

ABORIGINAL HERITAGE ACT 2006 (VIC)

Act No. 16 of 2006

Assented to 9 May 2006

The purpose of the *Aboriginal Heritage Act 2006* (Vic) ('the Act') is to provide for the protection of Aboriginal culture in Australia and to repeal the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic). The main stated objective of the Act is to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage and to accord the appropriate status to Aboriginal people with traditional or familial links with Aboriginal cultural heritage by promoting this heritage as an integral part of land and natural resource management. In this way, the Act provides for the integration of protecting Aboriginal heritage with planning and land development.

The Act is underlined by the principle that as far as is practicable, Aboriginal cultural heritage should be owned by Aboriginal people with traditional or familial links to the area relevant to the heritage. The Act provides for ownership of Aboriginal human remains and secret or sacred Aboriginal objects to be transferred from the custody of the State to the protection of the Aboriginal owners. The Minister is obliged to ensure that Aboriginal human remains and secret or sacred Aboriginal objects are transferred to the custody of the Museums Board (the governing body of the Museum of Victoria) as soon as practicable after the commencement. Aboriginal owners may then ask the Board to return the remains or objects or for the State to continue its role as custodians. Where an Aboriginal place or object is discovered, the person who becomes aware of it must report it to the Secretary of the Department which has administrative responsibilities for Aboriginal Affairs who is then required to decide what to do with the remains following consultation with any relevant Aboriginal person or body.

Part 9 of the Act establishes The Aboriginal Heritage Council ('the Council'), a body corporate with attendant rights and obligations. The Council has been endowed with certain

powers as the peak body to deal with Aboriginal cultural heritage issues in the state. The Council consists of not more than 11 members appointed by the Minister, each member must be an Aboriginal person who has traditional or familial links to an area in Victoria and has the relevant knowledge of Aboriginal cultural heritage in Victoria. The Council must advise the Minister in relation to the significance of Aboriginal remains, objects and places and the protection of this heritage. The Council is to develop measures for the promotion of Aboriginal people in the protection and management of heritage and offer advice on the knowledge, conduct and practice required of persons engaged in research into Aboriginal cultural heritage and the training of inspectors under the Act. At the Minister's request, the Council to make recommendations regarding the application of interim or ongoing protection declarations as well as assisting the Minister on other matters relating to the exercise of his or her powers under the Act where requested by the Minister.

Part 10 of the Act has provisions for the formation of Registered Aboriginal Parties ('RAPs') which represent Aboriginal groups with connections and knowledge of local areas in the State. The RAPs are to be a primary source of advice and knowledge to the Minister, Secretary and Council in relation to Aboriginal cultural heritage. They are to evaluate and prove relevant cultural heritage management plans and enter into cultural heritage agreements. It is the task of the Council to determine applications from parties to become registered Aboriginal parties under the Act and to promote public awareness of cultural heritage. The Chairman of the Council has the responsibility for arranging alternative dispute resolutions under the Act.

The Act establishes a process for cultural heritage management plans to be prepared in circumstances required by legislation and by regulations. The provisions in Part 9 cover large

scale or significant activities which will not be permitted to start without a cultural heritage management plan being prepared and approved. For example, any activity requiring an Environmental Effects Statement ('EES') to be undertaken will require a cultural heritage management plan to be made. Where a proposed activity is of a smaller scale and does not require a cultural heritage plan but may nonetheless pose a risk to cultural heritage, the party may seek a permit under Part 3. The Secretary must provide the relevant RAP with a copy of the application for the cultural heritage permit, who then has 30 days to respond. If the RAP objects to the permit, the Secretary must refuse it. If the Secretary, Council or an Inspector deems that the conditions or requirements attached to a cultural heritage permit or management plan have been contravened or that the impact of the activities is greater than that determined at the time the plan or permit was approved, they may then advise the Minister to order an audit pursuant to Part 6. The audit must be carried out under the direction of an inspector. The audit will produce a written report which identifies any contraventions.

People are permitted to enter into cultural heritage agreements concerning the management and protection of Aboriginal cultural heritage under Part 5. Parties may include any person, the Secretary, a crown land manager, private land owner; however, one of the parties must be a RAP. The agreement may only take place once relevant RAPs have provided written consent. An agreement could cover protection and maintenance or rehabilitation of Aboriginal places or objects or the right of access or use of Aboriginal places or objects.

Another feature of the Act is Part 9 which creates a new role for the Victorian Civil and Administrative Tribunal ('VCAT') as the means for dispute resolution and appeals against decisions over management plans, heritage permits and protection declarations. Where the Council as a means of alternative dispute resolution, fails to resolve disputes where a sponsor of a plan has been denied by the relevant RAPs or the Secretary, the matter will be taken to the VCAT or where there is disagreement between two or more RAPs the matter can then be appealed to the VCAT.

The Act produces a new framework for penalties against acts that harm Aboriginal cultural heritage. Some existing powers of enforcement have been retained, whilst others have been introduced. It should also be noted that penalties for breaches and contraventions of orders have increased.

For the offence of knowingly harming cultural heritage or of knowingly contravening a protection order, a person is liable to a penalty of 1,800 units; the figure increases to 10,000 units for a body corporate.

The full text of this Act is available online at: <<http://www.austlii.edu.au>>.