

Authorised Version

Aboriginal Heritage Amendment Act 2016

No. 11 of 2016

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Authorised Version



Victoria

**Aboriginal Heritage Amendment Act
2016[†]**

No. 11 of 2016

[Assented to 5 April 2016]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to amend the **Aboriginal Heritage Act 2006**—
 - (i) to improve the reporting requirements in relation to Aboriginal cultural heritage; and

- (ii) to include provisions regarding Aboriginal intangible heritage; and
- (iii) to establish an Aboriginal Cultural Heritage Fund; and
- (iv) to provide for the further protection of Aboriginal cultural heritage; and
- (b) to amend the **Borrowing and Investment Powers Act 1987**, the **Cemeteries and Crematoria Act 2003** and the **Coroners Act 2008** to make other amendments to provide for the further protection of Aboriginal cultural heritage.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 August 2016, it comes into operation on that day.

Part 2—Amendment of the Aboriginal Heritage Act 2006

3 Substitution of section 1

For section 1 of the **Aboriginal Heritage Act 2006** substitute—

"1 Purposes

The main purposes of this Act are—

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

4 Objectives

- (1) For section 3(c) of the **Aboriginal Heritage Act 2006** substitute—

"(c) to accord appropriate status to traditional owners, including a preference to appoint traditional owner bodies corporate as registered Aboriginal parties;"

- (2) In section 3(j) of the **Aboriginal Heritage Act 2006**, for "heritage." substitute "heritage;"

- (3) After section 3(j) of the **Aboriginal Heritage Act 2006** insert—

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

5 Definitions

- (1) In section 4(1) of the **Aboriginal Heritage Act 2006** insert the following definitions—

"Aboriginal ancestral 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 that is still used for the interment of human remains; or
- (b) an object made from human hair or from any other bodily material that is not readily recognisable as being bodily material; or
- (c) any human tissue—
 - (i) dealt with or to be dealt with in accordance with the **Human Tissue Act 1982** or any other law of a State, a Territory or the Commonwealth relating to

medical treatment or the use of
human tissue; or

- (ii) otherwise lawfully removed from
an Aboriginal person;

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

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

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

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

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

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

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

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

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

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

Department means the Department of Premier
and Cabinet;

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

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

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

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

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

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

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

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

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

public land manager means any of the following—

- (a) a committee of management;
- (b) the Secretary to the Department of Environment, Land, Water and Planning;
- (c) a municipal council;
- (d) Parks Victoria;

- (e) VicRoads;
- (f) VicTrack;
- (g) a water authority;

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

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

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

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

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

survey for Aboriginal cultural heritage means—

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

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

traditional owner has the meaning given by section 7;

university means any of the following—

- (a) Australian Catholic University;
- (b) Deakin University;
- (c) Federation University Australia;
- (d) La Trobe University;
- (e) Monash University;
- (f) Royal Melbourne Institute of Technology;
- (g) Swinburne University of Technology;
- (h) The University of Melbourne;
- (i) Victoria University;

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

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

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

- (2) In section 4(1) of the **Aboriginal Heritage Act 2006**, in the definition of *Aboriginal cultural heritage*, for "human" substitute "ancestral".
- (3) In section 4(1) of the **Aboriginal Heritage Act 2006**, in the definition of *Aboriginal object*—
 - (a) in paragraph (a)(ii), for "the Aboriginal people of Victoria" substitute "Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria"; and

- (b) in paragraph (b)(ii), for "the Aboriginal people of Victoria" **substitute** "Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria"; and
- (c) in paragraph (d), for "human" **substitute** "ancestral".
- (4) In section 4(1) of the **Aboriginal Heritage Act 2006**, in the definition of *Aboriginal tradition*—
- (a) in paragraph (a), after "traditions," **insert** "knowledge,"; and
- (b) in paragraph (b), after "traditions," **insert** "knowledge,".
- (5) In section 4(1) of the **Aboriginal Heritage Act 2006**, for the definition of *harm* **substitute**—
"harm, in relation to Aboriginal cultural heritage, includes damage, deface, desecrate, destroy, disturb, injure or interfere with;"
- (6) In section 4(1) of the **Aboriginal Heritage Act 2006**, in the definition of *native title agreement*, after "Act" **insert** "that is made between a group of Aboriginal persons and the Minister on behalf of the State".
- (7) In section 4(1) of the **Aboriginal Heritage Act 2006**, in the definition of *sell*—
- (a) in paragraph (d), for "exchange;" **substitute** "exchange; or"; and
- (b) after paragraph (d) **insert**—
"(e) do anything referred to in paragraphs (a) to (d) through an online auction house;"

- (8) In section 4(1) of the **Aboriginal Heritage Act 2006**, in the definition of *stop order*, after "under" insert "Division 2 of".
- (9) In section 4(1) of the **Aboriginal Heritage Act 2006**, the definitions of *Aboriginal person*, *Aboriginal human remains*, *buy*, *cultural heritage advisor*, *Department*, *inspector* and *traditional or familial links* are repealed.
- (10) In section 4(2) of the **Aboriginal Heritage Act 2006**, for "Department for Victorian Communities" substitute "Department of Premier and Cabinet".

6 What is an Aboriginal place?

- (1) In section 5(1) of the **Aboriginal Heritage Act 2006**, for "the Aboriginal people of Victoria" substitute "Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria".
- (2) In section 5(2)(f) of the **Aboriginal Heritage Act 2006**, for "human" substitute "ancestral".

7 Substitution of section 7

For section 7 of the **Aboriginal Heritage Act 2006** substitute—

"7 Traditional owners

- (1) For the purposes of this Act, a person is a traditional owner of an area if—
 - (a) the person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and
 - (b) the person—
 - (i) has responsibility under Aboriginal tradition for significant Aboriginal places located in, or

significant Aboriginal objects
originating from, the area; or

- (ii) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from, the area.

- (2) For the purposes of this Act, a person is a traditional owner of Aboriginal ancestral remains if the person is an Aboriginal person who—

- (a) has responsibility under Aboriginal tradition for the remains; and
- (b) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for the remains.

- (3) For the purposes of this Act, a person is a traditional owner of a secret or sacred object if the person is an Aboriginal person who—

- (a) has responsibility under Aboriginal tradition for the object; and
- (b) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for the object."

8 Act does not affect operation of Coroners Act 2008

In section 9 of the **Aboriginal Heritage Act 2006**, for "Nothing" substitute "Subject to section 19A, nothing".

9 Principles

- (1) In section 12(a) of the **Aboriginal Heritage Act 2006**, for "owned by Aboriginal people with traditional or familial links to" **substitute** "owned by and returned to traditional owners of".
- (2) In section 12(a)(i) of the **Aboriginal Heritage Act 2006**, for "human" **substitute** "ancestral".
- (3) After section 12(a) of the **Aboriginal Heritage Act 2006 insert**—
 - "(aa) as far as practicable, registered Aboriginal intangible heritage should be owned by any registered Aboriginal party, registered native title holder or traditional owner group entity applying to register that heritage on behalf of traditional owners of the area from which the Aboriginal intangible heritage is reasonably believed to have originated;"
- (4) At the end of section 12 of the **Aboriginal Heritage Act 2006 insert**—
 - "(2) In this section—

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

10 Aboriginal ancestral remains

For the heading to Division 2 of Part 2 of the **Aboriginal Heritage Act 2006 substitute**—

"Division 2—Aboriginal ancestral remains

Note

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

11 Repeal of section 13

Section 13 of the **Aboriginal Heritage Act 2006** is **repealed**.

12 Substitution of section 14

For section 14 of the **Aboriginal Heritage Act 2006** substitute—

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

- (1) Within 2 years of the commencement of section 12 of the **Aboriginal Heritage Amendment Act 2016**, a public entity or a university must—
 - (a) notify the Council in writing of any Aboriginal ancestral remains that are in its possession on the commencement of that section; and
 - (b) give a report in the prescribed form to the Council, including a list and details of the Aboriginal ancestral remains.

Penalty: 3000 penalty units.

Note

Section 187A applies to an offence against this subsection.

- (2) The Council must, within 90 days of receiving a report under subsection (1), give notice of the report—
 - (a) to any relevant traditional owner of the Aboriginal ancestral remains referred to in the report; and
 - (b) to any relevant registered Aboriginal party.

- (3) A public entity or a university must take all reasonable steps to transfer the Aboriginal ancestral remains into the custody of the Council as soon as practicable after giving a report to the Council under subsection (1).
- (4) This section applies in addition to any other provision of this Act relating to the reporting and transfer of Aboriginal ancestral remains to the Council.
- (5) In this section—

public entity has the same meaning as in the **Public Administration Act 2004**."

13 Repeal of sections 15 and 16

Sections 15 and 16 of the **Aboriginal Heritage Act 2006** are repealed.

14 Reporting of Aboriginal ancestral remains by persons other than coroner

- (1) In the heading to section 17 of the **Aboriginal Heritage Act 2006**, for "human remains" substitute "ancestral remains by persons other than coroner".
- (2) In section 17(1)(b) of the **Aboriginal Heritage Act 2006**, for "Aboriginal human" substitute "Aboriginal ancestral".
- (3) For section 17(2) of the **Aboriginal Heritage Act 2006** substitute—

- "(2) This section does not apply to an Aboriginal person—
- (a) who is the rightful owner of the Aboriginal ancestral remains; or
 - (b) who reasonably believes that transferring the remains would be contrary to Aboriginal tradition."

- (4) In section 17(3)(a) of the **Aboriginal Heritage Act 2006**, for "Secretary" **substitute** "Council".
- (5) In section 17(3)(b) of the **Aboriginal Heritage Act 2006**, for "Secretary" (where twice occurring) **substitute** "Council".
- (6) At the foot of section 17(3) of the **Aboriginal Heritage Act 2006** insert—
"Note
Section 187A applies to an offence against this subsection."
.
- (7) In section 17(4) of the **Aboriginal Heritage Act 2006**, for "Secretary" **substitute** "Council".

15 Council must determine how to act on report

- (1) In the heading to section 18 of the **Aboriginal Heritage Act 2006**, for "Secretary" **substitute** "Council".
- (2) In section 18(1) of the **Aboriginal Heritage Act 2006**, for "Secretary" **substitute** "Council".
- (3) In section 18(1)(b) of the **Aboriginal Heritage Act 2006**, for "human" **substitute** "ancestral".
- (4) In section 18(2) of the **Aboriginal Heritage Act 2006**, for "Secretary" **substitute** "Council".
- (5) In section 18(2)(b) of the **Aboriginal Heritage Act 2006**—
 - (a) for "Secretary" **substitute** "Council"; and
 - (b) for "human" (where twice occurring) **substitute** "ancestral".

16 Transfer of Aboriginal ancestral remains to Council

- (1) In the heading to section 19 of the **Aboriginal Heritage Act 2006**, for "human remains to Secretary" **substitute** "ancestral remains to Council".

- (2) In section 19(1)(a) of the **Aboriginal Heritage Act 2006**, for "human" **substitute** "ancestral".
- (3) In section 19(1)(b) of the **Aboriginal Heritage Act 2006**, for "human remains are Aboriginal human" **substitute** "Aboriginal ancestral remains are Aboriginal ancestral".
- (4) In section 19(1)(d) of the **Aboriginal Heritage Act 2006**, for "human remains." **substitute** "ancestral remains; or".
- (5) After section 19(1)(d) of the **Aboriginal Heritage Act 2006 insert—**
 - "(e) to an Aboriginal person who reasonably believes that transferring the Aboriginal ancestral remains would be contrary to Aboriginal tradition; or
 - (f) to a coroner."
- (6) In section 19(2) of the **Aboriginal Heritage Act 2006—**
 - (a) for "human" **substitute** "ancestral"; and
 - (b) for "Secretary" **substitute** "Council".
- (7) At the foot of section 19(2) of the **Aboriginal Heritage Act 2006 insert—**

"Note
Section 187A applies to an offence against this subsection."

17 New section 19A inserted

After section 19 of the **Aboriginal Heritage Act 2006 insert—**

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

A coroner who has reported to the Council that a body is, or is likely to be, Aboriginal ancestral remains must, as soon as

practicable, transfer the remains into the custody of the Council.

Note

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

18 Substitution of section 20 and new section 20A inserted

For section 20 of the **Aboriginal Heritage Act 2006** substitute—

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

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

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

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

19 Ownership of secret or sacred objects before the Aboriginal Heritage Amendment Act 2016

- (1) In the heading to section 21 of the **Aboriginal Heritage Act 2006**, after "objects" insert "before the Aboriginal Heritage Amendment Act 2016".
- (2) In section 21(1)(b) of the **Aboriginal Heritage Act 2006**, after "that commencement" insert "but before the commencement of section 20 of the **Aboriginal Heritage Amendment Act 2016**".

20 New sections 21A and 21B inserted

After section 21 of the **Aboriginal Heritage Act 2006** insert—

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

- (1) This section applies to an Aboriginal object that is a secret or sacred object that—
 - (a) is, on the commencement of this section, in the custody of a person (other than an Aboriginal person who is the rightful owner of the object) or, after that commencement, comes into the custody of that person; or

- (b) on or after the commencement of this section, comes into the custody of a State entity.
- (2) The traditional owners of an area in which the object is reasonably believed to have originated, if they are not already the owners of the object, become the owners—
- (a) if the object was in the custody of a person (other than an Aboriginal person who is the rightful owner of the object) on the commencement of this section, on that commencement; or
 - (b) if the object was in the custody of a State entity on the commencement of this section, on that commencement; or
 - (c) in any other case, when the object comes into the custody of the person or the State entity.
- (3) A person who has custody of an Aboriginal object that is a secret or sacred object but who is not the owner of the object must, as soon as practicable, take all reasonable steps to transfer the object into the custody of the Council.

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

Note

Section 187A applies to an offence against this subsection.

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

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

21 Return of secret or sacred objects by other entities

- (1) In section 23 of the **Aboriginal Heritage Act 2006**, for "An Aboriginal person with traditional or familial links to" **substitute** "A traditional owner of".
- (2) In section 23(a) of the **Aboriginal Heritage Act 2006**, for "his or her own initiative" **substitute** "the initiative of the traditional owner".
- (3) In section 23(b) of the **Aboriginal Heritage Act 2006**, for "person" **substitute** "traditional owner".

22 Role of the Museums Board

In the heading to Division 5 of Part 2 of the **Aboriginal Heritage Act 2006** omit "of Victoria".

23 Role of Museums Board

- (1) In the heading to section 26 of the **Aboriginal Heritage Act 2006** omit "of Victoria".
- (2) After section 26(2) of the **Aboriginal Heritage Act 2006** insert—

"(2A) Subsection (1) does not apply to any Aboriginal ancestral remains or secret or sacred Aboriginal objects transferred to the Museums Board for safekeeping under this Act."

- (3) In section 26(3) of the **Aboriginal Heritage Act 2006**, for "human" substitute "ancestral".

24 Harming Aboriginal cultural heritage unlawful

- (1) For section 27(1) of the **Aboriginal Heritage Act 2006** substitute—

"(1) A person is guilty of an offence if—

- (a) the person by an act or omission harms Aboriginal cultural heritage; and
- (b) at the time of the act or omission the person knew that the act or omission was likely to harm Aboriginal cultural heritage."

- (2) For section 27(3) of the **Aboriginal Heritage Act 2006** substitute—

"(3) A person is guilty of an offence if—

- (a) the person by an act or omission harms Aboriginal cultural heritage; and
- (b) at the time of the act or omission the person was reckless as to whether the act or omission was likely to harm Aboriginal cultural heritage."

(3) For section 27(5) of the **Aboriginal Heritage Act 2006 substitute**—

"(5) A person is guilty of an offence if—

- (a) the person by an act or omission harms Aboriginal cultural heritage; and
- (b) at the time of the act or omission the person was negligent as to whether the act or omission was likely to harm Aboriginal cultural heritage."

(4) For the note at the foot of section 27 of the **Aboriginal Heritage Act 2006 substitute**—

"Notes

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

25 Substitution of section 28

For section 28 of the **Aboriginal Heritage Act 2006 substitute**—

"28 A person must not harm Aboriginal cultural heritage

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

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

Note

Section 187A applies to an offence against this section."

26 When is harm permitted?

- (1) After section 29(a)(i) of the **Aboriginal Heritage Act 2006** insert—

"(ia) in accordance with an Aboriginal cultural heritage land management agreement; or".

- (2) In section 29(b) of the **Aboriginal Heritage Act 2006**, after "plan" insert "or an Aboriginal cultural heritage land management agreement".

- (3) In section 29(c) of the **Aboriginal Heritage Act 2006**, for "emergency." substitute "emergency; or".

- (4) After section 29(c) of the **Aboriginal Heritage Act 2006** insert—

"(d) the person is a coroner or a person assisting the coroner who does the act in the course of determining whether human remains are Aboriginal ancestral remains.".

27 Order to repair or restore Aboriginal cultural heritage

In section 30(3) of the **Aboriginal Heritage Act 2006**, for "rehabilitation" substitute "restoration".

28 Acquisition of Aboriginal place

In section 31(4) of the **Aboriginal Heritage Act 2006**, for "human" substitute "ancestral".

29 Control of activities

- (1) In section 34(1)(c) of the **Aboriginal Heritage Act 2006** omit "buy or".

(2) For the note at the foot of section 34(1) of the **Aboriginal Heritage Act 2006 substitute—**

"Notes

1. Certain permits cannot be obtained in relation to Aboriginal ancestral remains or secret or sacred Aboriginal objects: see section 37(1). The protection of Aboriginal ancestral remains and secret or sacred Aboriginal objects is dealt with in Part 2.
 2. Section 187A applies to an offence against this subsection."
- (3) In section 34(2)(a) of the **Aboriginal Heritage Act 2006**, after "Part 4" **insert** "or an Aboriginal cultural heritage land management agreement".
- (4) In section 34(2)(b) of the **Aboriginal Heritage Act 2006**, after "plan" **insert** "or an Aboriginal cultural heritage land management agreement".

30 New section 34A inserted

After section 34 of the **Aboriginal Heritage Act 2006 insert—**

"34A Surveys for Aboriginal cultural heritage

- (1) A person intending to carry out a survey for Aboriginal cultural heritage must give written notice of the person's intention to carry out the survey—
 - (a) to each relevant registered Aboriginal party; and
 - (b) to the Secretary (unless the Secretary is the person intending to carry out the survey); and

- (c) to the owner or occupier of any land within the area to which the survey relates.
- (2) A notice under subsection (1) must—
- (a) contain the name and contact details of the person intending to carry out the survey for Aboriginal cultural heritage; and
 - (b) contain a description of the proposed activity to which the survey relates; and
 - (c) clearly identify the area in respect of which the survey is to be prepared; and
 - (d) specify the dates within which the survey is proposed to be undertaken.
- (3) On receiving a notice under subsection (1), a registered Aboriginal party may, within 14 days, notify the person intending to carry out the survey whether the party wishes to participate in the survey.
- (4) A registered Aboriginal party that notifies the person under subsection (3) may participate in the conduct of the survey.
- (5) A person who carries out a survey for Aboriginal cultural heritage must give a copy of any relevant documentation to the Secretary for recording on the Register by the earlier of—
- (a) 30 days after producing the final report relating to the survey; or

(b) within 12 months after giving notice under subsection (1).

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

Note

Section 187A applies to an offence against this subsection.

- (6) If a person intending to carry out a survey for Aboriginal cultural heritage gives a notice under subsection (1) but does not carry out the survey, the person must notify the Secretary that the survey was not carried out.
- (7) This section does not apply to a person intending to carry out—
- (a) a survey for Aboriginal cultural heritage within an area to which an Aboriginal cultural heritage land management agreement applies; or
 - (b) a survey for the purposes of a cultural heritage management plan.
- (8) In this section—
- relevant documentation*** means any site records, photographs, maps and plans relating to the survey for Aboriginal cultural heritage, and a copy of any final report."

31 New section 35A inserted

Before section 36 of the **Aboriginal Heritage Act 2006 insert—**

"35A Definition

In this Division—

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

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

32 Application for cultural heritage permit

- (1) In section 36(1) of the **Aboriginal Heritage Act 2006**, for "the Secretary" substitute "an approval body".
- (2) For section 36(1)(b) of the **Aboriginal Heritage Act 2006 substitute—**
"(b) carry out research on an Aboriginal place or Aboriginal object, including the removal of an Aboriginal object from Victoria for the purposes of that research;"
- (3) In section 36(1)(d) of the **Aboriginal Heritage Act 2006 omit** "buy or".
- (4) In section 36(1)(e) of the **Aboriginal Heritage Act 2006**, for "Victoria." substitute "Victoria;"

(5) After section 36(1)(e) of the **Aboriginal Heritage Act 2006 insert—**

- "(f) rehabilitate land at an Aboriginal place, including land containing burial grounds for Aboriginal ancestral remains;
- (g) inter Aboriginal ancestral remains at an Aboriginal place."

33 Restrictions on grant of permit

(1) For section 37(1) of the **Aboriginal Heritage Act 2006 substitute—**

"(1) A cultural heritage permit authorising the applicant to do anything referred to in section 36(1)(c) to (e) must not be granted in respect of Aboriginal ancestral remains or an Aboriginal object that is a secret or sacred Aboriginal object."

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

(2) After section 37(2) of the **Aboriginal Heritage Act 2006 insert—**

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

34 Repeal of sections 38 and 39

Sections 38 and 39 of the **Aboriginal Heritage Act 2006** are **repealed**.

35 Determination of application

(1) For section 40(1) of the **Aboriginal Heritage Act 2006 substitute**—

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

(2) In section 40(2) of the **Aboriginal Heritage Act 2006**, for "the Secretary" substitute "the approval body".

(3) For section 40(3) of the **Aboriginal Heritage Act 2006 substitute**—

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

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

(3B) A request under subsection (3A) must be made in writing and include the following information—

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

- (3C) The period referred to in subsection (3)—
- (a) ceases to run when the approval body requests the additional information; and
 - (b) recommences to run when the information is provided to the approval body.
- (3D) The period referred to in subsection (3)—
- (a) ceases to run when the Secretary consults with the Council under subsection (3G); and
 - (b) recommences to run when the Council gives written advice to the Secretary or after 30 days, whichever is earlier.
- (3E) If the approval body fails to decide to grant or refuse to grant a cultural heritage permit in accordance with this section, the approval body is taken to have refused to grant the permit.
- (3F) If the approval body is the Secretary, the Secretary must consult with, and consider the views of, any Aboriginal person or Aboriginal body that the Secretary considers relevant when considering the application.
- (3G) If the application is to rehabilitate land containing burials of Aboriginal ancestral remains or to inter Aboriginal ancestral remains, and there is no relevant registered Aboriginal party, the Secretary must consult with the Council when considering the application."

- (4) In section 40(4) of the **Aboriginal Heritage Act 2006**, for "Secretary" substitute "approval body".

36 Substitution of section 41 and new sections 41A to 41D inserted

For section 41 of the **Aboriginal Heritage Act 2006** substitute—

"41 Conditions on cultural heritage permits

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

41A Offence to fail to comply with cultural heritage permit

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

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

Note

Section 187A applies to an offence against this section.

41B Transfer of cultural heritage permits

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

41C Amendments to cultural heritage permits

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

41D Taking effect of cultural heritage permits

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

37 What is a cultural heritage management plan?

In section 42(1)(b)(ii) of the **Aboriginal Heritage Act 2006**, for "recommendations for measures to be taken" **substitute** "conditions to be complied with".

38 Procedure for assessment

For section 43(2)(b) of the **Aboriginal Heritage Act 2006 substitute—**

"(b) a survey for Aboriginal cultural heritage;
and".

39 New section 45A inserted

After section 45 of the **Aboriginal Heritage Act 2006 insert—**

"45A Amendments to approved cultural heritage management plans

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

40 Mandatory cultural heritage management plans

- (1) In section 46(d) of the **Aboriginal Heritage Act 2006**, for "49A." **substitute** "49A; or".

(2) After section 46(d) of the **Aboriginal Heritage Act 2006** insert—

"(e) the Secretary receives an application for the certification of a preliminary Aboriginal heritage test determining that a proposed activity requires the preparation of a cultural heritage management plan, and the Secretary certifies that the test is correct."

(3) At the end of section 46 of the **Aboriginal Heritage Act 2006** insert—

"(2) A person is guilty of an offence if—

- (a) the person commences an activity for which a cultural heritage management plan is required under this Part; and
- (b) a cultural heritage management plan for the activity has not been approved under Division 5; and
- (c) at the time of commencing the activity, the person knew the activity required a cultural heritage management plan.

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

- (a) in the case of a natural person, 240 penalty units;
- (b) in the case of a body corporate, 1200 penalty units.

(4) A person is guilty of an offence if—

- (a) the person commences an activity for which a cultural heritage management plan is required under this Part; and
- (b) a cultural heritage management plan for the activity has not been approved under Division 5; and

- (c) at the time of commencing the activity, the person was reckless as to whether the activity required a cultural heritage management plan.
- (5) A person who is guilty of an offence under subsection (4) is liable to a penalty not exceeding—
 - (a) in the case of a natural person, 120 penalty units;
 - (b) in the case of a body corporate, 600 penalty units.
- (6) A person is guilty of an offence if—
 - (a) the person commences an activity for which a cultural heritage management plan is required under this Part; and
 - (b) a cultural heritage management plan for the activity has not been approved under Division 5; and
 - (c) at the time of commencing the activity, the person was negligent as to whether the activity required a cultural heritage management plan.
- (7) A person who is guilty of an offence under subsection (6) is liable to a penalty not exceeding—
 - (a) in the case of a natural person, 60 penalty units;
 - (b) in the case of a body corporate, 300 penalty units.

Note

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

41 Minister may require plan

Section 48(2) of the **Aboriginal Heritage Act 2006** is **repealed**.

42 New Division 2A of Part 4 inserted

After Division 2 of Part 4 of the **Aboriginal Heritage Act 2006** insert—

"Division 2A—Preliminary Aboriginal heritage tests

49B Application for certification of preliminary Aboriginal heritage test

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

49C Certification of preliminary Aboriginal heritage test

- (1) After receiving an application for the certification of a preliminary Aboriginal heritage test under section 49B, the Secretary must certify that the test is correct or refuse to certify the test.
- (2) The Secretary must certify a preliminary Aboriginal heritage test or refuse to certify the test within 21 days of receiving the application.

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

43 Definitions

- (1) In section 50 of the **Aboriginal Heritage Act 2006**, in the definition of *earth resource authorisation*, for paragraph (e) **substitute—**
"(e) a written consent given under section 193 of the **Greenhouse Gas Geological Sequestration Act 2008**;"
- (2) In section 50 of the **Aboriginal Heritage Act 2006**, in the definition of *earth resource law*, for paragraph (e) **substitute—**
"(e) the **Greenhouse Gas Geological Sequestration Act 2008**;"

44 Plan must be prepared before authorisation given

After section 52(5) of the **Aboriginal Heritage Act 2006** insert—

"(5A) This section applies to a proposed amendment to an approved cultural heritage management plan as if the proposed amendment were a new cultural heritage management plan."

45 Notice of intention to prepare cultural heritage management plan

(1) In section 54(1)(c) of the **Aboriginal Heritage Act 2006**, for "relates." substitute "relates; and".

(2) After section 54(1)(c) of the **Aboriginal Heritage Act 2006** insert—

"(d) to any municipal council whose municipal district includes an area to which the plan relates."

(3) In section 54(3)(d) of the **Aboriginal Heritage Act 2006**, for "prepared." substitute "prepared; and".

(4) After section 54(3)(d) of the **Aboriginal Heritage Act 2006** insert—

"(e) be accompanied by the prescribed fee (if any)."

(5) After section 54(3) of the **Aboriginal Heritage Act 2006** insert—

"(4) If the proposed activity in the plan is to be carried out in an area for which there is no registered Aboriginal party, a notice under this section may include details of Aboriginal people or Aboriginal groups with whom the sponsor intends to consult."

46 Registered Aboriginal parties may elect to evaluate plan

After section 55(2) of the **Aboriginal Heritage Act 2006** insert—

- "(3) If the sponsor of a cultural heritage management plan is a registered Aboriginal party, the party cannot evaluate the plan.
- (4) Despite subsection (3), any other registered Aboriginal party that receives notice of an intention to prepare a cultural heritage management plan may evaluate the plan."

47 Newly registered Aboriginal parties

For section 57(1)(b) of the **Aboriginal Heritage Act 2006** substitute—

- "(b) before the commencement of an assessment of the area for the purposes of the cultural heritage management plan."

48 Engagement of heritage advisor

- (1) In the heading to section 58 of the **Aboriginal Heritage Act 2006** omit "cultural".
- (2) In section 58 of the **Aboriginal Heritage Act 2006**, for "cultural heritage advisor" substitute "heritage advisor".

49 Registered Aboriginal party may also advise

In section 60(b) of the **Aboriginal Heritage Act 2006**, for "recommendations" substitute "conditions".

50 New section 60A inserted

After section 60 of the **Aboriginal Heritage Act 2006 insert—**

"60A Activity advisory groups

- (1) The Secretary may appoint an activity advisory group for a proposed activity if—
 - (a) the Secretary receives a notice of intention to prepare a cultural heritage management plan under section 54; and
 - (b) the proposed activity in the plan is to be carried out in an area for which there is no registered Aboriginal party.
- (2) If the Secretary appoints an activity advisory group under subsection (1), the Secretary must do so within 21 days of receiving a notice of intention to prepare a cultural heritage management plan.
- (3) The Secretary must notify the sponsor of a cultural heritage management plan of the appointment of an activity advisory group for the proposed activity in the plan as soon as practicable after appointing the group.
- (4) The function of an activity advisory group is to advise the Secretary on the proposed activity and its impact on Aboriginal cultural heritage.
- (5) For the purposes of performing its function, an activity advisory group may do any of the following—
 - (a) consult with the sponsor and the heritage advisor in relation to the assessment of the area for the purposes of the plan;

- (b) consult with the sponsor and the heritage advisor in relation to the conditions to be included in the plan;
 - (c) participate in the conduct of the assessment.
- (6) The sponsor of a cultural heritage management plan and the heritage advisor must make reasonable efforts to consult with the activity advisory group before beginning the assessment and during the preparation of the plan.
- (7) The Secretary may appoint representatives of any relevant traditional owners to an activity advisory group.
- (8) A member of an activity advisory group is appointed on the terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment."

51 Application to registered Aboriginal party for approval

After section 62(3) of the **Aboriginal Heritage Act 2006 insert—**

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

52 Decision by registered Aboriginal party

(1) After section 63(1) of the **Aboriginal Heritage Act 2006 insert—**

- "(1A) A registered Aboriginal party may request the sponsor to provide any additional information that the party reasonably

considers necessary to assist the party's decision.

- (1B) A request under subsection (1A) must be made in writing and include the following information—
- (a) the information to be provided;
 - (b) the date by which the information is to be provided, being at least 30 days after the request;
 - (c) a statement that the application will lapse if the information is not provided by that date.
- (1C) The period referred to in subsection (1)—
- (a) ceases to run when the registered Aboriginal party requests the additional information; and
 - (b) recommences to run when the information is provided to the registered Aboriginal party."

(2) After section 63(4) of the **Aboriginal Heritage Act 2006** insert—

"(5) The sponsor may agree to accept the decision of a registered Aboriginal party to approve the plan or refuse the plan after the period referred to in subsection (1), but only if the sponsor has not already made an application to the Secretary under section 65(1)(b)(iv)."

53 Approval by Secretary

- (1) After section 65(1) of the **Aboriginal Heritage Act 2006** insert—

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

(2) After section 65(2) of the **Aboriginal Heritage Act 2006** insert—

- "(2A) The Secretary may request the sponsor to provide any additional information that the Secretary reasonably considers necessary to assist the Secretary's decision.
- (2B) A request under subsection (2A) must be made in writing and include the following information—
- (a) the information to be provided;
 - (b) the date by which the information is to be provided, being at least 30 days after the request;
 - (c) a statement that the application will lapse if the information is not provided by that date.
- (2C) The period referred to in subsection (2)—
- (a) ceases to run when the Secretary requests the additional information; and
 - (b) recommences to run when the information is provided to the Secretary.
- (2D) Subject to subsection (2E), the Secretary is taken to have refused to approve the plan if the Secretary fails to decide whether to approve the plan or to refuse to approve the plan within the period referred to in subsection (1).
- (2E) The Secretary may decide to approve the plan or to refuse the plan after the period referred to in subsection (1) with the agreement of the sponsor."

(3) For section 65(3) of the **Aboriginal Heritage Act 2006 substitute—**

"(3) In considering the application, the Secretary must consult with, and consider the views of—

- (a) any Aboriginal person or Aboriginal body that the Secretary considers relevant to the application; or
- (b) any activity advisory group appointed by the Secretary under section 60A."

54 Approval by Council

(1) After section 66(1) of the **Aboriginal Heritage Act 2006 insert—**

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

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

Note

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

(2) After section 66(2) of the **Aboriginal Heritage Act 2006 insert—**

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

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

- (a) the information to be provided;
 - (b) the date by which the information is to be provided, being at least 30 days after the request;
 - (c) a statement that the application will lapse if the information is not provided by that date.
- (2C) The period referred to in subsection (2)—
- (a) ceases to run when the Council requests the additional information; and
 - (b) recommences to run when the information is provided to the Council."

55 New section 66A inserted

After section 66 of the **Aboriginal Heritage Act 2006** insert—

"66A Amendments to approved cultural heritage management plans

- (1) Subject to this section, Division 4 and this Division apply to a proposed amendment to an approved cultural heritage management plan as if the proposed amendment were a cultural heritage management plan.
- (2) A proposed amendment to an approved cultural heritage management plan that is, in the opinion of the relevant authority, a minor amendment to the plan, may be approved by the relevant authority within 14 days of receiving the proposed amendment.
- (3) The relevant authority must give written notice of its decision to approve or refuse to approve a proposed amendment to an approved cultural heritage management plan

- to the sponsor, and any relevant registered Aboriginal party.
- (4) An application to amend an approved cultural heritage management plan must be made in the prescribed form and accompanied by the prescribed fee (if any).
- (5) An approved cultural heritage management plan cannot be amended 5 years or more after first being approved under this Division.
- (6) In this section—
- relevant authority*, in relation to an application for a proposed amendment to an approved cultural heritage management plan, means—
- (a) a relevant registered Aboriginal party; or
 - (b) if there is no relevant registered Aboriginal party—the Secretary; or
 - (c) if the applicant is a registered Aboriginal party or the Secretary—the Council."

56 New section 67A inserted

After section 67 of the **Aboriginal Heritage Act 2006** insert—

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

- (1) The sponsor of an approved cultural heritage management plan is guilty of an offence if—
- (a) the sponsor by an act or omission fails to comply with the conditions of the approved cultural heritage management plan; and

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

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

Note

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

57 What is a cultural heritage agreement?

In section 68(2)(d) of the **Aboriginal Heritage Act 2006**, for "rehabilitation" **substitute** "restoration and preservation".

58 New Division 1A of Part 5 inserted

After Division 1 of Part 5 of the **Aboriginal Heritage Act 2006** insert—

"Division 1A—Aboriginal cultural heritage land management agreements

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

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

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

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

74C Conditions of Aboriginal cultural heritage land management agreement

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

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

- (1) Before entering into an Aboriginal cultural heritage land management agreement, the registered Aboriginal party that is a party to the proposed agreement must give written notice to the Secretary of the party's intention to enter into the agreement.
- (2) A notice under subsection (1) must include the following—
 - (a) the date by which the agreement is to be prepared;
 - (b) the parties to the agreement;
 - (c) any assessment to be undertaken as part of the agreement's preparation, including an assessment of an area to determine the nature of any Aboriginal cultural heritage in the area.

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

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

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

74F Amendments to Aboriginal cultural heritage land management agreements

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

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

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

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

- (6) A party to an Aboriginal cultural heritage land management agreement who is guilty of an offence under subsection (5) is liable to a penalty not exceeding—
- (a) in the case of a natural person, 60 penalty units;
 - (b) in the case of a body corporate, 300 penalty units.

Note

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

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

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

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

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

- (a) on the execution of the agreement; or

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

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

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

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

59 New Part 5A inserted

After Part 5 of the **Aboriginal Heritage Act 2006** insert—

"Part 5A—Aboriginal intangible heritage

79A Application of Part

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

79B What is Aboriginal intangible heritage?

- (1) For the purposes of this Act, Aboriginal intangible heritage means any knowledge of or expression of Aboriginal tradition, other than Aboriginal cultural heritage, and includes oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts, and environmental and

ecological knowledge, but does not include anything that is widely known to the public.

- (2) Aboriginal intangible heritage also includes any intellectual creation or innovation based on or derived from anything referred to in subsection (1).

79C Registration of Aboriginal intangible heritage

- (1) A registered Aboriginal party, registered native title holder or a traditional owner group entity may apply to the Secretary for details of any Aboriginal intangible heritage to be recorded on the Register.
- (2) An application under subsection (1) must be made in the prescribed form and include details of any consultation undertaken by the applicant with any relevant traditional owners.
- (3) The Secretary must decide to approve or refuse to approve an application within 90 days of receiving the application.
- (4) In considering the application, the Secretary must consult with, and consider the views of, the applicant and any Aboriginal person or Aboriginal body that the Secretary considers relevant to the application.
- (5) The Secretary may request the applicant to provide any additional information that the Secretary reasonably considers necessary to assist the Secretary's decision.
- (6) A request under subsection (5) must be made in writing and include the following information—
- (a) the information to be provided;

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

79D Aboriginal intangible heritage agreements

- (1) For the purposes of this Act, an Aboriginal intangible heritage agreement is an agreement relating to registered Aboriginal intangible heritage made between any person or body and—
- (a) a registered Aboriginal party; or
 - (b) a registered native title holder; or
 - (c) a traditional owner group entity.
- (2) An Aboriginal intangible heritage agreement may deal with any of the following—
- (a) the management, protection or conservation of Aboriginal intangible heritage;
 - (b) the research or publication of Aboriginal intangible heritage;
 - (c) the development or commercial use of Aboriginal intangible heritage;
 - (d) the rights of traditional owners to use and commercially exploit Aboriginal intangible heritage, including anything

produced from the research and development of Aboriginal intangible heritage;

- (e) the compensation to be paid to traditional owners for the research, development and commercial use of Aboriginal intangible heritage.
- (3) An Aboriginal intangible heritage agreement cannot deal with any activity for which a cultural heritage permit or cultural heritage management plan is required under this Act.
- (4) An Aboriginal intangible heritage agreement has effect as an agreement under seal.

79E Form of Aboriginal intangible heritage agreement

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

- (a) the parties to the Aboriginal intangible heritage agreement and the period for which the agreement applies;
- (b) a description of the Aboriginal intangible heritage to which the agreement relates;
- (c) any other information the registered Aboriginal party, registered native title holder or traditional owner group entity reasonably considers necessary.

79F Registration of Aboriginal intangible heritage agreements

- (1) After entering into an Aboriginal intangible heritage agreement, the parties to the agreement must, without delay, give a copy of the agreement to the Secretary for recording on the Register.

- (2) The parties to an Aboriginal intangible heritage agreement must, without delay, notify the Secretary in writing of any amendment to or termination of the agreement.

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

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

Penalty: In the case of a natural person,
1800 penalty units;
In the case of a body corporate,
10 000 penalty units.

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

Penalty: In the case of a natural person,
1200 penalty units;
In the case of a body corporate,
6000 penalty units.

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

Note

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

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

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

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

Note

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

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

- (1) An Aboriginal intangible heritage agreement is terminated if a party to the agreement is a registered Aboriginal party, registered native title holder or traditional owner group entity, and the registration of that registered Aboriginal party is revoked under Division 2

of Part 10, or that registered native title holder or traditional owner group entity ceases to be a body corporate.

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

79J When does an Aboriginal intangible agreement begin?

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

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

79K When does an Aboriginal intangible heritage agreement end?

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

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

79L Evidentiary provision regarding Aboriginal intangible heritage

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

existence of that Aboriginal intangible heritage.".

60 Cultural heritage audits, stop orders and improvement notices

For the heading to Part 6 of the **Aboriginal Heritage Act 2006** substitute—

"Part 6—Cultural heritage audits, stop orders and improvement notices".

61 When can a cultural heritage audit be ordered?

- (1) In section 81(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (2) In section 81(1)(a) of the **Aboriginal Heritage Act 2006**, for "recommendations" substitute "conditions".

62 Conduct of cultural heritage audit

- (1) In section 83(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (2) In section 83(2) of the **Aboriginal Heritage Act 2006**, for "cultural heritage advisor" substitute "heritage advisor".
- (3) In section 83(3) of the **Aboriginal Heritage Act 2006**, for "cultural heritage advisor" substitute "heritage advisor".
- (4) At the foot of section 83(3) of the **Aboriginal Heritage Act 2006** insert—

"Note

Section 187A applies to an offence against this subsection.".

(5) In section 83(4) of the **Aboriginal Heritage Act 2006**—

- (a) for "cultural heritage advisor" **substitute** "heritage advisor"; and
- (b) in paragraph (a), for "inspector" (where twice occurring) **substitute** "authorised officer"; and
- (c) in paragraph (b), for "inspector" **substitute** "authorised officer".

(6) For section 83(5) of the **Aboriginal Heritage Act 2006 substitute**—

- "(5) If the Secretary directs the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit to engage a heritage advisor to conduct a cultural heritage audit, the sponsor or holder must pay the fees and reasonable expenses of the heritage advisor in conducting the audit.
- (6) The Secretary must reimburse any fees or expenses incurred by the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit under subsection (5) if the cultural heritage audit finds that the sponsor or holder has not contravened the plan or permit."

63 Report of cultural heritage audit

- (1) In section 84(1) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer".
- (2) In section 84(2)(b) of the **Aboriginal Heritage Act 2006**, for "recommendations" **substitute** "conditions".

- (3) In section 84(2)(c) of the **Aboriginal Heritage Act 2006**, for "inspectors" **substitute** "authorised officers".

64 Notification and effect of approval

In section 86(3) of the **Aboriginal Heritage Act 2006**, for "recommendations" (where first occurring) **substitute** "conditions".

65 When can a stop order be issued?

For section 87(1) of the **Aboriginal Heritage Act 2006 substitute**—

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

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

66 What can a stop order do?

- (1) In section 89(1)(a) of the **Aboriginal Heritage Act 2006**, for "activity" **substitute** "act".
- (2) In section 89(1)(b) of the **Aboriginal Heritage Act 2006**, for "starting the activity" **substitute** "doing the act".

67 How is a stop order delivered?

- (1) In section 90(1)(b) of the **Aboriginal Heritage Act 2006**, for "activity" **substitute** "act".
- (2) In section 90(1)(c) of the **Aboriginal Heritage Act 2006**, for "activity" **substitute** "act".
- (3) In section 90(2) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer".

68 Revocation of stop order

In section 93(1)(b) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer".

69 Further stop order

In section 94 of the **Aboriginal Heritage Act 2006**—

- (a) for "activity" (wherever occurring) **substitute** "act"; and
- (b) for "inspector" **substitute** "authorised officer".

70 New Division 3 of Part 6 inserted

After Division 2 of Part 6 of the **Aboriginal Heritage Act 2006** insert—

"Division 3—24-hour stop orders

95A 24-hour stop orders

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

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

95B Cancellation of 24-hour stop order

- (1) An authorised officer or an Aboriginal heritage officer who issues a 24-hour stop order may cancel the 24-hour stop order.
- (2) Notice of cancellation of a 24-hour stop order must be served on the person affected.
- (3) A 24-hour stop order that has been issued to a person by an authorised officer or an Aboriginal heritage officer and that is in operation is cancelled if the Minister or an authorised officer issues a stop order to the person under section 87 in relation to the same act.

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

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

Penalty: In the case of a natural person,
1800 penalty units;
In the case of a body corporate,
10 000 penalty units.

Note

Section 187A applies to an offence against this subsection.

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

Note

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

71 New Division 4 of Part 6 inserted

After Division 3 of Part 6 of the **Aboriginal Heritage Act 2006** insert—

"Division 4—Improvement notices

95D Improvement notices

- (1) This Division applies if an authorised officer or an Aboriginal heritage officer believes on reasonable grounds that the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit has contravened this Act and that the contravention is likely to be repeated.
- (2) The authorised officer or the Aboriginal heritage officer may serve on the sponsor or holder an improvement notice requiring the sponsor or holder to remedy the contravention or likely contravention, or the matters or acts causing the contravention or likely contravention.
- (3) An improvement notice must—
 - (a) state the basis for the authorised officer's or Aboriginal heritage officer's service of the notice; and
 - (b) specify the provision of the Act in respect of which that belief is held; and
 - (c) specify a date within which the sponsor or holder is required to remedy the contravention or likely contravention or the matters or acts causing the contravention or likely contravention; and
 - (d) set out the penalty for contravening the notice.

- (4) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or likely contravention or the matters or acts causing the contravention or likely contravention to which the notice relates.

95E Proceedings for offences not affected by improvement notices

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

95F Offence to fail to comply with improvement notice

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

Penalty: In the case of a natural person,
500 penalty units;
In the case of a body corporate,
2500 penalty units.

Note

Section 187A applies to an offence against this subsection.

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

Note

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

95G Amendment of improvement notices

- (1) An authorised officer or an Aboriginal heritage officer who serves an improvement notice on the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit may amend the improvement notice by serving on the sponsor or holder a notice setting out the terms of the amendment.
- (2) A notice of an amendment of an improvement notice must—
 - (a) state the name of the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit or holder on whom the notice is served; and
 - (b) state the reasons for the amendment; and
 - (c) state that it is served under this section.

95H Cancellation of improvement notices

- (1) An authorised officer or an Aboriginal heritage officer who serves an improvement notice on the sponsor of a cultural heritage management plan or the holder of a cultural heritage permit may cancel the improvement notice.
- (2) Notice of cancellation of an improvement notice must be served on the sponsor or holder affected."

72 Meaning of *dispute*

For section 111 of the **Aboriginal Heritage Act 2006 substitute**—

"111 Meaning of *dispute*

In this Subdivision, *dispute* means a dispute between 2 or more registered Aboriginal parties, or between the sponsor of a cultural heritage management plan and a registered Aboriginal party, arising in relation to the evaluation of a plan for which approval is sought under section 62, but does not include a dispute arising in relation to the evaluation of a plan for which approval is sought under section 65 or 66."

73 Referral of disputes for alternative dispute resolution

- (1) In section 113(2) of the **Aboriginal Heritage Act 2006**, for "must" **substitute** "may".
- (2) After section 113(2) of the **Aboriginal Heritage Act 2006 insert**—

"(2A) The Chairperson may not arrange for the dispute to be the subject of alternative dispute resolution if the Chairperson reasonably believes that the dispute is unlikely to be resolved by alternative dispute resolution."

74 Decision of VCAT

In section 118(b) of the **Aboriginal Heritage Act 2006**, after "amendments" **insert** "to the conditions of the plan".

75 Applicant for cultural heritage permit may apply to VCAT

In section 121(1) of the **Aboriginal Heritage Act 2006**, for "the Secretary" substitute "an approval body".

76 Parties to a proceeding

In section 122 of the **Aboriginal Heritage Act 2006**, for "Secretary" substitute "approval body".

77 Membership

For section 131(3)(a) of the **Aboriginal Heritage Act 2006** substitute—

"(a) is a traditional owner or can demonstrate traditional ownership of an area in Victoria; and".

78 Functions of the Council

(1) Before section 132(1)(a) of the **Aboriginal Heritage Act 2006** insert—

"(aa) to be the central coordinating body responsible for the overseeing, monitoring, managing, reporting and returning of Aboriginal ancestral remains in Victoria;".

(2) In section 132(1)(a) of the **Aboriginal Heritage Act 2006** omit "at the Minister's request or on its own initiative,".

(3) In section 132(1)(a)(i) of the **Aboriginal Heritage Act 2006**, for "human" substitute "ancestral".

(4) In section 132(1)(a)(v) of the **Aboriginal Heritage Act 2006**, for "inspectors" substitute "authorised officers".

(5) In section 132(2)(c) of the **Aboriginal Heritage Act 2006** omit "to develop measures".

(6) After section 132(2)(c) of the **Aboriginal Heritage Act 2006** insert—

- "(ca) to report to the Minister annually on the performance of its functions, including a summary of any reports received by the Council from registered Aboriginal parties;
- (cb) to advise the Minister administering the **Planning and Environment Act 1987** on proposed amendments to planning schemes which may affect the protection, management or conservation of places or objects of Aboriginal cultural heritage significance;
- (cc) to oversee and monitor the system of reporting and returning Aboriginal ancestral remains and secret or sacred objects;
- (cd) to advise the Secretary on cultural heritage permits and cultural heritage management plans related to Aboriginal ancestral remains in areas without a registered Aboriginal party;
- (ce) to perform functions under this Act in relation to cultural heritage permits, including the granting of permits;
- (cf) to manage the Aboriginal Cultural Heritage Fund;
- (cg) to provide advice regarding Aboriginal cultural heritage, including to the Minister and the Secretary;
- (ch) to manage, oversee and supervise the operations of registered Aboriginal parties;
- (ci) to promote and facilitate research into the Aboriginal cultural heritage of Victoria;

- (cj) to nominate information about Aboriginal ancestral remains, Aboriginal secret or sacred objects and Aboriginal places and objects to be restricted information on the Register;
- (ck) to publish policy guidelines consistent with the functions of the Council;
- (cl) to report to the Minister every 5 years on the state of Victoria's Aboriginal cultural heritage;".

79 New section 132A inserted

After section 132 of the **Aboriginal Heritage Act 2006 insert—**

"132A Delegation of Council's functions

The Council may, by instrument, delegate any of its functions or powers, except this power of delegation, to—

- (a) the Secretary; or
- (b) a member of the Council; or
- (c) a Council advisory committee established under section 142A."

80 Substitution of section 137 and new section 137A inserted

For section 137 of the **Aboriginal Heritage Act 2006 substitute—**

"137 Alternate members

- (1) The Minister may appoint an alternate member for each member of the Council.
- (2) The Minister must consult with the Council before appointing an alternate member under subsection (1).

- (3) An alternate member must be appointed in the same manner as the member for whom the alternate member is appointed.
- (4) An alternate member may act in place of the member for whom the alternate member is appointed if—
 - (a) the member is absent or unable to perform the duties of the member's office; or
 - (b) the member and the alternate member agree that the alternate member is to act in the member's place; or
 - (c) the member's position is vacant.
- (5) If subsection (4)(c) applies, the alternate member must not act in that position for longer than 6 months.
- (6) An alternate member has all the functions of the member when acting in the place of that member.

137A Terms and conditions for alternate members

- (1) An alternate member holds office for the term specified in the alternate member's instrument of appointment, being a period of not more than 3 years.
- (2) An alternate member may resign from office by writing signed by the alternate member and addressed to the Minister.
- (3) The Minister may at any time remove an alternate member of the Council from office and appoint another person in the alternate member's place.

- (4) An alternate member, other than an alternate member who is a person employed under Part 3 of the **Public Administration Act 2004**, is entitled to receive the fees, travelling and other allowances from time to time fixed by the Minister in respect of that alternate member."

81 Election of Chairperson and Deputy Chairperson

In section 138(3)(b) of the **Aboriginal Heritage Act 2006**, for "a further term" substitute "two further terms".

82 Conflict of interest

Section 142(2) of the **Aboriginal Heritage Act 2006** is repealed.

83 New sections 142A to 142D inserted

After section 142 of the **Aboriginal Heritage Act 2006** insert—

"142A Council advisory committees

- (1) The Council may establish any advisory committees the Council considers necessary to advise it on any matter relating to the carrying out of its functions under this Act.
- (2) A member of the Council may be a member of an advisory committee established by the Council.

142B Procedure for advisory committees

- (1) A quorum of a Council advisory committee consists of a majority of the members of the committee for the time being.
- (2) Subject to this Act, a Council advisory committee may regulate its own proceedings.

142C Remuneration

A member of a Council advisory committee, other than a member who is a person employed under Part 3 of the **Public Administration Act 2004**, is entitled to receive the fees, travelling and other allowances from time to time approved by the Minister in respect of that member on the advice of the Council."

84 Functions of the Secretary

- (1) In section 143(1)(i) of the **Aboriginal Heritage Act 2006**, for "inspectors" substitute "authorised officers".
- (2) In section 143(1)(n) of the **Aboriginal Heritage Act 2006**, for "Act." substitute "Act;".
- (3) After section 143(1)(n) of the **Aboriginal Heritage Act 2006** insert—
 - "(o) to consider applications for the registration of Aboriginal intangible heritage and make determinations regarding sensitive Aboriginal heritage information;".

85 New section 144A inserted

After section 144 of the **Aboriginal Heritage Act 2006** insert—

"144A Purposes of the Register

The main purposes of the Register are—

- (a) to be a central repository for Victorian traditional owners to store information about their cultural heritage for the use of current and future generations of Victorians; and

- (b) to include information assisting the management and protection of Aboriginal cultural heritage and Aboriginal intangible heritage; and
- (c) to include information promoting both sustainable land use and development and the management and protection of Aboriginal cultural heritage; and
- (d) to be a repository for information for consideration for land use and land use planning; and
- (e) to be a research and planning tool assisting the consideration of Aboriginal cultural heritage values of particular objects and areas; and
- (f) to facilitate research about the Aboriginal peoples of Victoria."

86 What is in the Register?

- (1) After section 145(1)(a) of the **Aboriginal Heritage Act 2006** insert—

"(ab) all known Aboriginal objects in Victoria;"

- (2) For section 145(1)(c) of the **Aboriginal Heritage Act 2006** substitute—

"(c) all Aboriginal ancestral remains and interments of Aboriginal ancestral remains reported to the Council or the Secretary under this Act, or delivered to the Council, or known to be in the possession or under the control of any person;"

- (3) In section 145(1)(e) of the **Aboriginal Heritage Act 2006**, after "agreements" **insert** ", including any amendments to those permits, plans or agreements".
- (4) In section 145(1)(f) of the **Aboriginal Heritage Act 2006**, for "Act." **substitute** "Act;".
- (5) After section 145(1)(f) of the **Aboriginal Heritage Act 2006 insert**—
- (g) all Aboriginal cultural heritage land management agreements;
 - (h) all certified preliminary Aboriginal heritage tests;
 - (i) all information arising from surveys for Aboriginal cultural heritage;
 - (j) all known Aboriginal intangible heritage agreements and any Aboriginal intangible heritage approved to be recorded under section 79C."
- (6) For section 145(2) of the **Aboriginal Heritage Act 2006 substitute**—
- "(2) The Secretary may record in the Register any other information regarding Aboriginal cultural heritage or Aboriginal intangible heritage that the Secretary considers necessary in order to protect or manage that heritage."

87 Who may access the Register?

- (1) In section 146(1) of the **Aboriginal Heritage Act 2006**, for "The Secretary" **substitute** "Subject to section 146A, the Secretary".

(2) For section 146(1)(c) of the **Aboriginal Heritage Act 2006** substitute—

"(c) a person engaged as a heritage advisor for a cultural heritage management plan, preliminary Aboriginal heritage test, Aboriginal cultural heritage land management agreement or a cultural heritage audit—for the purpose of conducting research related to the plan, test, agreement or audit;"

(3) In section 146(1)(d) of the **Aboriginal Heritage Act 2006**, after "owner's land" **insert** ", including a cultural heritage management plan prepared in relation to the land before the land owner became the owner of that land".

(4) In section 146(1)(g) of the **Aboriginal Heritage Act 2006**—

(a) for "cultural heritage advisor" **substitute** "heritage advisor"; and

(b) for "land." **substitute** "land;"

(5) After section 146(1)(g) of the **Aboriginal Heritage Act 2006** **insert**—

"(h) a person who applies to the Secretary for the certification of a preliminary Aboriginal heritage test—for the purpose of obtaining information on any Aboriginal cultural heritage that may relate to the land on which the proposed activity is to be carried out;

(i) a holder of a cultural heritage permit granted under section 36(1)(a) or (b)—for the purpose of obtaining information on any Aboriginal cultural heritage relating to the permit;

- (j) the Executive Director of Heritage Victoria—for the purpose of managing and protecting Aboriginal cultural heritage on or associated with a heritage place;
- (k) a Catchment Management Authority—for the purpose of obtaining information to assist or enable the Authority to carry out functions or duties associated with the control or management of land;
- (l) the Minister responsible for keeping the Register of Aboriginal Sites and Objects under Part 2 of the Aboriginal Heritage Act 1988 of South Australia—for the purpose of obtaining information to assist with the management and protection of Aboriginal cultural heritage in South Australia in the vicinity of the Victorian border;
- (m) the Director-General appointed under the National Parks and Wildlife Act 1974 of New South Wales and responsible for maintaining the public register established under section 188F of that Act—for the purpose of obtaining information to assist with the management and protection of Aboriginal cultural heritage in New South Wales in the vicinity of the Victorian border;
- (n) a person employed under Part 3 of the **Public Administration Act 2004** whose responsibilities include the assessment of applications for planning permits or amendments to planning schemes—for the purpose of obtaining information on any Aboriginal cultural heritage relating to the application;

- (o) any person—for the purpose of obtaining information as to whether an Aboriginal intangible heritage agreement is required or if an agreement exists."
- (6) After section 146(2) of the **Aboriginal Heritage Act 2006 insert—**
 - "(3) An application to the Secretary for access to the Register under this section must be accompanied by the prescribed fee (if any)."

88 New section 146A inserted

After section 146 of the **Aboriginal Heritage Act 2006 insert—**

"146A Accessing the Register for sensitive information

- (1) The Secretary may, on the recommendation of the Council or a registered Aboriginal party, determine that any information in the Register relating to Aboriginal cultural heritage or Aboriginal intangible heritage is sensitive Aboriginal heritage information.
- (2) The Secretary must not allow a person or body referred to in section 146 to have access to sensitive Aboriginal heritage information without the written approval of the relevant registered Aboriginal party or, if there is no relevant registered Aboriginal party, the Council.
- (3) The Secretary may impose conditions on the access of sensitive Aboriginal heritage information under this section."

89 New section 147A inserted

After section 147 of the **Aboriginal Heritage Act 2006** insert—

"147A Offence to knowingly or recklessly use information for prohibited purposes

- (1) A person or body allowed access to the Register under this Division must not knowingly use any information in the Register for a purpose other than the purpose for which the person or body was allowed access.

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

Note

Section 187A applies to an offence against this subsection.

- (2) A person or body allowed access to the Register under this Division must not recklessly use any information in the Register for a purpose other than the purpose for which the person or body was allowed access.

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

Note

Section 187A applies to an offence against this subsection."

90 Functions of a registered Aboriginal party

- (1) In section 148(b) of the **Aboriginal Heritage Act 2006**, for "repatriation" **substitute** "return".

(2) After section 148(f) of the **Aboriginal Heritage Act 2006** insert—

- "(fa) to provide general advice regarding Aboriginal cultural heritage relating to the area for which the party is registered;
- (fb) to perform functions under this Act in relation to cultural heritage management plans, cultural heritage permits, cultural heritage agreements, preliminary Aboriginal heritage tests, Aboriginal cultural heritage land management agreements and Aboriginal intangible heritage agreements;
- (fc) to perform functions under this Act in relation to cultural heritage permits, including the granting of permits;
- (fd) to advise the Minister administering the **Planning and Environment Act 1987** on proposed amendments to planning schemes which may affect the protection, management or conservation of places or objects of Aboriginal cultural heritage significance;
- (fe) to report to the Council annually on the performance of its functions under this Act, including any fees and charges paid to or imposed by the party in respect of the year;
- (ff) to nominate information about Aboriginal cultural heritage to be restricted information on the Register;"

91 Application for registration

- (1) In section 150(1) of the **Aboriginal Heritage Act 2006**, for "approved" substitute "prescribed".
- (2) In section 150(1)(c)(ii) of the **Aboriginal Heritage Act 2006**, for "area." substitute "area;"

(3) After section 150(1)(c) of the **Aboriginal Heritage Act 2006** insert—

"(d) a statement from the applicant setting out how the applicant intends to consider the interests of any Aboriginal people for whom the area in respect of which the application is made has cultural heritage significance, but who are not the traditional owners of the area;

(e) any other prescribed information."

(4) For section 150(2) of the **Aboriginal Heritage Act 2006** substitute—

"(2) An applicant for registration as a registered Aboriginal party must be a corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth."

92 Determination of application for registration

(1) In section 151(1) of the **Aboriginal Heritage Act 2006**, for "120" substitute "270".

(2) After section 151(1) of the **Aboriginal Heritage Act 2006** insert—

"(1A) The Council may determine the application for a part of the area in respect of which the application is made before determining the application for the whole of the area."

(3) For section 151(2) of the **Aboriginal Heritage Act 2006** substitute—

"(2) If an applicant for registration is a registered native title holder for an area in respect of which there is a native title agreement, and the area in respect of which the application is made is within the external perimeter of the area described in the agreement—

- (a) the Council must register the applicant as the registered Aboriginal party for the area in respect of which the application is made; and
 - (b) no other applicant can be registered for the area in respect of which the application is made, except another registered native title holder."
- (4) For section 151(2A) of the **Aboriginal Heritage Act 2006 substitute**—
- "(2A) If an applicant for registration is a traditional owner group entity for an area in respect of which the entity has entered into a recognition and settlement agreement, and the area in respect of which the application is made is within the external perimeter of the area described in the agreement—
- (a) the Council must register the applicant as the registered Aboriginal party for the area in respect of which the application is made; and
 - (b) no other applicant can be registered for the area in respect of which the application is made, except a registered native title holder."
- (5) In section 151(3)(c) of the **Aboriginal Heritage Act 2006**, for "Aboriginal people with traditional or familial links to" **substitute** "the traditional owners of".
- (6) After section 151(6) of the **Aboriginal Heritage Act 2006 insert**—
- "(7) The Council must not approve an application for registration as a registered Aboriginal party if the applicant is not a traditional owner group entity and there exists a

traditional owner group entity for the area to which the application relates.

- (8) The Council may approve an application referred to in subsection (7) with the written consent of the traditional owner group entity for the area.
- (9) The Council may, in writing, ask the applicant for any additional information that the Council reasonably thinks necessary to assist its decision.
- (10) The period referred to in subsection (1)—
 - (a) ceases to run when the Council asks for additional information under subsection (9); and
 - (b) recommences to run when the information is provided to the Council."

93 New section 154A inserted

After section 154 of the **Aboriginal Heritage Act 2006 insert—**

"154A Conditions of registration

- (1) The Council may impose conditions on the registration of a registered Aboriginal party at any time.
- (2) The Council must give written notice to a registered Aboriginal party at least 30 days before imposing a condition under subsection (1).
- (3) The Council must consider any response by the registered Aboriginal party before imposing a condition.

- (4) The Council must give written notice to the registered Aboriginal party of a condition imposed under this section as soon as practicable after imposing the condition."

94 Suspension and revocation of registration

- (1) After section 156(1) of the **Aboriginal Heritage Act 2006** insert—

"(1A) Subject to section 157, the Council may suspend or revoke the registration of a registered Aboriginal party if the party contravenes a condition of registration imposed by the Council under section 154A."

- (2) In section 156(2)(a) of the **Aboriginal Heritage Act 2006**, after "body corporate" insert "or is not a corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth at the end of the period referred to in section 158A".

- (3) In section 156(3)(b) of the **Aboriginal Heritage Act 2006**, for "requires)." substitute "requires), unless the registered Aboriginal party in respect of the area or part of the area is a registered native title holder."

95 New section 158A inserted

After section 158 of the **Aboriginal Heritage Act 2006** insert—

"158A Further registration of existing registered Aboriginal parties

- (1) A registered Aboriginal party registered under this Part before the commencement of section 95 of the **Aboriginal Heritage Amendment Act 2016** must, within 2 years of the commencement of that section, be a corporation registered under the

Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth.

- (2) A registered Aboriginal party may make a written request to the Council to extend the period referred to in subsection (1) by a period of up to 12 months."

96 New Part 10A inserted

After Part 10 of the **Aboriginal Heritage Act 2006** insert—

"Part 10A—Aboriginal Cultural Heritage Fund

158B Establishment of Aboriginal Cultural Heritage Fund

- (1) There is established a fund called the Aboriginal Cultural Heritage Fund.
- (2) The Council must open and maintain an account with an ADI for the purposes of the Aboriginal Cultural Heritage Fund.

158C Payments into Aboriginal Cultural Heritage Fund

- (1) There must be paid into the Aboriginal Cultural Heritage Fund—
- (a) any fees paid to the Council or the Secretary under this Act; and
 - (b) any money borrowed by the Council; and
 - (c) any other money received by the Council.
- (2) Any interest earned on money in the Aboriginal Cultural Heritage Fund must be credited to the Aboriginal Cultural Heritage Fund.

158D Payments out of the Aboriginal Cultural Heritage Fund

- (1) The Secretary may pay out of the Aboriginal Cultural Heritage Fund any money—
 - (a) to provide assistance generally for the protection and management of Aboriginal cultural heritage; or
 - (b) to provide assistance generally for the conservation, protection and management of an area to which a protection declaration relates; or
 - (c) to make grants for the purposes of protecting and managing Aboriginal cultural heritage; or
 - (d) to do anything else authorised by this Act.
- (2) The Council may pay out of the Aboriginal Cultural Heritage Fund any money—
 - (a) to make loans for the purposes of protecting and managing Aboriginal cultural heritage; or
 - (b) to acquire any land or other assets authorised by this Act; or
 - (c) to repay any money borrowed by the Council including any charges or interest on that money; or
 - (d) to do anything else authorised by this Act.

158E Power of Council to borrow money

The Council may obtain financial accommodation subject to and in accordance with the powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

158F Power of Council to accept gifts

- (1) The Council may accept a gift of money, land or any other asset for the purposes of protecting and managing Aboriginal cultural heritage.
- (2) Any gift accepted by the Council under subsection (1) is vested in the Crown.

158G Acquisition and sale of land by Council

- (1) The Council may, with the approval of the Minister, acquire any land on which an Aboriginal place is located for the purposes of protecting and maintaining Aboriginal cultural heritage.
- (2) The Council may sell any land acquired by it under subsection (1).

158H Rates of interest on loans

Any loan made from the Aboriginal Cultural Heritage Fund must be at a rate of interest approved by the Treasurer (if any)."

97 Authorised officers

In the heading to Division 1 of Part 11 of the **Aboriginal Heritage Act 2006**, for "Inspectors" substitute "Authorised officers".

98 Functions of authorised officers

- (1) In the heading to section 159 of the **Aboriginal Heritage Act 2006**, for "inspectors" substitute "authorised officers".
- (2) In section 159 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

- (3) In section 159(e) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

99 Appointment of authorised officers

- (1) In the heading to section 160 of the **Aboriginal Heritage Act 2006**, for "inspectors" substitute "authorised officers".
- (2) In section 160(1) of the **Aboriginal Heritage Act 2006**, for "inspector" (where first occurring) substitute "authorised officer".
- (3) In section 160(2) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (4) In section 160(2)(c) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

100 Re-appointment of authorised officers

- (1) In the heading to section 161 of the **Aboriginal Heritage Act 2006**, for "inspectors" substitute "authorised officers".
- (2) In section 161 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

101 Suspension and revocation of appointment

- (1) In section 162(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (2) In section 162(2) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) substitute "authorised officer".

102 Cessation of appointment

- (1) In section 163 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (2) In section 163(a) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (3) For section 163(b) of the **Aboriginal Heritage Act 2006** substitute—
 - "(b) if the authorised officer was appointed under section 160(1)(b), the authorised officer ceases to be appointed as an inspector, enforcement officer or authorised officer by or under any other Act; or".

103 Identity cards

- (1) In section 164(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (2) In section 164(3)(a) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".
- (3) In section 164(3)(b) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

104 Authorised officer to produce identity card

- (1) In the heading to section 165 of the **Aboriginal Heritage Act 2006**, for "Inspector" substitute "Authorised officer".
- (2) In section 165 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

105 New Division 1A of Part 11 inserted

After Division 1 of Part 11 of the **Aboriginal Heritage Act 2006** insert—

"Division 1A—Aboriginal heritage officers

165A Functions of Aboriginal heritage officers

The functions of an Aboriginal heritage officer under this Act include—

- (a) monitoring compliance of cultural heritage management plans, cultural heritage permits and Aboriginal cultural heritage land management agreements; and
- (b) issuing and delivering 24-hour stop orders under Part 6.

165B Appointment of Aboriginal heritage officers

- (1) The Minister, after consultation with the Council, may, in writing, appoint an employee of a registered Aboriginal party as an Aboriginal heritage officer.
- (2) The Minister must be satisfied that a person appointed as an Aboriginal heritage officer—
 - (a) has an appropriate level of knowledge and experience in the identification and protection of Aboriginal cultural heritage; and
 - (b) has completed, to the satisfaction of the Minister, a course of training specified by the Minister; and
 - (c) is capable of carrying out the duties of an Aboriginal heritage officer under this Act.

165C Suspension and revocation of appointment

- (1) The Minister, after consulting with the Council, may, in writing, suspend for a specified period or revoke the appointment of an Aboriginal heritage officer under this Act.
- (2) An Aboriginal heritage officer is taken not to be an Aboriginal heritage officer under this Act during a period of suspension.

165D Identity cards

- (1) The Secretary must issue an identity card to each Aboriginal heritage officer.
- (2) An identity card issued under subsection (1) must—
 - (a) be in the approved form; and
 - (b) contain a recent photograph of the person to whom it is issued.
- (3) A person must immediately return the person's identity card to the Secretary if—
 - (a) the person ceases to be an Aboriginal heritage officer; or
 - (b) the appointment of the person as an Aboriginal heritage officer is suspended.

Penalty: 5 penalty units.

165E Aboriginal heritage officer to produce identity card

An Aboriginal heritage officer must produce an identity card for inspection—

- (a) before exercising any powers under this Act, except a requirement made by post; and

- (b) at any time during the exercise of a power under this Act, if asked to do so."

106 Powers of authorised officers and Aboriginal heritage officers

In the heading to Division 2 of Part 11 of the **Aboriginal Heritage Act 2006**, for "inspectors" substitute "authorised officers and Aboriginal heritage officers".

107 General power to enter land or premises

- (1) In section 166(1) of the **Aboriginal Heritage Act 2006**—
- (a) for "inspector" substitute "authorised officer or Aboriginal heritage officer"; and
- (b) for "inspector's" substitute "authorised officer's or Aboriginal heritage officer's".
- (2) In section 166(2) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (3) In section 166(2)(b)(ii) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

108 Obtaining the consent of the occupier

- (1) In section 167(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (2) In section 167(1)(b) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (3) In section 167(2) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

- (4) In section 167(2)(b) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (5) In section 167(3) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (6) In section 167(4) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (7) In section 167(5) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

109 Power to enter land or premises open to public

In section 168 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

110 Power to enter land or premises for audit

In section 169 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

111 Search powers upon entry

- (1) In section 170(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (2) In section 170(2) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (3) In section 170(2)(d) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (4) In section 170(2)(e) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

112 Seizure powers on entry without search warrant

In section 171 of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer or Aboriginal heritage officer".

113 Seizure power without consent

- (1) In section 172 of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer or Aboriginal heritage officer".
- (2) In section 172(a) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer or Aboriginal heritage officer".
- (3) In section 172(b) of the **Aboriginal Heritage Act 2006**, for "human remains if the inspector" **substitute** "ancestral remains if the authorised officer or Aboriginal heritage officer".

114 Search warrants

- (1) In section 173(1) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer".
- (2) In section 173(2) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer".
- (3) In section 173(3) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer".

115 Announcement before entry

- (1) In section 174(1) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer".
- (2) In section 174(2) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer".

116 Copy of search warrant to be given to occupier

In section 175 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

117 Receipt of seized things

- (1) In section 176(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (2) In section 176(1)(b) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (3) In section 176(2) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) substitute "authorised officer or Aboriginal heritage officer".

118 Security of seized things

- (1) In section 177(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (2) In section 177(2) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

119 Seizure of Aboriginal ancestral remains or object

- (1) In the heading to section 178 of the **Aboriginal Heritage Act 2006**, for "human" substitute "ancestral".
- (2) In section 178(1)(a) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

(3) For section 178(1)(b) of the **Aboriginal Heritage Act 2006** substitute—

"(b) the authorised officer or Aboriginal heritage officer believes that the human remains are Aboriginal ancestral remains or that the object is an Aboriginal object."

(4) In section 178(2) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

(5) In section 178(3) of the **Aboriginal Heritage Act 2006**, for "Aboriginal human" substitute "Aboriginal ancestral".

(6) In section 178(4) of the **Aboriginal Heritage Act 2006**, for "Aboriginal human" substitute "Aboriginal ancestral".

120 Substitution of section 179

For section 179 of the **Aboriginal Heritage Act 2006** substitute—

"179 Return of seized things

- (1) Subject to section 178, this section applies if an authorised officer or Aboriginal heritage officer has seized a thing under this Act.
- (2) If an authorised officer or Aboriginal heritage officer is satisfied that—
 - (a) the thing is not required (or is no longer required) as evidence of an offence against this Act; and
 - (b) the continued retention of the thing is not necessary to prevent the thing being used to continue, or repeat, an offence against this Act; and
 - (c) the thing is not subject to a dispute as to ownership, which would be appropriately resolved by making an

application under subsection (3) for the return of the thing—

the authorised officer or Aboriginal heritage officer must take reasonable steps to return the thing to the person from whom it was seized or to the owner if the person from whom it was seized is not entitled to possess it.

- (3) An application for the return of the thing may be made to the relevant tribunal or court by—
- (a) the person from whom it was seized; or
 - (b) a person who claims to be the owner; or
 - (c) an authorised officer or Aboriginal heritage officer.
- (4) If the relevant tribunal or court is satisfied that—
- (a) the thing is not required (or is no longer required) as evidence of an offence against this Act; and
 - (b) the continued retention of the thing is not necessary to prevent the thing being used to continue, or repeat, an offence against this Act—

the relevant tribunal or court may make an order for the return of the thing to the person from whom it was seized or to the owner if that person from whom it was seized is not entitled to possess it.

- (5) Nothing in this section affects a lien or other security over the thing.

- (6) Any thing seized under this Act and not claimed within 12 months after the seizure may be destroyed or sold and the proceeds of sale paid to the Consolidated Fund.
- (7) Before destroying or selling a seized thing under subsection (6), an authorised officer must—
 - (a) attempt to return the thing under subsection (2); or
 - (b) make an application to the relevant tribunal or court under subsection (3)."

121 Authorised officer or Aboriginal heritage officer may require giving of name and address

- (1) In the heading to section 180 of the **Aboriginal Heritage Act 2006**, for "**Inspector**" substitute "**Authorised officer or Aboriginal heritage officer**".
- (2) In section 180(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (3) In section 180(2) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) substitute "authorised officer or Aboriginal heritage officer".
- (4) In section 180(3) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) substitute "authorised officer or Aboriginal heritage officer".
- (5) In section 180(4) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (6) In section 180(4)(a) of the **Aboriginal Heritage Act 2006**, for "inspector's" substitute "authorised officer's or Aboriginal heritage officer's".

122 Authorised officer or Aboriginal heritage officer may require information

- (1) In the heading to section 181 of the **Aboriginal Heritage Act 2006**, for "**Inspector**" substitute "**Authorised officer or Aboriginal heritage officer**".
- (2) In section 181(1) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (3) In section 181(1)(a) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) substitute "authorised officer or Aboriginal heritage officer".
- (4) In section 181(1)(b) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) substitute "authorised officer or Aboriginal heritage officer".
- (5) In section 181(2) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".
- (6) In section 181(4) of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer or Aboriginal heritage officer".

123 Authorised officer may take affidavits

- (1) In the heading to section 182 of the **Aboriginal Heritage Act 2006**, for "**Inspector**" substitute "**Authorised officer**".
- (2) In section 182 of the **Aboriginal Heritage Act 2006**, for "inspector" substitute "authorised officer".

124 Report to be given about entry

- (1) In section 184(1) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer or Aboriginal heritage officer".
- (2) In section 184(2)(c) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer or Aboriginal heritage officer".
- (3) In section 184(2)(d) of the **Aboriginal Heritage Act 2006**, for "inspector's" **substitute** "authorised officer's or Aboriginal heritage officer's".
- (4) In section 184(2)(e) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer or Aboriginal heritage officer".

125 Person must not impersonate, obstruct or hinder authorised officer or Aboriginal heritage officer

- (1) In the heading to section 185 of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer or Aboriginal heritage officer".
- (2) In section 185(1) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer or Aboriginal heritage officer".
- (3) In section 185(2) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer or Aboriginal heritage officer".
- (4) In section 185(3) of the **Aboriginal Heritage Act 2006**, for "inspector" (where twice occurring) **substitute** "authorised officer or Aboriginal heritage officer".

126 Evidence

- (1) In section 187(1) of the **Aboriginal Heritage Act 2006**—
 - (a) after "a stop order," **insert** "a 24-hour stop order,"; and
 - (b) after "the stop order," **insert** "24-hour stop order,".
- (2) In section 187(2)(a) of the **Aboriginal Heritage Act 2006**, for "inspector" **substitute** "authorised officer".

127 New sections 187A and 187B inserted

After section 187 of the **Aboriginal Heritage Act 2006 insert**—

"187A Criminal liability of officers of bodies corporate—failure to exercise due diligence

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following sections are specified—
 - (a) section 14(1);
 - (b) section 17(3);
 - (c) section 19(2);
 - (d) section 21A(3);
 - (e) section 24(2);
 - (f) section 27(1), (3) and (5);
 - (g) section 28;

- (h) section 33(1);
 - (i) section 34(1);
 - (j) section 34A(5);
 - (k) section 41A;
 - (l) section 46(2), (4) and (6);
 - (m) section 67A(1), (3) and (5);
 - (n) subject to subsection (6),
section 74G(1), (3) and (5);
 - (o) section 79G(1) and (2);
 - (p) section 79H(1), (3) and (5);
 - (q) section 83(3);
 - (r) section 95(1);
 - (s) section 95C(1);
 - (t) section 95F(1);
 - (u) section 102(1) and (3);
 - (v) section 108(1) and (3);
 - (w) section 110(6);
 - (x) section 147A(1) and (2).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and

- (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) This section does not apply to an officer performing a statutory function for or on behalf of any public land manager performing any work for the Department of Environment, Land, Water and Planning.
- (7) In this section—

officer, in relation to a body corporate, means—

 - (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

187B Time for bringing proceedings

- (1) Despite anything to the contrary in any Act, proceedings for an offence against this Act may be commenced within the period of 3 years after the commission of the alleged offence.
- (2) Subsection (1) does not apply to indictable offences."

128 Heritage advisor

- (1) In the heading to section 189 of the **Aboriginal Heritage Act 2006**, for "Cultural heritage" substitute "Heritage".
- (2) In section 189(1) of the **Aboriginal Heritage Act 2006**, for "cultural heritage advisor" substitute "heritage advisor".
- (3) In section 189(1)(a) of the **Aboriginal Heritage Act 2006**, after "qualified" insert "and experienced".
- (4) In section 189(2) of the **Aboriginal Heritage Act 2006**, after "qualifications" insert "and experience".

129 Tax and rate remissions

In section 191(1)(a) of the **Aboriginal Heritage Act 2006** omit "to which the State is a party".

130 Report on operation of Act

In section 192(2) of the **Aboriginal Heritage Act 2006**—

- (a) in paragraph (a), for "inspectors" substitute "authorised officers"; and
- (b) in paragraph (b), for "inspectors" substitute "authorised officers".

131 Review of operation of Act

Section 193 of the **Aboriginal Heritage Act 2006** is **repealed**.

132 Regulations

For section 194(1)(b) of the **Aboriginal Heritage Act 2006** substitute—

- "(b) prescribing fees for evaluating, approving and amending cultural heritage management plans, applications for cultural heritage permits and applications for the certification of preliminary Aboriginal heritage tests;
- (ba) prescribing fees to be charged by the Secretary, including fees in relation to allowing access to and maintaining the Register;
- (bb) prescribing standards for the purposes of Aboriginal cultural heritage land management agreements;"

133 New section 198 inserted

After section 197 of the **Aboriginal Heritage Act 2006** insert—

**"198 Savings and transitional provisions—
Aboriginal Heritage Amendment Act 2016**

- (1) Aboriginal people who became the owners of Aboriginal human remains under section 13 of this Act, as in force immediately before the commencement of section 11 of the **Aboriginal Heritage Amendment Act 2016**, are taken to be the traditional owners of the remains on and after that commencement.

- (2) A person appointed as an inspector under section 160 of this Act, as in force immediately before the commencement of section 99 of the **Aboriginal Heritage Amendment Act 2016**, is taken to be an authorised officer on the commencement of that section.
- (3) To avoid doubt, the register kept under section 10(a) of the **Archaeological and Aboriginal Relics Preservation Act 1972** as in force immediately before the repeal of that Act is taken to form part of, and to have always formed part of, the Register established under section 144."

134 Insertion of Notes

- (1) At the foot of sections 24(2), 33(1), 95(1) and 110(6) of the **Aboriginal Heritage Act 2006** insert—

"Note

Section 187A applies to an offence against this subsection."

- (2) At the foot of sections 102 and 108 of the **Aboriginal Heritage Act 2006** insert—

"Note

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

Part 3—Amendment of the Borrowing and Investment Powers Act 1987

135 Schedule 1 to the Borrowing and Investment Powers Act 1987

In Schedule 1 to the **Borrowing and Investment Powers Act 1987**, before item 1AA insert—

"1AAA. Aboriginal Heritage Council 5, 8, 11, 12, 14, 15, 20, 20A and 21".

Part 4—Amendment of the Cemeteries and Crematoria Act 2003

136 Definitions

In section 3(1) of the **Cemeteries and Crematoria Act 2003** insert the following definition—

"Aboriginal ancestral remains has the same meaning as in the **Aboriginal Heritage Act 2006**";

137 New section 141A inserted

After section 141 of the **Cemeteries and Crematoria Act 2003** insert—

"141A Disapplication of provisions in respect of Aboriginal ancestral remains

The following provisions of this Act do not apply in respect of the interment or cremation of Aboriginal ancestral remains—

- (a) section 114;
- (b) Division 3 of Part 8;
- (c) section 129;
- (d) sections 135 to 141."

Part 5—Amendment of the Coroners Act 2008

138 Definitions

In section 3(1) of the **Coroners Act 2008** insert the following definitions—

"Aboriginal ancestral remains has the same meaning as in the **Aboriginal Heritage Act 2006**;

Aboriginal Heritage Council means the Council within the meaning of the **Aboriginal Heritage Act 2006**;"

139 New section 16A inserted

After section 16 of the **Coroners Act 2008** insert—

"16A Investigations and Aboriginal ancestral remains

If a coroner investigating a death believes that the body is, or is likely to be, Aboriginal ancestral remains, the coroner must notify the Aboriginal Heritage Council."

140 Preliminary examinations

After section 23(3) of the **Coroners Act 2008** insert—

"(4) If a medical investigator who performs a preliminary examination reports to the coroner that, in the medical investigator's opinion, the body is, or is likely to be, Aboriginal ancestral remains, the coroner must notify the Aboriginal Heritage Council of that report."

Part 6—Repeal of Amending Act

141 Repeal

This Act is **repealed** on 1 August 2017.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 11 November 2015

Legislative Council: 11 February 2016

The long title for the Bill for this Act was "A Bill for an Act to amend the **Aboriginal Heritage Act 2006**, the **Borrowing and Investment Powers Act 1987**, the **Cemeteries and Crematoria Act 2003** and the **Coroners Act 2008** to improve the reporting requirements in relation to Aboriginal cultural heritage, to include provisions regarding Aboriginal intangible heritage, to establish an Aboriginal Cultural Heritage Fund and to provide for the further protection of Aboriginal cultural heritage and for other purposes."