

Authorised Version No. 001
Aboriginal Heritage Regulations 2018

S.R. No. 59/2018

Authorised Version as at
23 May 2018

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Part 1—Preliminary

1 Objectives

The objectives of these Regulations are—

- (a) to specify the circumstances in which a cultural heritage management plan is required for an activity or class of activity; and
- (b) to prescribe standards for the preparation of a cultural heritage management plan including the carrying out of assessments; and
- (c) to prescribe the form for the preparation of preliminary Aboriginal heritage tests including the carrying out of assessments; and
- (d) to prescribe standards for the preparation of a map included in a cultural heritage agreement; and
- (e) to prescribe fees for evaluating, approving and amending a cultural heritage management plan; and
- (f) to prescribe fees for an application for a cultural heritage permit; and
- (g) to prescribe fees for an application to the Secretary for advice as to whether a record exists on the Register in relation to a nominated area of land; and

- (h) to prescribe fees for an application for certification of a preliminary Aboriginal heritage test; and
- (i) to prescribe fees for giving notice of intention to prepare a cultural heritage management plan; and
- (j) to prescribe fees for access to the Victorian Aboriginal Heritage Register; and
- (k) to generally give effect to the **Aboriginal Heritage Act 2006**.

2 Authorising provision

These Regulations are made under section 194 of the **Aboriginal Heritage Act 2006**.

3 Commencement

These Regulations come into operation on 23 May 2018.

4 Revocations

The following Regulations are **revoked**—

- (a) the Aboriginal Heritage Regulations 2007¹;
- (b) the Aboriginal Heritage Amendment Regulations 2009²;
- (c) the Aboriginal Heritage Amendment Regulations 2016³;
- (d) the Aboriginal Heritage Amendment Regulations 2018⁴.

5 Definitions

In these Regulations—

activity area means the area or areas to be used or developed for an activity;

area of cultural heritage sensitivity means—

- (a) an area specified as an area of cultural heritage sensitivity in Division 3 of Part 2; or
- (b) if Division 4 of Part 2 applies, an area specified as an area of cultural heritage sensitivity in that Division;

building has the same meaning as in the **Planning and Environment Act 1987**;

coastal Crown land has the same meaning as in the **Coastal Management Act 1995**;

complex assessment means an assessment under regulation 65;

decision maker has the same meaning as in section 50 of the Act;

deep ripping means the ploughing of soil using a ripper or subsoil cultivation tool to a depth of 60 centimetres or more;

desktop assessment means an assessment under regulation 61;

dwelling has the same meaning as in the VPP;

earth resource authorisation has the same meaning as in section 50 of the Act;

high impact activity means an activity specified as a high impact activity in Division 5 of Part 2;

industry has the same meaning as in the VPP;

lot has the same meaning as in the **Subdivision Act 1988**;

park has the same meaning as—

- (a) in the **National Parks Act 1975**; or
- (b) land described in a Division of Part 1 of the Fifth Schedule to the **Crown Land (Reserves) Act 1978**;

planning scheme means a planning scheme in force under the **Planning and Environment Act 1987**;

prior waterway means land which is identified as—

- (a) a "leveed stream course" on Geological Survey of Victoria map sheet SJ55-2 entitled "Wangaratta" (dated 1974); or
- (b) a "prior stream" on Geological Survey of Victoria map sheet SJ55-1 entitled "Bendigo" (third edition, 2001); or
- (c) a "leveed stream" on Geological Survey of Victoria map sheets SI54-4 entitled "St Arnaud" (dated 1976) and SI54-16 entitled "Swan Hill" (dated 1974); or
- (d) a "leveed stream trace" on Geological Survey of Victoria map sheet SI55-13 entitled "Deniliquin" (dated 1974);

private dam has the same meaning as in the **Water Act 1989**;

rail infrastructure has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

registered cultural heritage place means an Aboriginal place recorded in the Register;

road has the same meaning as in the **Road Management Act 2004**;

roadway has the same meaning as in the **Road Management Act 2004**;

rock shelter means—

- (a) a concave area in a cliff where the cliff overhangs; or
- (b) a concave area in a tor where the tor overhangs; or
- (c) a shallow cave—

where the height of the concave area or shallow cave is generally greater than its depth;

significant ground disturbance means disturbance of—

- (a) the topsoil or surface rock layer of the ground; or
- (b) a waterway—

by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping;

standard assessment means an assessment under regulation 63;

statutory authorisation has the same meaning as in section 50 of the Act;

subdivision has the same meaning as in the **Subdivision Act 1988**;

the Act means the **Aboriginal Heritage Act 2006**;

VPP means the Victoria Planning Provisions within the meaning of the **Planning and Environment Act 1987**;

waterway means—

- (a) a river, creek, stream or watercourse the name of which is registered under the **Geographic Place Names Act 1998** and includes any artificially manipulated sections; or
- (b) a natural channel the name of which is registered under the **Geographic Place Names Act 1998** and includes any artificially manipulated sections in which water regularly flows, whether or not the flow is continuous; or
- (c) a lake, lagoon, swamp or marsh, being—
 - (i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or
 - (ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) of the **Water Act 1989** to be a lake, lagoon, swamp or marsh; or

- (d) land which is regularly or intermittently covered by water from a waterway as described in paragraph (a), (b) or (c) but does not include—
 - (i) any artificial channel or work which diverts water away from such a waterway; or
 - (ii) an area covered by the floodwaters of a waterway; or
 - (iii) an area, other than the waterway, designated on a planning scheme as being a floodway or liable to flooding or as being subject to inundation; or
- (e) if any land described in paragraph (d) forms part of a slope rising from the waterway to a definite lip, the land up to that lip.

Part 2—Cultural heritage management plans

Division 1—When is a cultural heritage management plan required?

6 Purpose

The purpose of this Part is to prescribe the circumstances in which a cultural heritage management plan is required for an activity.

7 When a cultural heritage management plan is required

A cultural heritage management plan is required for an activity if—

- (a) all or part of the activity area for the activity is an area of cultural heritage sensitivity; and
- (b) all or part of the activity is a high impact activity.

Note

See regulation 5 for definitions of *area of cultural heritage sensitivity* and *high impact activity*.

Division 2—Exempt activities

8 Application

Despite regulation 7, a cultural heritage management plan is not required under these Regulations for an activity if—

- (a) the activity consists solely of a use or development of land that is specified in this Division as being an exempt activity; or
- (b) the activity consists of more than one use or development of land and each of those uses or developments is specified in this Division as being an exempt activity.

9 One or 2 dwellings

- (1) The construction of either of the following is an exempt activity—
 - (a) one or 2 dwellings on a lot or allotment;
 - (b) an extension to one or 2 dwellings on a lot or allotment.
- (2) In this regulation, a reference to the construction of one or 2 dwellings on a lot or allotment does not include a construction that is part of a high impact activity referred to in regulation 47.

10 3 or more dwellings on a small lot

The construction of 3 or more dwellings on a lot or allotment is an exempt activity if the lot or allotment is—

- (a) not within 200 metres of the coastal waters of Victoria, any sea within the limits of Victoria or the Murray River; and
- (b) less than 0.11 hectares.

11 Small subdivisions

The subdivision of land is an exempt activity if—

- (a) all of the land is not within 200 metres of the coastal waters of Victoria, any sea within the limits of Victoria or the Murray River; and
- (b) the total area of land to be subdivided is less than 0.11 hectares.

12 Buildings and works ancillary to a dwelling

- (1) The construction of a building is an exempt activity if it is ancillary to—
 - (a) an existing dwelling; or
 - (b) the construction of one or 2 dwellings on a lot or allotment.

- (2) The construction or carrying out of works is an exempt activity if it is ancillary to—
 - (a) an existing dwelling; or
 - (b) the construction of one or 2 dwellings on a lot or allotment.
- (3) Without limiting subregulations (1) and (2), the following activities are exempt activities if they are ancillary to an existing dwelling or the construction of one or 2 dwellings on a lot or allotment—
 - (a) constructing or maintaining a garden, including constructing a retaining wall, and removing, lopping, destroying or planting vegetation;
 - (b) constructing and maintaining a garage, workshop or shed;
 - (c) constructing and maintaining a driveway or path;
 - (d) constructing and maintaining a fence;
 - (e) installing a swimming pool or spa;
 - (f) installing a water tank.
- (4) In this regulation, a reference to the construction of one or 2 dwellings on a lot or allotment does not include a construction that is part of a high impact activity referred to in regulation 47.

13 Services to a dwelling

The construction or carrying out of works for reticulated electricity, gas, water, sewerage or drainage or for telecommunications services is an exempt activity if the works are located between a boundary of the land on which a dwelling is located and the dwelling or a building ancillary to the dwelling.

14 Alteration of buildings

The following are exempt activities—

- (a) the exterior alteration of a building;
- (b) the exterior decoration of a building.

15 Minor works

(1) The construction of the following structures is an exempt activity—

- (a) fences or freestanding walls;
- (b) temporary seating structures, stages or platforms.

(2) The construction or carrying out of the following works is an exempt activity—

- (a) works on, over or under an existing roadway or existing rail infrastructure;
- (b) maintenance or repair works or the removal of works associated with an existing high impact activity;
- (c) other minor works associated with an existing high impact activity.

16 Demolition

The demolition or removal of a building is an exempt activity.

17 Consolidation of land

The consolidation of land within the meaning of the **Subdivision Act 1988** is an exempt activity.

18 Subdivision of existing building

The subdivision of an existing building is an exempt activity.

19 Amendments to a statutory authorisation

- (1) The construction of a building or the construction or the carrying out of works authorised by an amendment to a statutory authorisation is an exempt activity if—
 - (a) the building or works are located in an area that has been subject to significant ground disturbance; and
 - (b) the statutory authorisation was granted before 28 May 2007.

Example

A permit was granted under the **Planning and Environment Act 1987** for a dam before 28 May 2007. The dam requires a licence to construct under section 67(1A) the **Water Act 1989**. An amendment to the permit is sought so the dam may be constructed at a different location on the land. The new location has been subject to significant ground disturbance. The dam, as proposed by the amendment, is an exempt activity.

- (2) The construction of a building or the construction or the carrying out of works authorised by an amendment to a statutory authorisation is an exempt activity if—
 - (a) there is an approved cultural heritage management plan in relation to the area to be affected by the building or works; and
 - (b) the building or works are not inconsistent with that plan; and
 - (c) the statutory authorisation was granted after 28 May 2007.

Example

A permit was granted under the **Planning and Environment Act 1987** for a motor racing track after these Regulations commenced. An amendment is later sought to add a lane to the track, which would enable a larger vehicle to race. Constructing the additional lane is inconsistent with a cultural heritage management plan that was approved

before the track was established. The additional lane is not an exempt activity.

20 Jetties

The construction of a jetty is an exempt activity if the jetty—

- (a) is constructed on—
 - (i) land used for only one dwelling; or
 - (ii) land abutting land used for only one dwelling; and
- (b) is to be used only by the occupier of the dwelling.

21 Sea bed

The development of the sea bed of the coastal waters of Victoria or any sea within the limits of Victoria is an exempt activity.

22 Emergency works

- (1) In an emergency, the construction or carrying out of works reasonably necessary to protect the health or safety of a person, to protect property or to protect the environment is an exempt activity.
- (2) In this regulation, *emergency* has the same meaning as in the **Emergency Management Act 1986**.

Division 3—Areas of cultural heritage sensitivity

23 Purpose

The purpose of this Division is to specify areas of cultural heritage sensitivity in Victoria.

Note

Under regulation 7, a cultural heritage management plan is required for an activity if all or part of the activity area is an area of cultural heritage sensitivity and if all or part of the activity is a high impact activity.

24 Application

This Division does not apply to an area of land specified in column 2 of Schedule 1.

25 Registered cultural heritage places

- (1) A registered cultural heritage place is an area of cultural heritage sensitivity.
- (2) Subject to subregulation (3), land within 50 metres of a registered cultural heritage place is an area of cultural heritage sensitivity.
- (3) If part of the land within 50 metres of a registered cultural heritage place has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

26 Waterways

- (1) Subject to subregulation (2), a waterway or land within 200 metres of a waterway is an area of cultural heritage sensitivity.
- (2) If part of a waterway or part of the land within 200 metres of a waterway has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

Examples

- 1 An activity area consists of the whole of a lot. A waterway passes through the lot. All of the land within 200 metres of one side of the waterway has been subject to significant ground disturbance. The land within 200 metres of the other side of the waterway has not been subject to significant ground disturbance and is an area of cultural heritage sensitivity.
- 2 A school proposes to demolish an old hospital and to build a new school in its place. The activity area is the footprint of the existing building, because the new building will have the same footprint. The activity area has been subject to significant ground disturbance when the foundations were dug many years ago. Although the existing building is located within 200 metres of a waterway, it is not an area of cultural

heritage sensitivity because all of the activity area has been subject to significant ground disturbance.

27 Prior waterways

- (1) Subject to subregulation (2), a prior waterway or land within 200 metres of a prior waterway is an area of cultural heritage sensitivity.
- (2) If part of a prior waterway or part of the land within 200 metres of a prior waterway has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

28 Ancient lakes

- (1) Subject to subregulation (2), an ancient lake or land within 200 metres of an ancient lake is an area of cultural heritage sensitivity.
- (2) If part of an ancient lake or part of the land within 200 metres of an ancient lake has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, *ancient lake* means an area identified as "Qxy" in the Surface Geology of Victoria 1:250 000 map book.

29 Declared Ramsar wetlands

- (1) Subject to subregulation (2), a declared Ramsar wetland or land within 200 metres of a declared Ramsar wetland is an area of cultural heritage sensitivity.
- (2) If part of a declared Ramsar wetland or part of the land within 200 metres of a declared Ramsar wetland has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, *declared Ramsar wetland* has the same meaning as in the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth.

30 Coastal Crown land

- (1) Subject to subregulation (2), coastal Crown land is an area of cultural heritage sensitivity.
- (2) If part of an area of coastal Crown land has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

Example

A yacht club proposes to extend its club house onto a vacant, unused area at the rear of the existing club house, within the area of its Crown land lease. The activity is the construction of the extension and the activity area is the unused area upon which the extension is to be constructed. The activity area is close to the coast. The activity area has not been subject to significant ground disturbance because only the coastal vegetation has been removed. The activity area is an area of cultural heritage sensitivity.

31 Coastal land

- (1) Subject to subregulation (2), land within 200 metres of the high water mark of the coastal waters of Victoria or any sea within the limits of Victoria is an area of cultural heritage sensitivity.
- (2) If part of the land specified in subregulation (1) has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

32 Parks

- (1) Subject to subregulation (2), a park is an area of cultural heritage sensitivity.
- (2) If part of a park has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

33 High plains

- (1) Subject to subregulation (2), the high plains is an area of cultural heritage sensitivity.
- (2) If part of the high plains has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, *high plains* means an area identified as "High Plains 1.3" on the map entitled "Land Systems and Geomorphic Units" published by the Land Conservation Council in 1988.

34 Koo Wee Rup Plain

- (1) Subject to subregulation (2), the Koo Wee Rup Plain is an area of cultural heritage sensitivity.
- (2) If part of the Koo Wee Rup Plain has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, *Koo Wee Rup Plain* means an area identified as "Qg" and "Qm1" in the Surface Geology of Victoria 1:250 000 map book.

35 Greenstone outcrops

- (1) Subject to subregulation (2), a greenstone outcrop area is an area of cultural heritage sensitivity.
- (2) If part of a greenstone outcrop area has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, a *greenstone outcrop area* means an area identified as "-Chm", "-Chs", "-Cic", "-Cid", "-Cie", "-Cim", "-Cip", "-Cis", "-Cj2", "-Cjb", "-Cjc", "-Cjh", "-Cjl", "-Cjm", "-Cjr", "-Cjs", "-Cjt", "-Cjw", "-Ctg" and "-Czk" in the Surface Geology of Victoria 1:250 000 map book.

36 Stony rises

- (1) Subject to subregulation (2), the stony rises associated with the Mt Eccles, Mt Napier and Mt Rouse lava flows are areas of cultural heritage sensitivity.
- (2) If part of an area specified in subregulation (1) has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, *stony rises associated with the Mt Eccles, Mt Napier and Mt Rouse lava flows* means the areas identified as "Neo2" in the Surface Geology of Victoria 1:250 000 map book and which are associated with the Mt Eccles, Mt Napier and Mt Rouse lava flows.

37 Volcanic cones of western Victoria

- (1) Subject to subregulation (2), the volcanic cones of western Victoria are areas of cultural heritage sensitivity.
- (2) If part of the volcanic cones of western Victoria has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, *volcanic cones of western Victoria* means an area identified as—
 - (a) "Ne", "Nep1", "Nept", "Neptp" and "Nes" in the Surface Geology of Victoria 1:250 000 map book; or
 - (b) "Qvs" on the Geological Survey of Victoria 1:250 000 map series sheet SJ54-11 entitled "Portland" (second edition, 1997).

38 Caves

A cave, a rock shelter or a cave entrance is an area of cultural heritage sensitivity.

39 Lunettes

- (1) Subject to subregulation (2), a lunette is an area of cultural heritage sensitivity.
- (2) If part of a lunette has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, *lunette* means an area identified as "Q1" and "Q11" in the Surface Geology of Victoria 1:250 000 map book.

40 Dunes

- (1) Subject to subregulation (2), a dune or a source bordering dune is an area of cultural heritage sensitivity.
- (2) If part of a dune or part of a source bordering dune has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation—
dune includes an inland, riverine, lacustrine or coastal dune;
source bordering dune means an area identified as "Qdi" in the Surface Geology of Victoria 1:250 000 map book.

41 Sand sheets

- (1) Subject to subregulation (2), a sand sheet, including the Cranbourne sand, is an area of cultural heritage sensitivity.
- (2) If part of a sand sheet, including the Cranbourne sand, has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

- (3) In this regulation, *sand sheet, including the Cranbourne sand* means an area identified as "Qd1" and "Qxr" in the Surface Geology of Victoria 1:250 000 map book.

Division 4—Areas of cultural heritage sensitivity specified in Schedule 1

42 Purpose

The purpose of this Division is to specify certain other areas of cultural heritage sensitivity in Victoria.

43 Areas of cultural heritage sensitivity

An area that is specified in column 3 of an item in Schedule 1 is an area of cultural heritage sensitivity.

44 A registered cultural heritage place is an area of cultural heritage sensitivity

- (1) A registered cultural heritage place that is located in an area specified in column 2 of an item in Schedule 1 is an area of cultural heritage sensitivity.
- (2) Subject to subregulation (3), land within 50 metres of a registered cultural heritage place that is located in an area specified in an item in column 2 of Schedule 1 is an area of cultural heritage sensitivity.
- (3) If part of the land within 50 metres of a registered cultural heritage place that is located in an area specified in an item in column 2 of Schedule 1 has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

Division 5—High impact activities

45 Purpose

The purpose of this Division is to specify high impact activities.

Note

Under regulation 7, a cultural heritage management plan is required for an activity if all or part of the activity area is an area of cultural heritage sensitivity and if all or part of the activity is a high impact activity.

46 Buildings and works for specified uses

- (1) The construction of a building or the construction or carrying out of works on land is a high impact activity if the construction of the building or the construction or carrying out of the works—
 - (a) would result in significant ground disturbance; and
 - (b) is for, or associated with, the use of the land for any one or more of the following purposes—
 - (i) aquaculture;
 - (ii) a camping and caravan park;
 - (iii) a car park;
 - (iv) a cemetery;
 - (v) a child care centre;
 - (vi) a corrective institution;
 - (vii) a crematorium;
 - (viii) an education centre;
 - (ix) an emergency services facility;
 - (x) a freeway service centre;
 - (xi) a hospital;
 - (xii) an industry;

- (xiii) intensive animal husbandry;
- (xiv) a major sports and recreation facility;
- (xv) a minor sports and recreation facility;
- (xvi) a motor racing track;
- (xvii) an office;
- (xviii) a place of assembly;
- (xix) a recreational boat facility;
- (xx) a research centre;
- (xxi) a residential building;
- (xxii) a residential village;
- (xxiii) a retail premises;
- (xxiv) a retirement village;
- (xxv) a service station;
- (xxvi) a transport terminal;
- (xxvii) a utility installation, other than a telecommunications facility, if—
 - (A) the works are a linear project that is the construction of an overhead power line with a length exceeding one kilometre or for which more than 10 power poles are erected; or
 - (B) the works are a linear project that is the construction of a pipeline with a length exceeding 500 metres; or

- (C) the works are a linear project with a length exceeding 100 metres (other than the construction of an overhead power line or a pipeline with a pipe diameter not exceeding 150 millimetres); or
 - (D) the works affect an area exceeding 25 square metres;
- (xxviii) a veterinary centre;
 - (xxix) a warehouse;
 - (xxx) land used to generate electricity, including a wind energy facility.
- (2) The terms used in subregulation (1)(b) have the same meanings as they have in the VPP.
 - (3) Despite subregulation (1), the construction of a building or the construction or carrying out of works on land is not a high impact activity if it is for, or associated with, a purpose listed under subregulation (1)(b) for which the land was being lawfully used immediately before 28 May 2007.
 - (4) In this regulation, *linear project* has the same meaning as in regulation 81.

47 Constructing specified items of infrastructure

- (1) The construction of any one or more of the following is a high impact activity if the construction would result in significant ground disturbance—
 - (a) an airfield;
 - (b) a bicycle track with a length exceeding 500 metres;
 - (c) a fuel break where a permit is required to remove or destroy native vegetation;
 - (d) a helipad;

- (e) rail infrastructure, other than—
 - (i) a railway track with a length of less than 100 metres; or
 - (ii) a railway track siding with a length of less than 100 metres; or
 - (iii) a cutting with a length of less than 100 metres; or
 - (iv) a tunnel with a length of less than 100 metres; or
 - (v) a bridge with a span of less than 100 metres; or
 - (vi) a platform with a length of less than 100 metres; or
 - (vii) a service road with a length of less than 100 metres;
 - (f) a roadway with a length exceeding 100 metres;
 - (g) a walking track with a length exceeding 500 metres;
 - (h) a telecommunications line consisting of an underground cable or duct with a length exceeding 500 metres.
- (2) In this regulation, *telecommunications line* has the same meaning as in the VPP.

48 Dwellings

- (1) The construction of 3 or more dwellings on a lot or allotment is a high impact activity.
- (2) The carrying out of works for 3 or more dwellings on a lot or allotment is a high impact activity.

- (3) This regulation does not apply to the construction of, or the carrying out of works, for a residential village or retirement village within the meaning of the VPP.

Example

Constructing an apartment tower containing 50 dwellings is a high impact activity. Constructing or extending only one or 2 dwellings on a lot or allotment is not a high impact activity.

Note

See regulation 9 in relation to the construction of a building, or the construction or carrying out of works, where the building or works are ancillary to an existing dwelling or the construction of one or 2 dwellings on a lot or allotment. See regulation 10 in relation to the construction of 3 or more dwellings on a small lot.

49 Subdivision of land

- (1) The subdivision of land into 3 or more lots is a high impact activity if—
- (a) the planning scheme that applies to the activity area in which the land to be subdivided is located provides that at least 3 of the lots may be used for a dwelling or may be used for a dwelling subject to the grant of a permit; and
 - (b) the area of each of at least 3 of the lots is less than 8 hectares.
- (2) The subdivision of land into 2 or more lots in an industrial zone is a high impact activity.
- (3) In this regulation, *industrial zone* has the same meaning as in the VPP.

Note

See regulation 11 in relation to small subdivisions.

50 Alpine resorts

- (1) The construction of a building or the construction or carrying out of works in an alpine resort is a high impact activity if the construction of the building or the construction or carrying out of the works would result in significant ground disturbance.
- (2) In this regulation, *alpine resort* has the same meaning as in the **Alpine Resorts Act 1983**.

51 Activities requiring earth resource authorisations

An activity is a high impact activity if it is an activity—

- (a) for which an earth resource authorisation is required before the activity may be carried out; and
- (b) that would result in significant ground disturbance.

52 Extraction or removal of stone

- (1) The extraction or removal of stone (other than sand or sandstone) that does not require an earth resource authorisation is a high impact activity if—
 - (a) the primary purpose of the extraction or removal is—
 - (i) the sale or commercial use of the stone; or
 - (ii) the use of the stone in construction, building, roadway or manufacturing works; and
 - (b) the land from which the stone is extracted or removed is more than 2000 square metres; and

- (c) the extraction or removal would result in significant ground disturbance.
- (2) In this regulation, *stone* has the same meaning as in the **Mineral Resources (Sustainable Development) Act 1990**.

53 Extraction or removal of sand or sandstone

- (1) The extraction or removal of sand or sandstone (other than extraction or removal that requires an earth resource authorisation) is a high impact activity if the extraction or removal would result in significant ground disturbance.
- (2) Subregulation (1) does not apply to the extraction or removal of sand or sandstone—
 - (a) from land that is a farm if the sand or sandstone is intended in good faith only to be used on that farm for the purposes of a dam or other farm works and not for sale or any other commercial use; or
 - (b) undertaken by or on behalf of a Minister responsible for the administration of the **Conservation, Forests and Lands Act 1987** where the primary purpose of the extraction is for the footings or foundations of a building or structure, the construction of a carpark, roadway, track or other works or for any borrow pit adjacent to such an excavation; or
 - (c) if the extraction or removal, including dredging, constitutes works for marine navigational purposes or the establishment or renourishment of a beach; or
 - (d) if the extraction or removal constitutes works for the purpose of establishing a port facility, railway or tunnel; or

- (e) if the primary purpose of the excavation or removal is for the construction of the footings or foundations of a building or structure.

54 Stone exploration

- (1) Stone exploration is a high impact activity if it would result in significant ground disturbance.
- (2) In this regulation, *stone exploration* has the same meaning as in the VPP.

55 Extraction or removal of loose stone on agricultural land on Victorian Volcanic Plain

- (1) The extraction or removal of loose stone from the surface of land used for agriculture on the Victorian Volcanic Plain is a high impact activity if the extraction or removal—
 - (a) is for the primary purpose of land improvement, including pasture enhancement; and
 - (b) would result in significant ground disturbance.
- (2) The crushing of loose stone on the surface of land used for agriculture on the Victorian Volcanic Plain is a high impact activity if the crushing is—
 - (a) by machinery; and
 - (b) for the primary purpose of land improvement, including pasture enhancement.
- (3) Subregulations (1) and (2) do not apply if the land is used for crop raising or has been used for crop raising.

(4) In this regulation—

agriculture and *crop raising* have the same meanings respectively as they have in the VPP;

stone has the same meaning as in the **Mineral Resources (Sustainable Development) Act 1990**;

Victorian Volcanic Plain means the area comprised of the areas identified as "Ne", "Neo", "Neo1", "Neo2", "Nep1", "Nept", "Neptp", "Nes", "Nes2" and "Nes3" in the Surface Geology of Victoria 1:250 000 map book.

56 Timber production

- (1) The use of an area of land greater than 40 hectares in size for timber production is a high impact activity if—
 - (a) a permit is required under a planning scheme to use the land for timber production; and
 - (b) the use of the land for timber production would result in significant ground disturbance.
- (2) The construction of a building associated with timber production is a high impact activity if—
 - (a) a permit is required under a planning scheme to construct the building; and
 - (b) the construction of the building would result in significant ground disturbance.

- (3) In this regulation, *timber production* has the same meaning as in the VPP.

Note

A permit may not be required under a planning scheme to use an activity area for timber production if the timber production is ancillary to a particular agricultural enterprise (such as agroforestry).

57 Dams

The construction or alteration of a private dam, other than on a waterway, is a high impact activity if a licence is required under section 67(1A) of the **Water Act 1989** for the construction or alteration of the private dam.

58 Use of land

- (1) The use of land for a purpose specified in regulation 46(1)(b) is a high impact activity if a statutory authorisation is required to change the use of the land for that purpose.
- (2) The use of land for an extractive industry is a high impact activity if a statutory authorisation is required to use the land for the extractive industry.
- (3) The use of a lot or allotment for 3 or more dwellings is a high impact activity if a statutory authorisation is required to use the lot or allotment for 3 or more dwellings.
- (4) Despite subregulations (1), (2) and (3), if the whole of the activity area for an activity referred to in subregulation (1), (2) or (3) has been subject to significant ground disturbance, that activity is not a high impact activity.

(5) In this regulation, *extractive industry* has the same meaning as in the VPP.

Example

A land owner proposes to change the use of his or her land from the grazing of animals to the storage of shipping containers. The land is flat and, in the first instance, no works are proposed, although the grass will first be cut and some non-indigenous shrubs removed. The use of the land for storing shipping containers is an industry and requires a statutory authorisation (a permit under the relevant planning scheme). The proposed use is a high impact activity. If, at a later date, the area is upgraded by works, including excavation for a concrete base on which to store the containers, the upgrade works would also be a high impact activity under regulation 46(1).

Part 3—Standards for the preparation of a cultural heritage management plan

Division 1—Assessments

59 Purpose

The purpose of this Division is to prescribe standards for the conduct of an assessment for the purposes of a cultural heritage management plan.

60 Types of assessment

- (1) An assessment must consist of a desktop assessment.
- (2) If required under this Division, an assessment must also consist of—
 - (a) a standard assessment; or
 - (b) a complex assessment; or
 - (c) a standard assessment and a complex assessment.

61 What does a desktop assessment include?

- (1) For the purposes of section 53(2) of the Act, a desktop assessment of an activity area must include research into information relating to Aboriginal cultural heritage in or associated with the activity area, including the following—
 - (a) a search of the Register for information relating to the activity area;
 - (b) an identification and determination of the geographic region of which the activity area forms a part that is relevant to the Aboriginal cultural heritage that may be present in the activity area;

- (c) a review of reports and published works about Aboriginal cultural heritage in the geographic region referred to in paragraph (b);
 - (d) a review of historical and ethno-historical accounts of Aboriginal occupation of the geographic region referred to in paragraph (b);
 - (e) a review of the landforms or geomorphology of the activity area;
 - (f) a review of the history of the use of the activity area.
- (2) A desktop assessment may include the collection and review of oral history relating to the activity area.

62 When is a standard assessment required?

- (1) Subject to subregulation (2), a standard assessment is required if the results of a desktop assessment show that it is reasonably possible that Aboriginal cultural heritage is present in the activity area.
- (2) If a complex assessment of all, or all relevant parts of, the activity area is carried out following a desktop assessment, a standard assessment for that area is not required.

63 What does a standard assessment include?

- (1) For the purposes of section 53(2) of the Act, a standard assessment must include a ground survey of all or part of the activity area to detect the presence of Aboriginal cultural heritage in or associated with the activity area.
- (2) A standard assessment may include the collection and review of oral history relating to the activity area.

- (3) A ground survey of an activity area under this regulation must include an on the ground examination of—
- (a) the surface of the activity area undertaken by traversing the area in a systematic manner; and
 - (b) any mature indigenous tree in the activity area; and
 - (c) any cave, rock shelter or cave entrance in the activity area.
- (4) A ground survey of an activity area under this regulation may include any of the following sub-surface investigations—
- (a) ground penetrating radar survey;
 - (b) resistivity survey;
 - (c) remote sensing;
 - (d) ground magnetic survey;
 - (e) electromagnetic survey;
 - (f) soil and sediment testing with a manual auger no larger than 12 centimetres in diameter to assist in defining the nature and extent of identified Aboriginal cultural heritage.
- (5) A ground survey of an activity area under this regulation must be conducted in accordance with proper archaeological practice.

64 When is a complex assessment required?

- (1) A complex assessment is required if the desktop assessment or standard assessment shows that—
- (a) Aboriginal cultural heritage is, or is likely to be, present in the activity area; and

- (b) it is not possible to identify the extent, nature and significance of the Aboriginal cultural heritage in the activity area unless a complex assessment is carried out.
- (2) Despite subregulation (1), a complex assessment is not required in respect of an area to which the standard assessment applied if the activity will not harm Aboriginal cultural heritage in that area.

65 What does a complex assessment include?

- (1) For the purposes of section 53(2) of the Act, a complex assessment of an activity area is an assessment involving the disturbance of all or part of the activity area or an excavation of all or part of the activity area to uncover or discover Aboriginal cultural heritage.
- (2) A complex assessment may also include the collection and review of oral history relating to the activity area.
- (3) A disturbance or an excavation for a complex assessment must be supervised by a person appropriately qualified in archaeology and be carried out in accordance with proper archaeological practice.
- (4) The stratigraphy and general sub surface nature of the area being investigated must be established by controlled excavation before any other disturbance or excavation is carried out.
- (5) If machinery is used in a disturbance or an excavation, the disturbance or excavation must be conducted on a detailed stratigraphic basis.
- (6) If the use of machinery in a disturbance or an excavation results in the finding of occupation deposits or features, the deposits or features must be uncovered and assessed by controlled excavation.

- (7) In this regulation, *controlled excavation* means an archaeological investigation to uncover deposits or features using accepted stratigraphic methods and—
- (a) standard hand-held archaeological equipment, such as trowels, spades, sieves and brushes; or
 - (b) if it is not practicable to use the equipment referred to in paragraph (a), mechanical equipment that can be used to proceed with the investigation in as careful a manner as an excavation carried out using the equipment referred to in paragraph (a).

Division 2—Preparation of a cultural heritage management plan

66 Purpose

The purpose of this Division is to prescribe standards relating to the preparation of a cultural heritage management plan.

67 Reason for preparation of a cultural heritage management plan

- (1) A cultural heritage management plan must include a statement about whether the plan was—
- (a) voluntarily prepared under section 45 of the Act; or
 - (b) required by these Regulations; or
 - (c) required by the Minister under section 48 of the Act; or
 - (d) required under section 49 of the Act; or
 - (e) required under section 49A of the Act; or

- (f) required under a certified preliminary Aboriginal heritage test.
- (2) If a cultural heritage management plan is required by these Regulations, the plan must include a statement of the reasons why these Regulations required the plan.

68 Content of a cultural heritage management plan

For the purposes of section 53(1) of the Act, a cultural heritage management plan must—

- (a) unless otherwise approved by the Secretary, be in the approved form; and
- (b) include the information set out in Schedule 2.

69 Amendments to approved cultural heritage management plans

For the purposes of section 66A(4) of the Act, an application to amend an approved cultural heritage management plan is in the prescribed form if it contains the information set out in Schedule 3.

Note

The amended plan must comply with section 53 of the Act.

70 Notice of representative

A registered Aboriginal party must notify the sponsor as soon as practicable of the name of each person it appoints to act as its representative in evaluating a cultural heritage management plan or doing any of the things set out in section 60 of the Act in relation to the plan.

Part 4—Standards for the preparation of a cultural heritage agreement

71 Purpose

The purpose of this Part is to prescribe standards for maps included in cultural heritage agreements.

72 Maps included in cultural heritage agreements

- (1) For the purposes of section 70(4) of the Act, a map included in a cultural heritage agreement under section 70(3) of the Act must include the following—
 - (a) details of the location of the boundaries of the land affected by the agreement;
 - (b) a description of what the map represents;
 - (c) a legend explaining the symbols used to represent features on the map;
 - (d) a scale shown as either a unit measure (such as 1:50 000) or by a graphic bar;
 - (e) an arrow indicating which direction is north;
 - (f) readily identifiable topographic features located in the vicinity of the land affected by the agreement;
 - (g) a small diagram showing the location of the area depicted on the map in relation to the nearest major town.
- (2) If coordinates are shown on a map included in a cultural heritage agreement, they must be standard Map Grid of Australia 1994 (MGA94) coordinates.
- (3) In this regulation, *Map Grid of Australia 1994 (MGA94)* has the same meaning as in the Surveying (Cadastral Surveys) Regulations 2015⁵.

Part 5—Standards for the preparation of an Aboriginal cultural heritage land management agreement

73 Purpose

The purpose of this Division is to prescribe standards for conducting an assessment for the preparation of, and conditions to be included in, an Aboriginal cultural heritage land management agreement.

74 Types of assessment

- (1) An assessment must consist of a desktop assessment.
- (2) An assessment may also consist of—
 - (a) a standard assessment; or
 - (b) a complex assessment; or
 - (c) a standard assessment and a complex assessment.
- (3) For the purposes of section 74B of the Act, a desktop assessment of an agreement area must include research into information relating to Aboriginal cultural heritage in or associated with the agreement area, including the following—
 - (a) a search of the Register for information relating to the agreement area;
 - (b) an identification and determination of the geographic region of which the agreement area forms a part that is relevant to the Aboriginal cultural heritage that may be present in the agreement area;
 - (c) a review of reports and published works about Aboriginal cultural heritage in the geographic region referred to in paragraph (b);

- (d) a review of historical and ethno-historical accounts of Aboriginal occupation of the geographic region referred to in paragraph (b);
 - (e) a review of the landforms or geomorphology of the agreement area;
 - (f) a review of the history of the use of the agreement area.
- (4) A desktop, standard or complex assessment may include the collection and review of oral history relating to the agreement area.
- (5) A standard assessment of an agreement area under this regulation is the same as a standard assessment of an activity area under regulation 63.
- (6) A complex assessment of an agreement area under this regulation is the same as a complex assessment of an activity area under regulation 65.

75 Content of an Aboriginal cultural heritage land management agreement

For the purposes of section 74B of the Act, an Aboriginal cultural heritage land management agreement must—

- (a) unless otherwise approved by the Secretary, be in the approved form; and
- (b) include the information set out in Schedule 4.

Part 6—Prescribed forms

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

For the purposes of section 14(1)(b) of the Act, a report to the Council is in the prescribed form if the report includes the information set out in Schedule 5.

77 Application for certification of preliminary Aboriginal heritage test

For the purposes of section 49B(3) of the Act, an application is in the prescribed form if the application includes the information set out in Schedule 6.

78 Registration of Aboriginal intangible heritage

For the purposes of section 79C(2) of the Act, an application for registration of Aboriginal intangible heritage is in the prescribed form if it includes the information set out in Schedule 7.

79 Form of Aboriginal intangible heritage agreement

For the purposes of section 79E of the Act, an Aboriginal intangible heritage agreement is in the prescribed form if it includes the information set out in Schedule 8.

80 Application for registration

For the purposes of section 150(1) of the Act, an application for registration as a registered Aboriginal party is in the prescribed form and includes the prescribed information if the application includes the information set out in Schedule 9.

Part 7—Fees

81 Definitions

In this Part—

large activity means an activity—

- (a) with an activity area of more than 40 hectares; or
- (b) that is a linear project with a length of more than 5 kilometres;

linear project includes a railway, a road, a power line, a channel, or a pipe or conduit to transmit water, gas, sewage, power or oil;

medium-size activity means an activity—

- (a) with an activity area of more than one hectare but not more than 40 hectares; or
- (b) that is a linear project with a length of more than one kilometre but not more than 5 kilometres;

relevant authority, in relation to an application for approval of a cultural heritage management plan, means—

- (a) a relevant registered Aboriginal party to which an application is required to be made under section 62 of the Act; or
- (b) if there is no relevant registered Aboriginal party—the Secretary; or
- (c) if the applicant is a relevant registered Aboriginal party or the Secretary—the Council;

small activity means an activity—

- (a) with an activity area of one hectare or less; or
- (b) that is a linear project with a length of one kilometre or less.

82 Fees payable under section 36(2) of the Act

- (1) For the purposes of section 36(2) of the Act, the following fees are prescribed for an application for a cultural heritage permit—
 - (a) if the permit is to authorise the applicant to disturb or excavate any land for the purpose of uncovering or discovering Aboriginal cultural heritage (see section 36(1)(a) of the Act), a fee of 8 fee units;
 - (b) if the permit is to authorise the applicant to carry out research on an Aboriginal place (including the removal of an Aboriginal object from that place for the purposes of that research) or Aboriginal object (including the removal of an Aboriginal object from Victoria for the purposes of that research) (see section 36(1)(b) of the Act), a fee of 8 fee units;
 - (c) if the permit is to authorise the applicant to carry out an activity that will, or is likely to, harm Aboriginal cultural heritage (see section 36(1)(c) of the Act), a fee of 46 fee units;
 - (d) if the permit is to authorise the applicant to sell an Aboriginal object (see section 36(1)(d) of the Act), a fee of 13 fee units;

- (e) if the permit is to authorise the applicant to remove an Aboriginal object from Victoria other than for the purposes of research referred to in paragraph (b) (see section 36(1)(e) of the Act), a fee of 13 fee units.
- (2) If an application is made for a cultural heritage permit in relation to 2 or more of the matters referred to in subregulation (1), the prescribed fee is the sum of the fees specified in subregulation (1) for each of those matters.
- (3) The fee prescribed for a permit to rehabilitate land at an Aboriginal place, including land containing burial grounds for Aboriginal ancestral remains (see section 36(1)(f) of the Act) is nil.
- (4) The fee prescribed for a permit to inter Aboriginal ancestral remains at an Aboriginal place (see section 36(1)(g) of the Act) is nil.
- (5) Despite subregulations (1) and (2), no fee is payable for an application for a permit in one of the following classes—
 - (a) Class 1, an application under section 36(1)(c) of the Act for a permit to carry out heritage protection works;
 - (b) Class 2, an application under section 36(1)(b) of the Act, by a student enrolled in an undergraduate course at a university;
 - (c) Class 3, an application under section 36(1)(a), (b), (c) or (d) of the Act that is the same or substantially similar to an application that was withdrawn no more than 6 months before the application is made;
 - (d) Class 4, an application that is the same or substantially similar to an application that was refused under section 40(3E) of the Act.

- (6) In this regulation, *heritage protection works* means works that are primarily intended to protect, conserve or enhance an Aboriginal place.

83 Fees payable under section 49B(3) of the Act

For the purposes of section 49B(3) of the Act, the following fees are prescribed for an application for certification of a preliminary Aboriginal heritage test—

- (a) for a test that relates to a small activity, 24 fee units;
- (b) for a test that relates to a medium-size activity, 47 fee units;
- (c) for a test that relates to a large activity, 71 fee units.

84 Fee payable under section 54(3)(e) of the Act—notice of intention to prepare cultural heritage management plan

For the purposes of section 54(3)(e) of the Act, the prescribed fee is 10 fee units.

85 Fees payable under sections 62(3) and 65(1A) of the Act—only one relevant authority

- (1) This regulation applies if there is only one relevant authority.
- (2) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that only involves a desktop assessment—
 - (a) for a plan that relates to a small activity, 27 fee units;
 - (b) for a plan that relates to a medium-size activity, 55 fee units;
 - (c) for a plan that relates to a large activity, 110 fee units.

- (3) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that involves a standard assessment but not a complex assessment—
- (a) for a plan that relates to a small activity, 39 fee units;
 - (b) for a plan that relates to a medium-size activity, 79 fee units;
 - (c) for a plan that relates to a large activity, 157 fee units.
- (4) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that involves a complex assessment—
- (a) for a plan that relates to a small activity, 63 fee units;
 - (b) for a plan that relates to a medium-size activity, 125 fee units;
 - (c) for a plan that relates to a large activity, 251 fee units.
- (5) Despite subregulations (1) to (4), no fee is payable for an application for approval of a plan that is the same or substantially similar to an application that was withdrawn no more than 6 months before the application is made.

86 Fees payable under sections 62(3) and 65(1A) of the Act—2 relevant authorities

- (1) This regulation applies if there are 2 relevant authorities.
- (2) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that only involves a desktop assessment—

- (a) for a plan that relates to a small activity,
22 fee units;
 - (b) for a plan that relates to a medium-size
activity, 41 fee units;
 - (c) for a plan that relates to a large activity,
82 fee units.
- (3) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that involves a standard assessment but not a complex assessment—
- (a) for a plan that relates to a small activity,
30 fee units;
 - (b) for a plan that relates to a medium-size
activity, 59 fee units;
 - (c) for a plan that relates to a large activity,
118 fee units.
- (4) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that involves a complex assessment—
- (a) for a plan that relates to a small activity,
47 fee units;
 - (b) for a plan that relates to a medium-size
activity, 94 fee units;
 - (c) for a plan that relates to a large activity,
188 fee units.

Note

Section 62 of the Act provides that the fee prescribed under this regulation is payable to each registered Aboriginal party that gives notice to the sponsor of its intention to evaluate a plan under section 55(2) of the Act.

- (5) Despite subregulations (1) to (4), no fee is payable for an application for approval of a plan that is the same or substantially similar to an application that was withdrawn no more than 6 months before the application is made.

87 Fees payable under sections 62(3) and 65(1A) of the Act—3 or more relevant authorities

- (1) This regulation applies if there are 3 or more relevant authorities.
- (2) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that only involves a desktop assessment—
- (a) for a plan that relates to a small activity, 19 fee units;
 - (b) for a plan that relates to a medium-size activity, 36 fee units;
 - (c) for a plan that relates to a large activity, 74 fee units.
- (3) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that involves a standard assessment but not a complex assessment—
- (a) for a plan that relates to a small activity, 27 fee units;
 - (b) for a plan that relates to a medium-size activity, 52 fee units;
 - (c) for a plan that relates to a large activity, 105 fee units.
- (4) For the purposes of sections 62(3) and 65(1A) of the Act, the following fees are prescribed for an application for approval of a plan that involves a complex assessment—

- (a) for a plan that relates to a small activity, 41 fee units;
- (b) for a plan that relates to a medium-size activity, 84 fee units;
- (c) for a plan that relates to a large activity, 167 fee units.

Note

Section 62 of the Act, provides that the fee prescribed under this regulation is payable to each registered Aboriginal party that gives notice to the sponsor of its intention to evaluate a plan under section 55(2) of the Act.

- (5) Despite subregulations (1) to (4), no fee is payable for an application for approval of a plan that is the same or substantially similar to an application that was withdrawn no more than 6 months before the application is made.

88 No fee payable if section 65(1)(b)(iv) of the Act applies to application

Despite regulations 85 to 87, for the purposes of section 65(1A) of the Act, no fee is payable for an application for approval of a cultural heritage management plan if—

- (a) subsection (1)(b)(iv) of that section applies to the application; and
- (b) the application is the same or substantially similar to an application for approval under section 62 of the Act.

89 Fee payable under section 66A(4) of the Act—applications for approval of amendment to approved cultural heritage management plan

For the purposes of section 66A(4) of the Act, the prescribed fee is 53 fee units.

90 Fees payable under section 146(3) of the Act

- (1) For the purposes of section 146(3) of the Act, the following fees are prescribed for an application to the Secretary for access to the Register—
 - (a) for an application for access under section 146(1)(c) of the Act, a fee of 18 fee units;
 - (b) for an application for access under section 146(1)(g) of the Act by a heritage advisor appointed by a proposed developer, purchaser or user of land or by a person specified under section 146(1)(d) of the Act, a fee of 18 fee units.
- (2) For all other applications for access to the Register under section 146 of the Act the fee is nil.

91 Fee payable under section 147(2) of the Act

For the purposes of section 147(2) of the Act, an application to the Secretary for advice under section 147(1) of the Act must be accompanied by a fee of 12 fee units.

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Schedule 1—Other areas of cultural heritage sensitivity

Schedule 1—Other areas of cultural heritage sensitivity

Regulations 24, 43 and 44

| <i>Item</i> | <i>Column 1</i> | <i>Column 2</i> | <i>Column 3</i> |
|-------------|--|--|--|
| | <i>Plan description</i> | <i>Areas excluded from Division 3 of Part 2</i> | <i>Specified areas of cultural heritage sensitivity</i> |
| 1 | Plan of Bucks Sandhill published in Commonwealth Government Gazette No. GN 50, 19 December 2001, page 3675 | Area shown on the plan referred to in Column 1 of Item 1 | Area shown on the plan referred to in Column 1 of Item 1 |

Schedule 2—Cultural heritage management plans

Regulation 68(b)

1 Sponsor

The name of the sponsor.

2 Owner or occupier

If different from the sponsor, the name of the owner or occupier of the activity area.

3 Heritage advisor

- (1) The name of the heritage advisor engaged by the sponsor.
- (2) A brief description of the qualifications and experience of that heritage advisor.

Note

Heritage advisor is defined in section 4(1) of the Act.

4 Registered Aboriginal parties

- (1) The name of each relevant registered Aboriginal party for the activity area.
- (2) Whether a registered Aboriginal party has elected to evaluate the plan.
- (3) If a registered Aboriginal party has elected to evaluate the plan, the names of the representatives appointed by that party and the functions carried out by those representatives.

5 Notices relating to plan

- (1) A copy of the notices given under section 54 of the Act.
- (2) A copy of any notices given under section 55 of the Act.

6 Activity

- (1) A detailed description of the activity setting out—
 - (a) the nature and extent of the activity and any ancillary works associated with the activity; and
 - (b) the likely impact of the activity on the surface of the land and buried former land surfaces.
- (2) If the activity is a subdivision referred to in regulation 49—
 - (a) a description of how each lot is intended to be used or developed; or
 - (b) if no description under paragraph (a) is provided in relation to a lot, the use or development of the lot permitted by the relevant planning scheme.

7 Activity area

- (1) A detailed description of the activity area, including a map in a form approved by the Secretary indicating—
 - (a) the location of the activity area; and
 - (b) the municipal district (if any) in which the area is located; and
 - (c) the prominent structures and works in, and natural features of, the activity area.
- (2) If the map relates to part of the activity area, a detailed description of that part of the activity area.

8 Details of assessment

- (1) The method by which the Aboriginal cultural heritage present in the activity area was assessed.

- (2) The names of the persons involved in the assessment.
- (3) Details of the reasonable efforts made by the sponsor to consult with the registered Aboriginal party in accordance with section 59(2) of the Act.
- (4) A summary of any information provided by a representative of a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the activity area.
- (5) An accurate transcript of any oral information provided by a representative of a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the activity area, if the person who provided the information consents.
- (6) Details of any obstacles encountered in completing the assessment.

9 Details of subsurface testing and excavation

If the cultural heritage assessment included subsurface testing or excavation—

- (a) the method used for subsurface testing or excavation; and
- (b) the location of subsurface testing or excavation pits or transects, including transect start and end points; and
- (c) the names of persons taking part in the subsurface testing or excavation; and
- (d) the name of the person responsible for supervising the subsurface testing or excavation; and
- (e) any physical or other obstacles to the carrying out of the subsurface testing or excavation; and

- (f) the results of the subsurface testing or excavation including the results of radiometric dating.

10 Written report

If the activity is a subdivision referred to in regulation 49, the written report must set out—

- (a) how each lot is intended to be used or developed by the sponsor; or
- (b) if a lot is not intended to be used or developed by the sponsor, the use or development of the lot permitted by the relevant planning scheme.

11 Aboriginal cultural heritage

- (1) A detailed description of any Aboriginal cultural heritage found in the activity area, consistent with the registration of that Aboriginal cultural heritage and including the registration number.
- (2) A full cadastral description of the land where that Aboriginal cultural heritage is located.
- (3) A statement of the cultural heritage significance of that Aboriginal cultural heritage.
- (4) A concise map or maps of the activity area which show the location of that Aboriginal cultural heritage.
- (5) A detailed plan of each Aboriginal place found in the activity area.
- (6) Photographs or digital images of that Aboriginal cultural heritage.

12 Matters considered in preparation of plan

A statement of how the matters referred to in section 61 of the Act were considered in preparing the cultural heritage management plan.

13 Contingency plans

- (1) Contingency plans for the following—
 - (a) the matters referred to in section 61 of the Act;
 - (b) the resolution of any disputes between the sponsor and relevant registered Aboriginal parties in relation to the implementation of the plan or the conduct of the activity;
 - (c) reviewing compliance with the cultural heritage management plan and mechanisms for remedying non-compliance;
 - (d) the management of Aboriginal cultural heritage found during the activity;
 - (e) the notification, in accordance with the Act, of the discovery of Aboriginal cultural heritage during the carrying out of the activity.
- (2) If the activity is a subdivision referred to in regulation 49, the contingency plans must address—
 - (a) how each lot is intended to be used or developed by the sponsor; or
 - (b) if a lot is not intended to be used or developed by the sponsor, the use or development of the lot permitted by the relevant planning scheme.

Schedule 3—Applications to amend approved cultural heritage management plans

Regulation 69

1 Cultural heritage management plan to be amended

The title and registration number of the approved cultural heritage management plan to be amended.

2 Sponsor

The name of the sponsor.

3 Heritage advisor

- (1) The name of the heritage advisor engaged by the sponsor.
- (2) A brief description of the qualifications and experience of that heritage advisor.

4 Registered Aboriginal parties

- (1) The name of each relevant registered Aboriginal party for the activity area.
- (2) Whether a registered Aboriginal party has elected to evaluate the amendment.
- (3) If a registered Aboriginal party has elected to evaluate the amendment, the names of the representatives appointed by that party and the functions carried out by those representatives.

5 Notices relating to amendment

- (1) A copy of the notices given under section 54 of the Act.
- (2) A copy of any notices given under section 55 of the Act.

6 Details of proposed amendment

A detailed description of the proposed amendment to the approved cultural heritage management plan.

7 Matters considered in preparation of amendment

A statement of how the matters referred to in section 61 of the Act were considered in preparing the application to amend the approved cultural heritage management plan.

Schedule 4—Aboriginal cultural heritage land management agreements

Regulation 75(b)

1 Parties to agreement

The name of the public land manager and registered Aboriginal party who are parties to the agreement.

2 Agreement area

A description of the agreement area and the boundaries of that area, including a map, location of the agreement area in a regional context, and a list of prominent structures, natural features and infrastructure within the agreement area.

3 Land management activities

A list of land management activities which are permissible under the agreement, including for each activity—

- (a) a description of the activity; and
- (b) a description of permissible ancillary works associated with the activity; and
- (c) a description of the likely impact on the land of the activity and any associated ancillary works.

4 Details of assessment

- (1) The method by which the Aboriginal cultural heritage present in the agreement area was assessed.
- (2) The names of the persons involved in the assessment.

- (3) A summary of any information provided by a representative of a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the agreement area.
- (4) An accurate transcript of any oral information provided by a representative of a relevant registered Aboriginal party, or other person, about the Aboriginal cultural heritage in the agreement area, if the person who provided the information consents.
- (5) Details of any obstacles encountered in completing the assessment.

5 Details of subsurface testing and excavation

If the cultural heritage assessment included subsurface testing or excavation—

- (a) the method used for subsurface testing or excavation; and
- (b) the location of subsurface testing or excavation pits or transects, including transect start and end points; and
- (c) the names of persons taking part in the subsurface testing or excavation; and
- (d) the name of the person responsible for supervising the subsurface testing or excavation; and
- (e) any physical or other obstacles to the carrying out of the subsurface testing or excavation; and
- (f) the results of the subsurface testing or excavation including the results of radiometric dating.

6 Aboriginal cultural heritage

- (1) A detailed description of any Aboriginal cultural heritage found in the agreement area consistent with the registration of that Aboriginal cultural heritage and including the registration number.
- (2) A statement of the cultural heritage significance of that Aboriginal cultural heritage.
- (3) A concise map or maps of the agreement area which show the location of that Aboriginal cultural heritage.

7 Payments

Details of any payments required to be made by the public land manager to a registered Aboriginal party.

8 Cultural heritage management actions

Details of any cultural heritage management actions required to be undertaken by the public land manager or any other person.

9 Consultation

Details of any consultation that must be undertaken by the public land manager or some other person with a registered Aboriginal party.

10 Other matters

Details of any other matters agreed between the parties to the agreement.

Schedule 5—Report on Aboriginal ancestral remains

Regulation 76

1 Name of public entity or university

The name of the public entity or university making the report.

2 Table of Aboriginal ancestral remains in possession of public entity or university

A table of Aboriginal ancestral remains in the possession of the public entity or university, including—

- (a) a description of the remains; and
- (b) the origin of the remains (if known); and
- (c) the current location of the remains; and
- (d) the minimum number of individuals; and
- (e) any relevant accession number or catalogue entry; and
- (f) any associated Aboriginal objects.

3 Details of Aboriginal ancestral remains

- (1) The dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of Aboriginal ancestral remains or associated Aboriginal objects, if known.
- (2) Information relating to the acquisition of the remains, including—
 - (a) the name of the person or organisation from which the remains were obtained (if known); and

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- (b) the date of acquisition of the remains (if known); and
 - (c) the means of acquisition of the remains (e.g. gift, excavation, purchase).
- (3) Any consultation undertaken with traditional owners in compiling the report.
- (4) A summary of the evidence, including the results of consultation, used to determine the origin of the remains and associated Aboriginal objects.

Schedule 6—Application for certification of preliminary Aboriginal heritage test

Regulation 77

1 Name of applicant

The name of the person proposing the activity.

2 Who prepared the test

The names of the persons involved in the preparation of the test, including the ground inspection (if any).

3 Proposed activity area

- (1) A detailed description of the proposed activity area, including a map indicating the location of the proposed activity area.
- (2) A statement detailing the previous land use of the proposed activity area.

4 Background assessment

A background assessment of the proposed activity area, including—

- (a) the results of the Register search, including a list of reports and cultural heritage management plans relevant to the proposed activity area; and
- (b) the details of the geographic region, landforms and geomorphology of which the proposed activity area forms a part; and
- (c) if a survey for Aboriginal cultural heritage is undertaken for the test, the results of that survey, and any details required under section 34A of the Act.

5 Ground inspection

A statement of the method and conduct of the ground inspection of the proposed activity area (if any).

6 Aboriginal cultural heritage

A detailed description of any Aboriginal cultural heritage in the activity area consistent with the registration of that Aboriginal cultural heritage and including the registration number.

7 Consultation

- (1) Details of any consultation undertaken with a relevant registered Aboriginal party or traditional owner.
- (2) A summary of any information provided by a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the proposed activity area.
- (3) Any oral information provided by a relevant registered Aboriginal party or other person about the Aboriginal cultural heritage in the proposed activity area, if the person who provided the information consents.

8 Conclusions

- (1) A statement of whether a cultural heritage management plan is required in relation to the proposed activity.
- (2) A statement of whether there has been significant ground disturbance in the proposed activity area and, if so, the nature and extent of that disturbance.

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Schedule 6—Application for certification
of preliminary Aboriginal heritage test

- (3) Details of any other action recommended to protect or preserve any Aboriginal cultural heritage in the proposed activity area.
- (4) The details of any obstacles encountered in preparing the test.

Schedule 7—Application for registration of Aboriginal intangible heritage

Regulation 78

1 Name of applicant

The name of the registered Aboriginal party,
registered native title holder or traditional owner
group entity.

2 Aboriginal intangible heritage

Details of the knowledge of, or expression of,
Aboriginal tradition proposed to be registered as
Aboriginal intangible heritage, including—

- (a) the category of Aboriginal intangible
heritage applicable to the application; and
- (b) details of any additional evidence
supporting the application, including the
contact details of corroborative informants,
associated Aboriginal cultural heritage and
documentary evidence (if any).

3 Consultation

Details of any consultation undertaken by the
applicant with any relevant traditional owners.

Schedule 8—Aboriginal intangible heritage agreement

Regulation 79

1 Details of agreement

The details of the agreement, including—

- (a) the registration number of the Aboriginal intangible heritage, if applicable; and
- (b) the period for which the agreement applies; and
- (c) a detailed description of the uses and activities permitted by the agreement; and
- (d) details of remuneration, compensation or commercial arrangements to be enforced by the agreement; and
- (e) dispute resolution procedures; and
- (f) review and variation clauses.

Schedule 9—Application for registration as a registered Aboriginal party

Regulation 80

1 Name of applicant

The name of the applicant for registration as a registered Aboriginal party, including details of registration under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth.

2 Supporting evidence

The details of the applicant, including—

- (a) evidence of any native title determination made relating to the applicant and the application area; and
- (b) evidence of any recognition and settlement agreement in relation to the application area; and
- (c) evidence of the status of the applicant as a native title party (if applicable); and
- (d) any terms of any native title agreement the applicant wishes to make available to the Council (if applicable); and
- (e) evidence of any grant of land in fee simple made by the State or the Commonwealth to the applicant under a specific power in a State or Commonwealth Act (if applicable); and
- (f) evidence of any agreement between the applicant and the State in relation to land and natural resource management in the application area (if applicable).

3 Application area

A description of the area in respect of which the application is made, including details, in the form of an attached map, or a written description, of the boundaries of that area.

4 Consultation

- (1) Evidence of any consultation or agreement with other traditional owner group entities regarding the boundary of the application area.
- (2) If the applicant is not a traditional owner group entity, the written consent of the traditional owner group entity to which the application relates (if any) that the applicant may apply to be a registered Aboriginal party for that area.

5 Supporting documentation

- (1) Attach a statement outlining the nature of, and evidence supporting—
 - (a) the relationship or links of the applicant to the area in respect of which the application is made or the applicant's historical or contemporary interest in Aboriginal cultural heritage relating to the area; and
 - (b) the demonstrated expertise in managing and protecting Aboriginal cultural heritage in that area.
- (2) Attach a statement outlining 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.

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Schedule 9—Application for registration as a registered Aboriginal party

- (3) If this is a repeat application, attach a statement outlining how the application addresses the reasons Council declined the previous application.
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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.

The Aboriginal Heritage Regulations 2018, S.R. No. 59/2018 were made on 22 May 2018 by the Lieutenant-Governor as the Governor's deputy, with the advice of the Executive Council, under section 194 of the **Aboriginal Heritage Act 2006**, No. 16/2006 and came into operation on 23 May 2018: regulation 3.

The Aboriginal Heritage Regulations 2018 will sunset 10 years after the day of making on 22 May 2028 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

There are no amendments made to the Aboriginal Heritage Regulations 2018 by statutory rules, subordinate instruments and Acts.

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ Reg. 4(a): S.R. No. 41/2007. Reprint No. 1 as at 11 June 2009. Reprinted to S.R. No 50/2009. Subsequently amended by S.R. No 94/2016, extended in operation by S.R. No. 30/2017 and subsequently amended by S.R. No. 10/2018.

² Reg. 4(b): S.R. No. 50/2009.

³ Reg. 4(c): S.R. No. 94/2016.

⁴ Reg. 4(d): S.R. No. 10/2018.

⁵ Reg. 72(3): S.R. No. 43/2015.

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2017 is \$14.22. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

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Endnotes

Table of Applied, Adopted or Incorporated Matter

The following table of applied, adopted or incorporated matter was included in S.R. No. 59/2018 in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2014.

| Statutory rule provision | Title of applied, adopted or incorporated document | Matter in applied, adopted or incorporated document |
|---|--|--|
| Regulation 5 definition of <i>prior waterway</i> | Geological Survey of Victoria map sheet SJ55-2 entitled "Wangaratta" (dated 1974); | The areas identified as a "leveed stream course" |
| Regulation 5 definition of <i>prior waterway</i> | Geological Survey of Victoria map sheet SI54-4 entitled "St Arnaud" (dated 1976) | The areas identified as a "leveed stream" |
| Regulation 5 definition of <i>prior waterway</i> | Geological Survey of Victoria map sheet SI54-16 entitled "Swan Hill" (dated 1974) | The areas identified as a "leveed stream" |
| Regulation 5 definition of <i>prior waterway</i> | Geological Survey of Victoria map sheet SI55-13 entitled "Deniliquin" (dated 1974) | The areas identified as a "leveed stream trace" |
| Regulation 5 definition of <i>prior waterway</i> | Geological Survey of Victoria map sheet SJ55-1 entitled "Bendigo" (third edition, 2001) | The areas identified as a "prior stream" |
| Regulation 28(3) definition of <i>ancient lake</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Qxy" |
| Regulation 33(3) definition of <i>high plains</i> | The map entitled "Land Systems and Geomorphic Units", published by the Land Conservation Council in 1988 | The areas identified as "High Plains 1.3" |
| Regulation 34(3) definition of <i>Koo Wee Rup Plain</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Qg" and "Qm1" |

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Endnotes

| Statutory rule provision | Title of applied, adopted or incorporated document | Matter in applied, adopted or incorporated document |
|---|--|---|
| Regulation 35(3) definition of <i>greenstone outcrop area</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "-Chm", "-Chs", "-Cic", "-Cid", "-Cie", "-Cim", "-Cip", "-Cis", "-Cj2", "-Cjb", "-Cjc", "-Cjh", "-Cjl", "-Cjm", "-Cjr", "-Cjs", "-Cjt", "-Cjw", "-Ctg" and "-C xk" |
| Regulation 36(3) definition of <i>stony rises associated with the Mt Eccles, Mt Napier and Mt Rouse lava flows</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Neo2" |
| Regulation 37(3) definition of <i>volcanic cones of western Victoria</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Ne", "Nep1", "Nept", "Neptp" and "Nes" |
| Regulation 37(3) definition of <i>volcanic cones of western Victoria</i> | Geological Survey of Victoria 1:250 000 map series sheet SJ54-11 entitled "Portland" (second edition, 1997) | The areas identified as "Qvs" |
| Regulation 39(3) definition of <i>lunette</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Q1" and "Q11" |
| Regulation 40(3) definition of <i>source bordering dune</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Qdi" |

Aboriginal Heritage Regulations 2018

S.R. No. 59/2018

Endnotes

| Statutory rule provision | Title of applied, adopted or incorporated document | Matter in applied, adopted or incorporated document |
|---|---|--|
| Regulation 41(3) definition of <i>sand sheet, including the Cranbourne sand</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Qd1" and "Qxr" |
| Regulations 24, 43 and 44 | Plan of Bucks Sandhill published in Commonwealth Government Gazette No. GN# 50, 19 December 2001, page 3675 | Whole of the Plan |
| Regulation 55(4) definition of <i>Victorian Volcanic Plain</i> | Surface Geology of Victoria 1:250 000 map book | The areas identified as "Ne", "Neo", "Neo1", "Neo2", "Nep1", "Nept", "Neptp", "Nes", "Nes2" and "Nes3" |