

# Aboriginal Heritage Act 2006

Act No. 16/2006

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No. 16 of 2006

## Aboriginal Heritage Act 2006<sup>†</sup>

[Assented to 9 May 2006]

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

### PART 1—PRELIMINARY

#### **1. Purpose**

The main purpose of this Act is to provide for the protection of Aboriginal cultural heritage in Victoria.

#### **2. Commencement**

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

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### **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 Aboriginal people with traditional or familial links with Aboriginal cultural heritage in protecting that heritage;
- (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;

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

#### 4. Definitions

- (1) In this Act—

**"Aboriginal cultural heritage"** means  
Aboriginal places, Aboriginal objects and  
Aboriginal human remains;

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

- (a) a body, or the remains of a body, buried  
in a public cemetery (within the  
meaning of the **Cemeteries and  
Crematoria Act 2003**) 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;

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**"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 the Aboriginal people of 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 the Aboriginal people of 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 human remains;

**"Aboriginal person"** means a person belonging to the indigenous peoples of Australia, including the indigenous inhabitants of the Torres Strait Islands, and any descendants of those peoples;

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

**"Aboriginal tradition"** means—

- (a) the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people; and
- (b) any such traditions, 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;

**"buy"**, in relation to an Aboriginal object, means—

- (a) acquire by purchase, barter or exchange; or
- (b) agree, or offer, to acquire by purchase, barter or exchange; or
- (c) advertise for the purpose of engaging in purchase, barter or exchange;

**"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;

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

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

**"cultural heritage advisor"** means a person who has the qualifications or experience (or both) required under section 189;

**"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 for Victorian Communities;

**"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;

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- (e) the placing or relocation of a building or works on land;
  - (f) the construction or putting up for display of signs or hoardings;

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

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

**"inspector"** means an inspector appointed under Part 11;

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

**"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;

**"native title agreement"** means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements under the Native Title Act;

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

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

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

**"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;

**"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;



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- (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;

**"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;

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**"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;

**"stop order"** means a stop order issued under Part 6;

**"traditional or familial links"** has the meaning given by section 7;

**"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;

**"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 for Victorian Communities is changed, a reference in the definition of "Department" in sub-section (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.

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- (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 the Aboriginal people of Victoria.
- (2) For the purposes of sub-section (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 human remains to be re-interred or otherwise deposited on a permanent basis;
  - (g) a building or structure.

**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 sub-section (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

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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 sub-section (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 or familial links**

- (1) For the purposes of this Act, a person has traditional or familial links to 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 has traditional or familial links to Aboriginal human remains if the person is an Aboriginal person who—
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- (a) has responsibility under Aboriginal tradition for the remains; or
  - (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 has traditional or familial links to a secret or sacred object if the person is an Aboriginal person who—
- (a) has responsibility under Aboriginal tradition for the object; or
  - (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 1985**

Nothing in this Act affects the operation of the **Coroners Act 1985**.

**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.
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**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.

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**PART 2—OWNERSHIP AND CUSTODY OF ABORIGINAL  
CULTURAL HERITAGE**

**Division 1—Underlying Principles**

**12. Principles**

The following principles underlie this Part—

- (a) as far as practicable, Aboriginal cultural heritage should be owned by Aboriginal people with traditional or familial links to the area from which the Aboriginal cultural heritage is reasonably believed to have originated if it is any of the following—
  - (i) Aboriginal human remains;
  - (ii) secret or sacred Aboriginal objects;
- (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.

**Division 2—Aboriginal Human Remains**

**13. Ownership of Aboriginal human remains**

- (1) On the commencement of this section, Aboriginal people who, immediately before that commencement, had a traditional or familial link to Aboriginal human remains become the owners of the human remains if they are not already the owners.
  - (2) Sub-section (1) applies regardless of who may have owned the Aboriginal human remains before the commencement of this section.
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**14. Aboriginal human remains in custody of State**

On the commencement of this section, the Minister must ensure that Aboriginal human remains that are in the custody of the State are, as soon as practicable, transferred to the Museums Board for safekeeping.

**15. Return and custody of Aboriginal human remains by Museums Board**

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

**16. Return of Aboriginal human remains by other entities**

An Aboriginal person with traditional or familial links to Aboriginal human remains held or controlled by a university, museum or other institution may—

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- (a) on his or her own initiative, 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 person—

for the return of the Aboriginal human remains.

**17. Reporting Aboriginal human remains**

- (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 human remains.
- (2) This section does not apply to an Aboriginal person who is the rightful owner of the Aboriginal human remains.
- (3) A person to whom this section applies must—
  - (a) as soon as practicable, report the existence of the human remains to the Secretary; and
  - (b) give the Secretary all details about the location and nature of the human remains that the Secretary reasonably requires.

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

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

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

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**18. Secretary must determine how to act on report**

- (1) This section applies if the Secretary—
- (a) receives a report under section 17; and
  - (b) is satisfied that the report relates to Aboriginal human remains.
- (2) The Secretary must—
- (a) inform the person who gave the report of the person's obligations under section 19 (if applicable); and
  - (b) after taking reasonable steps to consult with any Aboriginal person or body the Secretary believes may have an interest in the Aboriginal human remains, determine the appropriate course of action to be taken in relation to the Aboriginal human remains.

**19. Transfer of Aboriginal human remains to Secretary**

- (1) This section applies to a person who—
- (a) is in possession of Aboriginal human remains that are not presently part of, or contained within, an Aboriginal place; and
  - (b) knows or ought reasonably to know, or is reckless as to whether, the human remains are Aboriginal human remains—

but does not apply—

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

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

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

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

**20. What must the Secretary do with transferred remains?**

If Aboriginal human remains are transferred to the Secretary under section 19, the Secretary must—

- (a) if there is an Aboriginal person or a registered Aboriginal party that the Secretary is satisfied is entitled to, and willing to take possession, custody or control of the remains, transfer the remains to that person or party; or
- (b) if there is no person or party of the kind referred to in paragraph (a), deal with the remains in accordance with the reasonable directions of the Council; or
- (c) in any other case, transfer the remains to the Museums Board for safekeeping.

**Division 3—Secret or Sacred Aboriginal Objects**

**21. Ownership of secret or sacred objects**

- (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, comes into the custody of a State entity.
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- (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.

**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 sub-section (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 sub-section (1).
  - (4) A person who owns an Aboriginal object is not limited to making only one request under sub-section (1).
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**23. Return of secret or sacred objects by other entities**

An Aboriginal person with traditional or familial links to a secret or sacred Aboriginal object held or controlled by a university, museum or other institution may—

- (a) on his or her own initiative, 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 person—

for the return of the secret or sacred Aboriginal object.

**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.

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- (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 of Victoria**

**26. Role of Museums Board of Victoria**

- (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.
- (3) Section 25 of the **Museums Act 1983** does not apply to Aboriginal human remains or secret or sacred Aboriginal objects.

**PART 3—PROTECTION OF ABORIGINAL CULTURAL  
HERITAGE**

**Division 1—Protection from Harm**

**27. Harming Aboriginal cultural heritage unlawful**

- (1) A person is guilty of an offence if—
    - (a) the person knowingly does an act that harms Aboriginal cultural heritage; and
    - (b) at the time the act was done the person knew that the thing harmed was 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.
  - (3) A person is guilty of an offence if—
    - (a) the person knowingly does an act that harms Aboriginal cultural heritage; and
    - (b) at the time the act was done the person was reckless as to whether the thing harmed was 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.
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- (5) A person is guilty of an offence if—
- (a) the person knowingly does an act that harms Aboriginal cultural heritage; and
  - (b) at the time the act was done the person was negligent as to whether the thing harmed was 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.

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.

**28. Doing an act likely to harm Aboriginal cultural heritage unlawful**

- (1) A person is guilty of an offence if—
- (a) the person knowingly does an act that is likely to harm Aboriginal cultural heritage; and
  - (b) at the time the act was done the person knew that the act 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, 1200 penalty units;
  - (b) in the case of a body corporate, 6000 penalty units.
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- (3) 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.

**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
  - (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 in accordance with this Act; or
- (c) the harm is the result of doing an act that is necessary because of an emergency.

**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.

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- (2) In addition to any other sentencing order 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—
- (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 rehabilitation of land that needs to be done because of the offence.

**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.

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- (2) Subject to sub-sections (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 human remains on or under the surface of the land acquired under this section.

**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**.

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**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.

- (2) A person who has an Aboriginal object in the person's possession does not commit an offence under sub-section (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.
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**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) buy or 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.

Note: A permit cannot be obtained in relation to Aboriginal human remains or secret or sacred Aboriginal objects: see section 37(1). The protection of Aboriginal human remains and secret or sacred Aboriginal objects is dealt with in Part 2.

- (2) Sub-section (1) does not apply—
- (a) to anything done in the course of preparing a cultural heritage management plan in accordance with Part 4; or
  - (b) to anything done in accordance with an approved cultural heritage management plan;  
or

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- (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.

**35. Forfeiture of Aboriginal object to Crown**

- (1) On conviction for an offence against section 34 involving an Aboriginal object, in addition to any other sentencing order 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.

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**Division 4—Cultural Heritage Permits**

**36. Application for cultural heritage permit**

- (1) A person may apply to the Secretary 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 scientific research on an Aboriginal place (including the removal of Aboriginal objects from that place for the purpose of that research);
  - (c) carry out an activity that will, or is likely to, harm Aboriginal cultural heritage;
  - (d) buy or sell an Aboriginal object;
  - (e) remove an Aboriginal object from Victoria.
- (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 must not be granted in respect of Aboriginal human remains or a secret or sacred Aboriginal object.
- (2) A cultural heritage permit must not be granted for an activity for which a cultural heritage management plan is required under this Act.



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**38. Referral of application to registered Aboriginal party**

- (1) This section applies if the Aboriginal cultural heritage in respect of which an application for a cultural heritage permit has been made is—
  - (a) an Aboriginal place located within an area for which there is a registered Aboriginal party; or
  - (b) an Aboriginal object that the Secretary reasonably believes to have originated from an area for which there is a registered Aboriginal party.
- (2) Before determining the application, the Secretary must give a copy of the application to each registered Aboriginal party for the area.
- (3) The Secretary may, in accordance with the regulations, forward part of the prescribed application fee (if any) to the registered Aboriginal party.

**39. Action by registered Aboriginal party on application**

- (1) If a copy of an application is given to a registered Aboriginal party under section 38, the registered Aboriginal party may, within 30 days after receiving the copy of the application, advise the Secretary in writing that it—
    - (a) does not object to the granting of the cultural heritage permit; or
    - (b) does not object if the cultural heritage permit is subject to the conditions specified by the registered Aboriginal party; or
    - (c) objects to the granting of the cultural heritage permit on any specified ground.
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- (2) The conditions specified by the registered Aboriginal party under sub-section (1)(b)—
  - (a) may include a condition that something be done to the satisfaction of the registered Aboriginal party; and
  - (b) must not include a condition that the applicant pay or give money or money's worth to the registered Aboriginal party.
- (3) Before giving the Secretary written advice under sub-section (1), the registered Aboriginal party may—
  - (a) request further information from the applicant for the cultural heritage permit; and
  - (b) if the application relates to Aboriginal cultural heritage that is located on or within land, ask the occupier of the land for permission to inspect the land to determine the likely impact on the Aboriginal cultural heritage of the activity for which the cultural heritage permit is sought.
- (4) A registered Aboriginal party may request the assistance of an inspector for the purpose of conducting an inspection under sub-section (3)(b).

**40. Determination of application**

- (1) The Secretary must consider every application for a cultural heritage permit.
  - (2) After considering an application, the Secretary may decide—
    - (a) to grant the cultural heritage permit; or
    - (b) to refuse to grant the cultural heritage permit.
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- (3) The Secretary must decide to refuse to grant the permit if a registered Aboriginal party objects within the time allowed by section 39 to the granting of the cultural heritage permit.
  - (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 Secretary 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.

**41. Conditions on cultural heritage permits**

- (1) In deciding to grant a cultural heritage permit, the Secretary must—
    - (a) include in the permit any condition that a registered Aboriginal party reasonably requires under section 39 to be included; and
    - (b) not include in the permit additional conditions that conflict with any condition included under paragraph (a).
  - (2) Subject to sub-section (1)(b), the Secretary may include in the cultural heritage permit any other conditions that the Secretary considers appropriate including—
    - (a) a condition that the activity authorised by the cultural heritage permit be supervised by a cultural heritage advisor; and
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- (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; and
  - (c) a condition that specified things are to be done to the satisfaction of the Secretary.
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**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) recommendations for measures to be taken 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.

**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 ground survey to detect the presence of Aboriginal cultural heritage; and

- (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 sub-section (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.

**Division 2—When is a Cultural Heritage Management Plan Required?**

**46. Mandatory cultural heritage management plans**

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

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- (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.

**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.
- (2) If a person receives a direction from the Minister under this section, the person must not knowingly commence the activity to which the direction relates without first preparing a cultural heritage management plan.

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

In the case of a body corporate,  
1200 penalty units.

- (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**.

**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 Development Act 1990**;
- (b) a work authority granted under section 19 of the **Extractive Industries Development Act 1995**;



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- (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 licence to construct and operate a pipeline under the **Pipelines Act 1967**;
  - (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 **Petroleum (Submerged Lands) Act 1982** of an environment plan;

**"earth resource law"** means any of the following—

- (a) the **Mineral Resources Development Act 1990**;
  - (b) the **Extractive Industries Development Act 1995**;
  - (c) the **Petroleum Act 1998**;
  - (d) the **Pipelines Act 2005**;
  - (e) the **Pipelines Act 1967**;
  - (f) the **Geothermal Energy Resources Act 2005**;
  - (g) the **Petroleum (Submerged Lands) Act 1982** and any regulations made under that Act;
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**"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;
- (d) an amendment to an earth resource authorisation 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
  - (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.

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**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) Sub-section (4) does not affect any period for making a decision that is preliminary to the decision whether to grant the statutory authorisation.
  - (6) This section applies despite anything to the contrary in any other Act.
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**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—
    - (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.
  - (2) The sponsor must give the notice referred to in sub-section (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
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- (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.

**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.

**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—

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- (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 intended date of commencement of preparation of the plan.
- (2) As soon as possible, the Secretary must give the sponsor the contact details of the registered Aboriginal party.
  - (3) Sub-section (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.

**58. Engagement of cultural heritage advisor**

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

**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.
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- (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 recommendations to be included in the plan;
- (c) participate in the conduct of the assessment.

**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.
- (3) An application under sub-section (2) must be accompanied by the relevant prescribed fee (if any).
- (4) The sponsor and each registered Aboriginal party referred to in sub-section (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.



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- (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 sub-section (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.

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

- (1) Subject to sub-section (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).

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- (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.
- (2) Within 30 days after receiving the application, the Secretary must decide whether to approve the plan or to refuse to approve the plan.
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- (3) In considering the application, the Secretary must consult with, and consider the views of, any Aboriginal person or Aboriginal body that the Secretary considers relevant to the application.
  - (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.
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- (2) Within 60 days after receiving the application, the Council must decide whether to approve or to refuse to approve the plan.
- (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.

**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.

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- (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.
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**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 rehabilitation of Aboriginal places or objects.
- (3) Despite sub-sections (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.

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**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 sub-section (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**").

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**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.



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**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**.

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**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 sub-section (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**.

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- (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**.
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**PART 6—CULTURAL HERITAGE AUDITS AND STOP ORDERS**

**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 inspector, the Minister reasonably believes that—
    - (a) the sponsor of an approved cultural heritage management plan has contravened, or is likely to contravene, the recommendations 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.
  - (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
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- (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**

- (1) A cultural heritage audit must be conducted by or under the direction of an inspector.
- (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 cultural heritage advisor to conduct the audit.
- (3) If the Secretary directs a sponsor or the holder of a cultural heritage permit to engage a cultural 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.

- (4) A person engaged as a cultural heritage advisor to conduct a cultural heritage audit must comply with—
  - (a) a direction of an inspector requiring the person to give the inspector a written report of the findings of the audit; and
  - (b) any other reasonable direction of the inspector.

- (5) If the Secretary directs a sponsor or the holder of a cultural heritage permit to engage a cultural heritage advisor to conduct a cultural heritage audit, the Secretary must pay the fees and reasonable expenses of the cultural heritage advisor in conducting the audit.

**84. Report of cultural heritage audit**

- (1) An inspector 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.
- (2) The report may—
- (a) identify any apparent contravention of an approved cultural heritage management plan or cultural heritage permit;
  - (b) recommend amendments to the recommendations of the approved cultural heritage management plan or the conditions of the cultural heritage permit applying to the activity to which the audit relates;
  - (c) recommend arrangements for the access of inspectors 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.
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**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 recommendations 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.

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**Division 2—Stop Orders**

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

- (1) The Minister or an inspector may issue a stop order to a person if—
  - (a) the person is carrying out, or proposes to carry out, an activity; and
  - (b) the Minister or inspector is satisfied that there are reasonable grounds for believing that the carrying out of the activity is harming, or is likely to harm, Aboriginal cultural heritage; and
  - (c) the Minister or inspector 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.
- (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 activity specified in the order; or
    - (b) prohibit the person from starting the activity 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.
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**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 activity 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 activity to which the stop order relates.
- (2) The Minister (or a person authorised by the Minister) or an inspector may enter any land or premises at any time for the purpose of delivering a stop order in accordance with this section.

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

- (1) Subject to sub-section (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 inspector—by the Minister or the inspector.
- (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.

**94. Further stop order**

If a stop order has been issued in respect of an activity, the Minister or an inspector may only issue a further stop order to a person in respect of that activity if the circumstances relating to that activity 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.

- (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.

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**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 sub-section (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.

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**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.

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**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.
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- (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.

**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.

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**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.



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**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.

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- (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.

**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.

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- (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 sub-section (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.

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**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 arising in relation to the evaluation of a cultural heritage management plan for which approval is sought under section 62.

**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**

- (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 must (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.
- (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.

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**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.

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- (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; or
- (c) refuse to approve the cultural heritage management plan.

**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.
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- (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 the Secretary—
- (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 the decision, the day on which the statement

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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.

**122. Parties to proceeding**

The applicant, any relevant registered Aboriginal party and the Secretary 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.
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- (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.

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- (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.
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**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) has, and can demonstrate, traditional or familial links to an area in Victoria; and
    - (b) is resident in Victoria; and
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- (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—
- (a) at the Minister's request or on its own initiative, to advise the Minister in relation to the protection of Aboriginal cultural heritage in Victoria, including advising the Minister about—
- (i) the cultural heritage significance of any Aboriginal human 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 inspectors under this Act;
  - (vi) any other matters referred to the Council by the Minister;
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- (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.

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- (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 develop measures to promote public awareness and understanding of Aboriginal cultural heritage in Victoria;
  - (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.

**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.



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**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.
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- (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.

**137. Co-opted members**

- (1) Subject to the approval of the Minister, the Council may co-opt additional members.
- (2) A co-opted member does not have any voting rights at a meeting of the Council.
- (3) A co-opted member does not form part of the quorum for a meeting of the Council.

**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 a further term 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.
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- (6) An election under this section is determined by a majority of votes of the members of the Council at the meeting.

**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.

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**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 sub-section (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.
  - (2) Without limiting sub-section (1), a member of the Council has a personal interest in a decision that is to be made by the Council if the decision affects—
    - (a) a registered Aboriginal party of which the member of the Council is a member; or
    - (b) a body that is an applicant for registration under Part 10 of which the member of the Council is a member; or
    - (c) a member of the family of the member of the Council.
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**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 inspectors of their powers under this Act;
  - (j) to facilitate research into the Aboriginal cultural heritage of Victoria;

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- (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.
- (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.

**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;
  - (b) all known private collections of Aboriginal objects in Victoria;

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- (c) all Aboriginal human remains reported to the Secretary under this Act or delivered to the Secretary or known to be in the possession or under the control of any person;
  - (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;
  - (f) all stop orders, interim protection declarations and ongoing protection declarations issued or made under this Act.
- (2) The Secretary may record in the Register any other information regarding Aboriginal cultural heritage that the Secretary considers necessary in order to protect or manage Aboriginal cultural heritage.

**146. Who may access the Register?**

- (1) 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;

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- (c) a person engaged as a cultural heritage advisor for a cultural heritage management plan or a cultural heritage audit—for the purpose of conducting research related to the cultural heritage management plan or the cultural heritage audit;
  - (d) a land owner—for the purpose of obtaining information on any Aboriginal cultural heritage that may relate to the owner's 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 cultural 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.
- (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.
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**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 sub-section (1) must be accompanied by the prescribed fee (if any).
  - (3) Subject to sub-section (4), the advice under sub-section (1) must include sufficient detail to identify the nature of the record.
  - (4) In providing advice under sub-section (1), the Secretary must not provide any information if providing the information would be likely to endanger Aboriginal cultural heritage.
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**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 repatriation 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;
- (g) to carry out any other functions conferred on registered Aboriginal parties by or under this Act.

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**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**

- (1) An application for registration as a registered Aboriginal party must be made to the Council in the approved 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.
- (2) An applicant for registration as a registered Aboriginal party must be a body corporate.

**151. Determination of application for registration**

- (1) The Council must determine an application for registration as a registered Aboriginal party within 120 days after receiving the application.

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- (2) If an applicant for registration is a registered native title holder for an area in respect of which a determination that native title exists has been made—
- (a) the Council must register the applicant as the registered Aboriginal party for that area; and
  - (b) no other applicant can be registered in respect of that area.
- (3) Subject to sub-section (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 Aboriginal people with traditional or familial links to 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.
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- (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.
  - (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.

**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—

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- (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 sub-section (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.

**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.

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- (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.
  - (2) The registration of a registered Aboriginal party is revoked if—
    - (a) the party ceases to be a body corporate; or
    - (b) the party is placed under administration or goes into liquidation.
  - (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
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- (b) a determination has been made that native title exists in the area or that part of the area (as the case requires).
  - (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 sub-section (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—
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- (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.
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**PART 11—ENFORCEMENT**

**Division 1—Inspectors**

**159. Functions of inspectors**

The functions of an inspector under this Act include—

- (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 inspector of his or her functions under this Act.

**160. Appointment of inspectors**

- (1) The Minister, after consulting with the Council, may, by writing, appoint any of the following as an inspector 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 inspector—
  - (a) has an appropriate level of knowledge and experience in the identification and protection of Aboriginal cultural heritage; and

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- (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 inspector under this Act.

**161. Re-appointment of inspectors**

The Minister, after consulting with the Council, may re-appoint a person as an inspector 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.

**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 inspector under this Act.
- (2) An inspector is deemed not to be an inspector under this Act during a period of suspension.

**163. Cessation of appointment**

The appointment of an inspector under this Act ceases immediately if—

- (a) the inspector ceases to be an employee under Part 3 of the **Public Administration Act 2004**; or
- (b) if the inspector was appointed under section 160(1)(b), the inspector 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**

- (1) The Secretary must issue an identity card to each inspector.
- (2) An identity card issued under sub-section (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—
  - (a) the person ceases to be an inspector; or
  - (b) the appointment of the person as an inspector is suspended.

Penalty: 5 penalty units.

**165. Inspector to produce identity card**

An inspector 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.

**Division 2—Powers of Inspectors**

**166. General power to enter land or premises**

- (1) Subject to this section, an inspector may enter any land or premises during normal business hours for the purposes of carrying out the inspector's functions under this Act.

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- (2) An inspector 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 inspector entering the land or premises without the occupier being present.

**167. Obtaining the consent of the occupier**

- (1) For the purposes of obtaining the consent of an occupier of land or premises under section 166 an inspector 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
  - (b) enter a part of the land or premises that the inspector reasonably considers members of the public would ordinarily be allowed to enter when they wish to contact the occupier.
- (2) When seeking to obtain the consent of an occupier of land or premises under section 166, an inspector must inform the occupier—
- (a) of the purpose of the entry; and
  - (b) if the inspector 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
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- (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 inspector who requested consent must, before entering the land or premises, ask the occupier to sign an acknowledgment stating—
- (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 inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- (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 inspector leaves the land or premises.
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- (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.

**168. Power to enter land or premises open to public**

An inspector may enter and inspect any part of land or premises which, at the time of the entry and inspection, are open to the public.

**169. Power to enter land or premises for audit**

An inspector 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**

- (1) This section sets out the search powers of an inspector who enters land or premises under section 166 or 168.
- (2) The inspector 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 inspector reasonably requires to exercise a power or perform a function or duty under this Act;
- (e) bring onto the land or premises any equipment or materials that the inspector reasonably requires to exercise a power or perform a function or duty under this Act.

**171. Seizure powers on entry without search warrant**

If an inspector enters land or premises under section 166 or 168, the inspector 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.

**172. Seizure power without consent**

Despite anything to the contrary in this Part, if an inspector enters land or premises in accordance with section 166, 168 or 169 the inspector may without the consent of the occupier—

- (a) seize an Aboriginal object if the inspector 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
- (b) seize Aboriginal human remains if the inspector reasonably believes that the remains are being held in contravention of section 19.



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**173. Search warrants**

- (1) An inspector may apply to a magistrate for the issue of a search warrant under this section in relation to a particular place.
  - (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 inspector and any member of the police force and other assistants the inspector 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.
  - (3) In addition to a thing named or described in the warrant under sub-section (2)(b), the inspector executing the warrant may seize any other thing, including an Aboriginal object, present at the place if the inspector 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
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- (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 inspector 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 inspector 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
  - (b) that the effective execution of the search warrant is not frustrated.

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**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 inspector 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**

- (1) If an inspector 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 inspector and the reason why the thing is being seized.
- (2) If an inspector is unable to discover the identity of the owner or custodian of any thing seized under this Act, the inspector must post the receipt to the owner of the place, land or premises from which the thing was seized.

**177. Security of seized things**

- (1) If an inspector 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 inspector.

Penalty: 10 penalty units.

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**178. Seizure of Aboriginal human remains or object**

- (1) This section applies if—
  - (a) an inspector seizes human remains or an object under this Act; and
  - (b) the inspector believes that the human remains are Aboriginal human remains or that the object is an Aboriginal object.
- (2) The inspector 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.
- (3) If the human remains transferred to the Secretary under this section are Aboriginal human remains, the Secretary must deal with the human remains in accordance with Part 2.
- (4) If human remains or an object transferred to the Secretary under this section are not Aboriginal human 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.

**179. Return of seized things**

Subject to section 178, if an inspector seizes a thing under this Act, the inspector must take reasonable steps to return the thing to the person from whom it was seized within 4 months after the date of seizure (the "**retention period**") unless proceedings have commenced within the retention period and those proceedings (including any appeal) have not been completed.

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**180. Inspector may require giving of name and address**

- (1) This section applies if an inspector reasonably suspects that a person has committed, or is committing, an offence against this Act.
- (2) If the person is a natural person, the inspector may require the person to give to the inspector the person's full name and the address of the person's usual place of residence.
- (3) If the person is a body corporate, the inspector may require the person to give to the inspector the name under which the person carries on business and the address of the person's usual place of business.
- (4) When requiring a person to give the information referred to in sub-sections (2) and (3), the inspector must—
  - (a) inform the person of the grounds for the inspector'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 sub-section (2) or (3).

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

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

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**181. Inspector may require information**

- (1) An inspector who enters land or premises under this Division may—
- (a) require any person present on the land or premises to give the inspector any assistance that the inspector 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 inspector any information and produce any document that the inspector reasonably requires to ascertain whether this Act is being complied with.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an inspector under sub-section (1).
- 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 sub-section (1), an inspector must advise the person that—
- (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
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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.

**182. Inspector may take affidavits**

An inspector 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**

- (1) An inspector 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 inspector leaves the place to the occupier or apparent occupier for the time being of the place.

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- (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 inspector took photographs, or made sketches, of anything at the place; and
  - (d) a summary of the inspector's observations while at the place; and
  - (e) the procedure for contacting the inspector for further details of the entry.
- (3) In this section, "**place**" includes land, premises and a vehicle.

**185. Person must not impersonate, obstruct or hinder inspector**

- (1) A person must not knowingly impersonate an inspector acting in his or her official capacity.
- Penalty: 60 penalty units, or 6 months imprisonment, or both.
- (2) A person must not, without reasonable excuse, obstruct or hinder an inspector while the inspector is exercising a power or carrying out a duty or function under this Act in accordance with this Act.
- Penalty: 120 penalty units, or 12 months imprisonment, or both.
- (3) It is a defence to a prosecution for an offence under sub-section (2) if the inspector failed to inform the person of the existence of the offence before the inspector attempted to exercise the power or carry out the duty or function.



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**186. Who may prosecute?**

- (1) Subject to sub-section (2), proceedings for an offence against this Act may only be taken by the Secretary or a member of the police force.
- (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**

- (1) In proceedings for an offence against this Act involving the contravention of a stop order, an interim protection declaration or an ongoing protection declaration, the 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.
  - (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 inspector 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;
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- (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.
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**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.

**189. Cultural heritage advisor**

- (1) A person may only be engaged as a cultural heritage advisor under this Act if the person—
    - (a) is appropriately qualified 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.
  - (2) The Minister may make guidelines specifying appropriate qualifications 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.
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**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 to which the State is a party; 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 sub-section (2)(a) unless the Treasurer agrees to the order being made.
  - (4) Before making an order under sub-section (2)(b), the Minister must consult with the relevant rating authority.
  - (5) The Minister cannot make an order under sub-section (2)(b) unless one of the following agrees to the order being made—
    - (a) the rating authority; or
-

- 
- (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 inspectors of their powers, functions and duties under this Act;
  - (b) non-identifying information on any complaints received in relation to inspectors and the action taken to address those complaints.

**193. Review of operation of Act**

Before the fifth anniversary of the commencement of this section, the Minister must conduct a review of the operation of this Act to determine its efficacy and efficiency.

**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 cultural heritage management plans or applications for cultural heritage permits;
  - (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.
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s. 194

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- (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 sub-paragraphs (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.
-

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Acts

s. 195

**PART 13—REPEAL, SAVING AND TRANSITIONAL  
PROVISIONS AND AMENDMENT OF ACTS**

**195. Repeal**

**The Archaeological and Aboriginal Relics  
Preservation Act 1972 is repealed.**

See:  
Act No.  
8273.  
Reprint No. 5  
as at  
22 April 1999  
and  
amending  
Act No.  
108/2004.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

**196. Saving and transitional provisions**

Schedule 1 contains saving and transitional  
provisions.

**197. Amendment of the Victorian Civil and  
Administrative Tribunal Act 1998**

In Schedule 1 to the **Victorian Civil and  
Administrative Tribunal Act 1998**, after Part 1  
insert—

**"PART 1A—ABORIGINAL HERITAGE ACT 2006**

**2A. Constitution of Tribunal**

The Tribunal is to be constituted for the purposes of a  
proceeding under Part 8 of the **Aboriginal Heritage  
Act 2006** by—

- (a) one member who has sound knowledge of, and  
experience in, Aboriginal cultural heritage; or
- (b) if it is constituted by 2 members, at least one  
member who has sound knowledge of, and  
experience in, Aboriginal cultural heritage; or

See:  
Act No.  
53/1998.  
Reprint No. 4  
as at  
1 March 2006  
and  
amending  
Acts Nos  
16/2005,  
49/2005,  
57/2005,  
61/2005 and  
97/2005.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

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**s. 198**

Part 13—Repeal, Saving and Transitional Provisions and Amendment of  
Acts

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- (c) if it is constituted by 3, 4 or 5 members, at least 2 members who have sound knowledge of, and experience in, Aboriginal cultural heritage."

**198. Consequential amendments**

On the coming into operation of an item in Schedule 2, the Act referred to in the heading to that item is amended as set out in that item.

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**SCHEDULES**

**SCHEDULE 1**

Section 196

**SAVING AND TRANSITIONAL PROVISIONS**

**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—

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Sch. 1

- 
- (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.

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**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 sub-clause (1) may be made retrospective in operation to a day on or after the commencement day.
  - (3) A provision referred to in sub-clause (1) has effect despite anything to the contrary in any Act (other than this Schedule) or subordinate instrument.
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**SCHEDULE 2**

Section 198

**CONSEQUENTIAL AMENDMENTS**

**1. Alcoa (Portland Aluminium Smelter) Act 1980**

(1) **Insert** the following heading to section 13—

**"Exemption from Aboriginal Heritage Act 2006"**.

(2) In section 13, for "The provisions of the **Archaeological and Aboriginal Relics Preservation Act 1972** shall not apply—" **substitute** "The **Aboriginal Heritage Act 2006** does not apply—".

**2. Confiscation Act 1997**

In Schedule 1, for item 3 **substitute**—

"3. An offence against section 34(1)(c) of the **Aboriginal Heritage Act 2006** (buying or selling an Aboriginal object).".

**3. Extractive Industries Development Act 1995**

(1) For sections 10(c) and 10(d) **substitute**—

"(c) land in respect of which an ongoing protection declaration is in force under the **Aboriginal Heritage Act 2006**".

(2) In section 11(2)(a), for "**Archaeological and Aboriginal Relics Preservation Act 1972**" **substitute** "**Aboriginal Heritage Act 2006**".

(3) For section 11(2)(b) **substitute**—

"(b) any registered Aboriginal party (within the meaning of the **Aboriginal Heritage Act 2006**) for an area to which the application relates.".

**4. Geothermal Energy Resources Act 2005**

In section 87, for "**Archaeological and Aboriginal Relics Preservation Act 1972** or the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 of the Commonwealth" **substitute** "**Aboriginal Heritage Act 2006**".

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**5. Mineral Resources Development Act 1990**

- (1) In section 4(1)—
- (a) the definitions of "Aboriginal object" and "Aboriginal place" are **repealed**; and
  - (b) in the definition of "low impact exploration", for paragraph (a)(iv) **substitute**—
    - "(iv) without disturbing any Aboriginal cultural heritage within the meaning of the **Aboriginal Heritage Act 2006** that is recorded in the Victorian Aboriginal Heritage Register under that Act; and".
- (2) For sections 6(1)(c) and 6(1)(d) **substitute**—
- "(c) land in respect of which an ongoing protection declaration is in force under the **Aboriginal Heritage Act 2006**;"
- (3) In section 18(a), for "**Archaeological and Aboriginal Relics Preservation Act 1972**" **substitute** "**Aboriginal Heritage Act 2006**".
- (4) For section 18(b) **substitute**—
- "(b) any registered Aboriginal party (within the meaning of the **Aboriginal Heritage Act 2006**) for an area to which the application relates."
- (5) For sections 45(1)(a)(xi) and 45(1)(a)(xii) **substitute**—
- "(xi) land in respect of which an ongoing protection declaration is in force under the **Aboriginal Heritage Act 2006**; or
  - (xii) any Aboriginal place within the meaning of the **Aboriginal Heritage Act 2006** that is recorded in the Victorian Aboriginal Heritage Register under that Act; or".
- (6) Section 45(6) is **repealed**.
- (7) For section 58(1)(d) **substitute**—
- "(d) disturb any Aboriginal cultural heritage (within the meaning of the **Aboriginal Heritage Act 2006**) on the land."
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(8) For section 62(1)(d) **substitute—**

"(d) disturb any Aboriginal cultural heritage (within the meaning of the **Aboriginal Heritage Act 2006**) on the land."

**6. Petroleum Act 1998**

In section 146, for "**Archaeological and Aboriginal Relics Preservation Act 1972** nor the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 of the Commonwealth" **substitute "Aboriginal Heritage Act 2006"**.

**7. Very Fast Train (Route Investigation) Act 1989**

For section 22 **substitute—**

**"22. Application of Aboriginal Heritage Act 2006**

Nothing in this Act affects the operation of the **Aboriginal Heritage Act 2006**."

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Endnotes

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**ENDNOTES**

† *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."

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