.

S. 178(2)  
amended by  
No. 11/2016  
s. 119(4).

- (3) If the human remains transferred to the Secretary under this section are Aboriginal ancestral remains, the Secretary must deal with the human remains in accordance with Part 2.

S. 178(3)  
amended by  
No. 11/2016  
s. 119(5).

- (4) If human remains or an object transferred to the Secretary under this section are not Aboriginal ancestral remains or an Aboriginal object, the Secretary must ensure that the human remains or the object are returned to the person from whom they were seized as soon as practicable.

S. 178(4)  
amended by  
No. 11/2016  
s. 119(6).

S. 179  
substituted by  
No. 11/2016  
s. 120.

### **179 Return of seized things**

- (1) Subject to section 178, this section applies if an authorised officer or Aboriginal heritage officer has seized a thing under this Act.
- (2) If an authorised officer or Aboriginal heritage officer is satisfied that—
  - (a) the thing is not required (or is no longer required) as evidence of an offence against this Act; and
  - (b) the continued retention of the thing is not necessary to prevent the thing being used to continue, or repeat, an offence against this Act; and
  - (c) the thing is not subject to a dispute as to ownership, which would be appropriately resolved by making an application under subsection (3) for the return of the thing—

the authorised officer or Aboriginal heritage officer must take reasonable steps to return the thing to the person from whom it was seized or to the owner if the person from whom it was seized is not entitled to possess it.
- (3) An application for the return of the thing may be made to the relevant tribunal or court by—
  - (a) the person from whom it was seized; or
  - (b) a person who claims to be the owner; or
  - (c) an authorised officer or Aboriginal heritage officer.
- (4) If the relevant tribunal or court is satisfied that—
  - (a) the thing is not required (or is no longer required) as evidence of an offence against this Act; and

(b) the continued retention of the thing is not necessary to prevent the thing being used to continue, or repeat, an offence against this Act—

the relevant tribunal or court may make an order for the return of the thing to the person from whom it was seized or to the owner if that person from whom it was seized is not entitled to possess it.

- (5) Nothing in this section affects a lien or other security over the thing.
- (6) Any thing seized under this Act and not claimed within 12 months after the seizure may be destroyed or sold and the proceeds of sale paid to the Consolidated Fund.
- (7) Before destroying or selling a seized thing under subsection (6), an authorised officer must—
- (a) attempt to return the thing under subsection (2); or
  - (b) make an application to the relevant tribunal or court under subsection (3).

**180 Authorised officer or Aboriginal heritage officer may require giving of name and address**

S. 180  
(Heading)  
amended by  
No. 11/2016  
s. 121(1).

- (1) This section applies if an authorised officer or Aboriginal heritage officer reasonably suspects that a person has committed, or is committing, an offence against this Act.
- (2) If the person is a natural person, the authorised officer or Aboriginal heritage officer may require the person to give to the authorised officer or Aboriginal heritage officer the person's full name and the address of the person's usual place of residence.

S. 180(1)  
amended by  
No. 11/2016  
s. 121(2).

S. 180(2)  
amended by  
No. 11/2016  
s. 121(3).

S. 180(3)  
amended by  
No. 11/2016  
s. 121(4).

(3) If the person is a body corporate, the authorised officer or Aboriginal heritage officer may require the person to give to the authorised officer or Aboriginal heritage officer the name under which the person carries on business and the address of the person's usual place of business.

S. 180(4)  
amended by  
No. 11/2016  
s. 121(5).

(4) When requiring a person to give the information referred to in subsections (2) and (3), the authorised officer or Aboriginal heritage officer must—

S. 180(4)(a)  
amended by  
No. 11/2016  
s. 121(6).

(a) inform the person of the grounds for the authorised officer's or Aboriginal heritage officer's suspicion in sufficient detail to allow the person to understand the nature of the offence or suspected offence; and

(b) warn the person that it is an offence to refuse or fail to comply with the requirement without a reasonable excuse.

(5) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under subsection (2) or (3).

Penalty: In the case of a natural person,  
10 penalty units;

In the case of a body corporate,  
50 penalty units.

S. 181  
(Heading)  
amended by  
No. 11/2016  
s. 122(1).

### **181 Authorised officer or Aboriginal heritage officer may require information**

S. 181(1)  
amended by  
No. 11/2016  
s. 122(2).

(1) An authorised officer or Aboriginal heritage officer who enters land or premises under this Division may—

S. 181(1)(a)  
amended by  
No. 11/2016  
s. 122(3).

(a) require any person present on the land or premises to give the authorised officer or Aboriginal heritage officer any assistance that the authorised officer or Aboriginal

heritage officer reasonably requires to exercise a power or perform a function or duty under this Act; and

- (b) require any person present on the land or premises to give the authorised officer or Aboriginal heritage officer any information and produce any document that the authorised officer or Aboriginal heritage officer reasonably requires to ascertain whether this Act is being complied with.

**S. 181(1)(b)**  
amended by  
**No. 11/2016**  
s. 122(4).

- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer or Aboriginal heritage officer under subsection (1).

**S. 181(2)**  
amended by  
**No. 11/2016**  
s. 122(5).

Penalty: In the case of a natural person,  
10 penalty units;

In the case of a body corporate,  
50 penalty units.

- (3) It is a reasonable excuse for a person to refuse or fail to give information or produce a document or do any other thing that the person is required to do under this section if the giving of the information or document or the doing of the thing would tend to incriminate the person.

- (4) At the time of requiring a person to do something under subsection (1), an authorised officer or Aboriginal heritage officer must advise the person that—

**S. 181(4)**  
amended by  
**No. 11/2016**  
s. 122(6).

- (a) unless the person has a reasonable excuse, it is an offence for the person to refuse or fail to comply with the requirement; and
- (b) it is a reasonable excuse for the person to refuse or fail to give information or produce any document or do any other thing that the person is required to do under this section if the giving of the information or document or

the doing of the thing would tend to  
incriminate the person.

S. 182  
(Heading)  
amended by  
No. 11/2016  
s. 123(1).

### **182 Authorised officer may take affidavits**

S. 182  
amended by  
No. 11/2016  
s. 123(2).

An authorised officer is authorised to take affidavits for any purpose relating or incidental to the performance of his or her functions or exercise of his or her powers under this Act.

### **183 Person must not give false information etc.**

A person must not, in response to a request under this Division—

- (a) give information that the person knows to be false or misleading in a material detail; or
- (b) produce a document that the person knows to be false or misleading in a material detail without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
300 penalty units.

## **Division 3—General**

### **184 Report to be given about entry**

S. 184(1)  
amended by  
No. 11/2016  
s. 124(1).

- (1) An authorised officer or Aboriginal heritage officer who enters a place under Division 2 in the absence of the occupier must give a report concerning the entry when, or as soon as practicable after, the authorised officer or Aboriginal heritage officer leaves the place to the occupier or apparent occupier for the time being of the place.



- (2) The report must be in writing and include—
- (a) the time of the entry and departure; and
  - (b) the purpose of the entry; and
  - (c) a description of things done while at the place, including whether the authorised officer or Aboriginal heritage officer took photographs, or made sketches, of anything at the place; and
  - (d) a summary of the authorised officer's or Aboriginal heritage officer's observations while at the place; and
  - (e) the procedure for contacting the authorised officer or Aboriginal heritage officer for further details of the entry.
- (3) In this section, *place* includes land, premises and a vehicle.

S. 184(2)(c)  
amended by  
No. 11/2016  
s. 124(2).

S. 184(2)(d)  
amended by  
No. 11/2016  
s. 124(3).

S. 184(2)(e)  
amended by  
No. 11/2016  
s. 124(4).

**185 Person must not impersonate, obstruct or hinder authorised officer or Aboriginal heritage officer**

S. 185  
(Heading)  
amended by  
No. 11/2016  
s. 125(1).

- (1) A person must not knowingly impersonate an authorised officer or Aboriginal heritage officer acting in his or her official capacity.

S. 185(1)  
amended by  
No. 11/2016  
s. 125(2).

Penalty: 60 penalty units, or 6 months imprisonment, or both.

- (2) A person must not, without reasonable excuse, obstruct or hinder an authorised officer or Aboriginal heritage officer while the authorised officer or Aboriginal heritage officer is exercising a power or carrying out a duty or function under this Act in accordance with this Act.

S. 185(2)  
amended by  
No. 11/2016  
s. 125(3).

Penalty: 120 penalty units, or 12 months imprisonment, or both.

S. 185(3)  
amended by  
No. 11/2016  
s. 125(4).

- (3) It is a defence to a prosecution for an offence under subsection (2) if the authorised officer or Aboriginal heritage officer failed to inform the person of the existence of the offence before the authorised officer or Aboriginal heritage officer attempted to exercise the power or carry out the duty or function.

### 186 Who may prosecute?

S. 186(1)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 1.2).

- (1) Subject to subsection (2), proceedings for an offence against this Act may only be taken by the Secretary or a police officer.
- (2) Proceedings for an indictable offence against this Act must not be commenced without the written consent of the Director of Public Prosecutions.

### 187 Evidence

S. 187(1)  
amended by  
No. 11/2016  
s. 126(1).

- (1) In proceedings for an offence against this Act involving the contravention of a stop order, a 24-hour stop order, an interim protection declaration or an ongoing protection declaration, the stop order, 24-hour stop order, interim protection declaration or ongoing protection declaration is evidence that the place or object in respect of which it was issued or made is an Aboriginal place or object.

S. 187(2)(a)  
amended by  
No. 11/2016  
s. 126(2).

- (2) In any proceedings for an offence against this Act—
- (a) a certificate signed by the Minister to the effect that a person named in the certificate is an authorised officer is evidence of that fact;
- (b) a certificate signed by the Minister administering the **Conservation, Forests and Lands Act 1987** to the effect that land identified in the certificate is Crown land is evidence of that fact;

- (c) a certificate signed by the Secretary to the effect that a cultural heritage permit has not been issued in respect of particular Aboriginal cultural heritage is evidence of that fact;
- (d) a certificate signed by the Secretary to the effect that an entry in respect of particular Aboriginal cultural heritage has been made in the Register is evidence of that fact;
- (e) a certificate signed by the Chief Executive Officer of the Museums Board to the effect that an object referred to in the certificate is an Aboriginal object is evidence of that fact.

**187A Criminal liability of officers of bodies corporate—  
failure to exercise due diligence**

S. 187A  
inserted by  
No. 11/2016  
s. 127.

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following sections are specified—
  - (a) section 14(1);
  - (b) section 17(3);
  - (c) section 19(2);
  - (d) section 21A(3);
  - (e) section 24(2);
  - (f) section 27(1), (3) and (5);
  - (g) section 28;
  - (h) section 33(1);
  - (i) section 34(1);

- (j) section 34A(5);
  - (k) section 41A;
  - (l) section 46(2), (4) and (6);
  - (m) section 67A(1), (3) and (5);
  - (n) subject to subsection (6), section 74G(1), (3) and (5);
  - (o) section 79G(1) and (2);
  - (p) section 79H(1), (3) and (5);
  - (q) section 83(3);
  - (r) section 95(1);
  - (s) section 95C(1);
  - (t) section 95F(1);
  - (u) section 102(1) and (3);
  - (v) section 108(1) and (3);
  - (w) section 110(6);
  - (x) section 147A(1) and (2).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.

- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) This section does not apply to an officer performing a statutory function for or on behalf of any public land manager performing any work for the Department of Environment, Land, Water and Planning.
- (7) In this section—
- officer*, in relation to a body corporate, means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
  - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

**187B Time for bringing proceedings**

- (1) Despite anything to the contrary in any Act, proceedings for an offence against this Act may be commenced within the period of 3 years after the commission of the alleged offence.
- (2) Subsection (1) does not apply to indictable offences.

S. 187B  
inserted by  
No. 11/2016  
s. 127.

## Part 12—General

### 188 Delegation

- (1) The Minister may, in writing, delegate any of his or her powers, functions or duties under this Act, other than this power of delegation—
  - (a) to the Secretary; or
  - (b) to a person employed in the Department.
- (2) The Secretary may, in writing, delegate any of his or her powers, functions or duties under this Act, other than this power of delegation, to a person employed in the Department.

S. 189  
(Heading)  
amended by  
No. 11/2016  
s. 128(1).

### 189 Heritage advisor

S. 189(1)  
amended by  
No. 11/2016  
s. 128(2).

- (1) A person may only be engaged as a heritage advisor under this Act if the person—

S. 189(1)(a)  
amended by  
No. 11/2016  
s. 128(3).

- (a) is appropriately qualified and experienced in a discipline directly relevant to the management of Aboriginal cultural heritage, such as anthropology, archaeology or history; or
- (b) has extensive experience or knowledge in relation to the management of Aboriginal cultural heritage.

S. 189(2)  
amended by  
No. 11/2016  
s. 128(4).

- (2) The Minister may make guidelines specifying appropriate qualifications and experience for the purposes of this section.
- (3) The Minister must consult with the Council before making any guidelines under this section.
- (4) The guidelines must be published in the Government Gazette.

### **190 Approval of forms**

- (1) The Secretary may approve forms for use under this Act.
- (2) The Secretary must cause all approved forms to be published on the Internet site for the Department.

### **191 Tax and rate remissions**

- (1) This section applies if the Minister believes on reasonable grounds that the conditions of—
  - (a) a cultural heritage agreement; or
  - (b) an ongoing protection declaration—  
so restrict the purposes for which a person may use land that compliance with the agreement or declaration is not economically feasible.
- (2) The Minister may make either or both of the following orders—
  - (a) an order remitting the whole or any part of the land tax payable by the owner of the land under the **Land Tax Act 1958**;
  - (b) an order remitting the whole or any part of any rates payable in respect of the land.
- (3) The Minister cannot make an order under subsection (2)(a) unless the Treasurer agrees to the order being made.
- (4) Before making an order under subsection (2)(b), the Minister must consult with the relevant rating authority.
- (5) The Minister cannot make an order under subsection (2)(b) unless one of the following agrees to the order being made—
  - (a) the rating authority; or

S. 191(1)(a)  
amended by  
No. 11/2016  
s. 129.

- (b) the Minister administering the legislation under which the rating authority is constituted.

## 192 Report on operation of Act

- (1) The Secretary must include in the annual report of the Department prepared under the **Financial Management Act 1994** a report on the operation of this Act.
- (2) The report must include—
- (a) information on the exercise and performance by authorised officers of their powers, functions and duties under this Act;
  - (b) non-identifying information on any complaints received in relation to authorised officers and the action taken to address those complaints.

S. 192(2)(a)  
amended by  
No. 11/2016  
s. 130(a).

S. 192(2)(b)  
amended by  
No. 11/2016  
s. 130(b).

S. 193  
repealed by  
No. 11/2016  
s. 131.

\* \* \* \* \*

## 194 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing standards for the conduct of assessments and the preparation of cultural heritage management plans under this Act;
  - (b) prescribing fees for evaluating, approving and amending cultural heritage management plans, applications for cultural heritage permits and applications for the certification of preliminary Aboriginal heritage tests;

S. 194(1)(b)  
substituted by  
No. 11/2016  
s. 132.



- |   |  |
|---|--|
| <p>(ba) prescribing fees to be charged by the Secretary, including fees in relation to allowing access to and maintaining the Register;</p>         | <p>S. 194(1)(ba)<br/>inserted by<br/>No. 11/2016<br/>s. 132.</p> |
| <p>(bb) prescribing standards for the purposes of Aboriginal cultural heritage land management agreements;</p>                                      | <p>S. 194(1)(bb)<br/>inserted by<br/>No. 11/2016<br/>s. 132.</p> |
| <p>(c) generally any other matter or thing that is authorised or required to be prescribed or necessary to be prescribed to carry out this Act.</p> |  |
- (2) The regulations—
- (a) may be of general or of specially limited application; and
  - (b) may differ according to differences in time, place or circumstance; and
  - (c) may require a matter affected by the regulations to be—
    - (i) in accordance with a specified standard or specified requirement; or
    - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
    - (iii) as specified in both subparagraphs (i) and (ii); and
  - (d) may apply, adopt or incorporate any matter contained in any document whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as in force at a particular time or as in force from time to time; and

- (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
- (f) may provide in a specified case or class of case for the exemption of activities or operations from all or any of the provisions of this Act, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
- (g) may be expressed as requiring the achievement of a specified object in relation to any particular subject matter.

## **Part 13—Repeal, saving and transitional provisions and amendment of Acts**

\* \* \* \* \*

**S. 195**  
repealed by  
**No. 29/2011**  
s. 3(Sch. 1  
item 1).

### **196 Saving and transitional provisions**

Schedule 1 contains saving and transitional provisions.

### **197 Validation provision**

**S. 197**  
repealed by  
**No. 29/2011**  
s. 3(Sch. 1  
item 1),  
new s. 197  
inserted by  
**No. 30/2011**  
s. 3.

- (1) A director, officer or employee of a RAP who on or before the validation date has made a decision or taken any action or purported to make a decision or take any action under section 63(1) in good faith on behalf of the RAP is by virtue of this section to be taken to have been authorised by the RAP to make the decision or take the action.
- (2) For the purposes of this Act, a decision or action or purported decision or action to which subsection (1) applies is a decision made or action taken by a RAP under section 63(1).
- (3) Any action, matter or thing taken, arising or done as a result or consequence of, or in reliance upon, a decision or action or purported decision or action to which subsection (1) applies whether under this Act or otherwise is taken to be, and to always have been, as valid and effective as it would have been if this section had been in force at the time that the action, matter or thing was taken, arose or was done.

(4) In this section—

**RAP** means any of the following bodies corporate registered as a registered Aboriginal party under Part 10—

- (a) Barengi Gadjin Land Council  
Aboriginal Corporation ICN 4395;
- (b) Dja Dja Wurrung Clans Aboriginal  
Corporation ICN 4421;
- (c) Gunaikurnai Land & Waters Aboriginal  
Corporation ICN 4768;
- (d) Gunditj Mirring Traditional Owners  
Aboriginal Corporation ICN 4672;
- (e) Martang Pty Ltd ACN 096 534 119;
- (f) Taungurung Clans Aboriginal  
Corporation ICN 4191;
- (g) Wathaurung Aboriginal Corporation  
ICN 3330;
- (h) Wurundjeri Tribe Land &  
Compensation & Cultural Heritage  
Council Inc A0005530A;
- (i) Yorta Yorta Nation Aboriginal  
Corporation ICN 3279;

**validation date** means the date on which the  
**Aboriginal Heritage Amendment Act 2011**  
comes into operation.

S. 198  
repealed by  
No. 29/2011  
s. 3(Sch. 1  
item 1),  
new s. 198  
inserted by  
No. 11/2016  
s. 133.

#### **198 Savings and transitional provisions—Aboriginal Heritage Amendment Act 2016**

- (1) Aboriginal people who became the owners of  
Aboriginal human remains under section 13 of  
this Act, as in force immediately before the  
commencement of section 11 of the **Aboriginal  
Heritage Amendment Act 2016**, are taken to be

the traditional owners of the remains on and after that commencement.

- (2) A person appointed as an inspector under section 160 of this Act, as in force immediately before the commencement of section 99 of the **Aboriginal Heritage Amendment Act 2016**, is taken to be an authorised officer on the commencement of that section.
- (3) To avoid doubt, the register kept under section 10(a) of the **Archaeological and Aboriginal Relics Preservation Act 1972** as in force immediately before the repeal of that Act is taken to form part of, and to have always formed part of, the Register established under section 144.

## Schedules

### Schedule 1—Saving and transitional provisions

Section 196

#### 1 Definitions

In this Schedule—

*commencement day* means the day on which section 195 of this Act comes into operation;

*Commonwealth Act* means the Aboriginal and Torres Strait Islander Heritage Preservation Act 1984 of the Commonwealth as in force immediately before the commencement day;

*old Act* means the **Archaeological and Aboriginal Relics Preservation Act 1972**.

#### 2 Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

#### 3 Continuation of old Act and regulations

If a provision of the old Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—

- (a) any other provision of the old Act necessary to give effect to that continued provision; and
- (b) any regulation made under the old Act for the purposes of that continued provision.

#### **4 Superseded references**

On and from the commencement day, in any Act (other than this Act or a provision of the old Act continued by this Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to the old Act is deemed to be a reference to the **Aboriginal Heritage Act 2006**; and
- (b) a reference to an archaeological relic or relic within the meaning of the old Act is deemed to be a reference to an Aboriginal object—

so far as it relates to any period on and from the commencement day, unless the context otherwise requires.

#### **5 Reports of discovery of Aboriginal human remains**

Without limiting section 17(4), it is also a defence to proceedings under section 17(3) if the person had reasonable cause to believe that a report had been made under section 21P of the Commonwealth Act in relation to the Aboriginal human remains.

#### **6 Permits and consents**

- (1) A reference in section 29 to a cultural heritage permit includes a reference to the following—
  - (a) a consent granted under section 21U(4) or 21U(5) of the Commonwealth Act and existing immediately before the commencement day;
  - (b) a consent granted by the Minister under section 21 of the old Act and existing immediately before the commencement day.

- (2) A reference in section 33 to a cultural heritage permit includes a reference to a consent to possess granted under section 26A of the old Act and existing immediately before the commencement day.
- (3) A reference in section 34 to a cultural heritage permit includes a reference to a consent granted under section 22 or 26A of the old Act and existing immediately before the commencement day.

#### **7 Cultural heritage agreements**

A reference in section 33 to a cultural heritage agreement includes a reference to an Aboriginal Cultural Heritage Agreement made under section 21K of the Commonwealth Act and existing immediately before the commencement day.

#### **8 Interim protection declarations**

Section 100 does not apply to the making of the first interim protection declaration under this Act in respect of a place or object if—

- (a) immediately before the commencement day there was a temporary declaration of preservation in force under section 21D of the Commonwealth Act in respect of the place or object; and
- (b) the interim protection declaration is in the same or similar terms as the temporary declaration of preservation.

#### **9 Ongoing protection declarations**

Section 106 does not apply to the making of an ongoing protection declaration under this Act in respect of a place or object if—



- (a) immediately before the commencement day there was a declaration of preservation in force under section 21E of the Commonwealth Act in respect of the place or object; and
- (b) the ongoing protection declaration is in the same or similar terms as the declaration of preservation.

### **10 Seizure of things**

Section 31 of the old Act continues to apply to any relic seized under that section and detained immediately before the commencement day as if the old Act had not been repealed.

### **11 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.
- (2) A provision mentioned in subclause (1) may be made retrospective in operation to a day on or after the commencement day.
- (3) A provision referred to in subclause (1) has effect despite anything to the contrary in any Act (other than this Schedule) or subordinate instrument.

\* \* \* \* \*

Sch. 2  
amended by  
No. 63/2006  
s. 61(Sch.  
items 1.3, 1.4),  
repealed by  
No. 29/2011  
s. 3(Sch. 1  
item 1).

## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 6 April 2006*

*Legislative Council: 3 May 2006*

The long title for the Bill for this Act was "to provide for the protection of Aboriginal cultural heritage in Victoria, to repeal the **Archaeological and Aboriginal Relics Preservation Act 1972** and for other purposes."

The **Aboriginal Heritage Act 2006**, No. 16/2006 was assented to on 9 May 2006 and came into operation on 28 May 2007: Government Gazette 24 May 2007 page 921.

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Aboriginal Heritage Act 2006** by Acts and subordinate instruments.

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### **Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006**

*Assent Date:* 29.8.06  
*Commencement Date:* S. 61(Sch. item 1) on 30.8.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Aboriginal Heritage Act 2006**

### **Coroners Act 2008, No. 77/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 129(Sch. 2 item 1) on 1.11.09: s. 2  
*Current State:* This information relates only to the provision/s amending the **Aboriginal Heritage Act 2006**

### **Resources Industry Legislation Amendment Act 2009, No. 6/2009**

*Assent Date:* 3.3.09  
*Commencement Date:* S. 42 on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Aboriginal Heritage Act 2006**

### **Major Transport Projects Facilitation Act 2009, No. 56/2009**

*Assent Date:* 29.9.09  
*Commencement Date:* S. 264(Sch. 2) on 1.11.09: Government Gazette 29.10.09 p. 2729  
*Current State:* This information relates only to the provision/s amending the **Aboriginal Heritage Act 2006**

### **Energy and Resources Legislation Amendment Act 2009, No. 57/2009**

*Assent Date:* 21.10.09  
*Commencement Date:* S. 42 on 30.6.10: Special Gazette (No. 255) 30.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Aboriginal Heritage Act 2006**

### **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 1) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Aboriginal Heritage Act 2006**

### **Offshore Petroleum and Greenhouse Gas Storage Act 2010, No. 10/2010**

*Assent Date:* 23.3.10  
*Commencement Date:* S. 800(Sch. 6 item 1) on 1.1.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Aboriginal Heritage Act 2006**

Aboriginal Heritage Act 2006  
No. 16 of 2006  
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**Energy and Resources Legislation Amendment Act 2010, No. 55/2010**

*Assent Date:* 14.9.10  
*Commencement Date:* S. 89 on 14.10.10: Government Gazette 14.10.10  
p. 2404  
*Current State:* This information relates only to the provision/s  
amending the **Aboriginal Heritage Act 2006**

**Traditional Owner Settlement Act 2010, No. 62/2010**

*Assent Date:* 21.9.10  
*Commencement Date:* Ss 92–94 on 23.9.10: Special Gazette (No. 382)  
22.9.10 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Aboriginal Heritage Act 2006**

**Statute Law Revision Act 2011, No. 29/2011**

*Assent Date:* 21.6.11  
*Commencement Date:* S. 3(Sch. 1 item 1) on 22.6.11: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Aboriginal Heritage Act 2006**

**Aboriginal Heritage Amendment Act 2011, No. 30/2011**

*Assent Date:* 29.6.11  
*Commencement Date:* S. 3 on 30.6.11: s. 2  
*Current State:* All of Act in operation

**Victoria Police Amendment (Consequential and Other Matters) Act 2014,  
No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 1) on 1.7.14: Special Gazette (No.  
200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s  
amending the **Aboriginal Heritage Act 2006**

**Aboriginal Heritage Amendment Act 2016, No. 11/2016**

*Assent Date:* 5.4.16  
*Commencement Date:* Ss 3–134 on 1.8.16: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Aboriginal Heritage Act 2006**

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### **3 Amendments Not in Operation**

There are no amendments which were Not in Operation at the date of this publication.

**4 Explanatory details**

No entries at date of publication.