

CLAUSE NOTES

Aboriginal Heritage Protection Bill 2013

PART 1 PRELIMINARY

Clause 1: **Short Title**
Provides that the short title of the Act is the *Aboriginal Heritage Protection Act 2013*.

Clause 2: **Commencement**
Provides that the Act commences on a day or days to be proclaimed.

Clause 3: **Objects of Act**
Sets out the objects of the Act.

Fundamentally, the Bill seeks to recognise, provide for and promote the protection of Aboriginal heritage and to provide for the involvement of the Aboriginal community in the management and protection of their heritage.

Aboriginal heritage management is to be treated as an integral part of the States resource management and planning system.

Clause 4: **Interpretation**
Governs how terms and phrases used in the Act are to be interpreted and applied.

In particular, subclause (1) provides that:

“Aboriginal heritage” means Aboriginal human remains, Aboriginal objects, Aboriginal sites or nominated Aboriginal heritage.

“Aboriginal heritage assessment” means an assessment to determine the nature, extent and significance of any Aboriginal heritage on specific land or in a specific area.

“Controlled land activity” means an activity carried out under a permit, management plan or external regulatory approval, and includes any part of the controlled land activity.

“Development” has the same meaning as the definition used in section 3(1) paragraphs (a) to (f) of the *Land Use Planning and Approvals Act 1993*.

“External regulatory approval” refers to a planning permit under the *Land Use Planning and Approvals Act 1993* or a dam permit under the *Water Management Act 1999*.

“Harm” includes damage, deface, destroy, conceal and otherwise interfere with, but does not include an act or omission excluded from the definition by regulations.

“High-impact land activity” refers to substantial infrastructure or resource development projects; large-scale subdivisions and dams; and large industrial and extractive development activities that require approval under the *Environmental Management and Pollution Control Act 1994*.

“Land activity” means any development or use of the land, or forest practices on the land within the meaning of the *Forest Practices Act 1985*.

“Management plan” means a plan in respect of a proposed land activity setting out – (a) the results of an Aboriginal heritage assessment of the affected area; and (b) the known and likely Aboriginal heritage impacts; and (c) the Aboriginal heritage measures, and other measures, that will need to be taken.

“Nominated Aboriginal heritage” means an object or site entered on the Aboriginal Heritage Register as such. It must meet public criteria and is to be registered only after undergoing a public process that is run by the Aboriginal Heritage Council and leads to it making a preliminary determination to the Minister. The details of these processes are set out in Regulations.

“Restricted activity” refers to scientific research on an Aboriginal site (including removing Aboriginal objects for that purpose); removing an Aboriginal object from Tasmania; selling a registered Aboriginal object (excluding objects made for the purpose of sale); disturbing land or excavating in order to uncover or discover an Aboriginal object; and an activity that will, or is likely to, harm Aboriginal heritage.

“Serious ground disturbance” means disturbance of the topsoil, or a waterway of the surface rock layer of the ground, in the course of digging, dredging, excavating, grading or trenching using mechanical means, or ploughing involving deep ripping undertaken with a ripper or subsoil cultivation tool or mound ploughing. It does not include other forms of ploughing.

“Significance” relates to the definition of Aboriginal object and Aboriginal site, and includes Aboriginal objects or sites with archaeological, anthropological, spiritual, contemporary, historical, scientific or social significance.

“Use” has the same meaning as in the *Land Use Planning and Approvals Act 1993*.

Clause 5:

Meaning of Aboriginal human remains

The definition of *“Aboriginal human remains”* means the bodily remains of an Aboriginal person. It does not include a body or remains buried in a cemetery or in other land as allowed under section 41 of the *Burial and Cremation Act 2002*. It does not include certain objects made from bodily material, for example a bracelet or necklace made from human hair. Lastly, it does not include human tissue lawfully removed from an Aboriginal person or dealt with in accordance with the *Human Tissue Act 1985*.

- Clause 6: Meaning of Aboriginal object**
The definition of “*Aboriginal object*” means any object relating to the Aboriginal occupation of Australia, which is located in Tasmania, and which is of significance to Aboriginal people. It includes objects which have been removed or excavated from their Aboriginal place of origin. It does not include an object that was made for the purpose of sale, other than an object made for exchange or barter in accordance with Aboriginal tradition. It does not include Aboriginal human remains, which are separately defined. Examples of Aboriginal objects include stone artefacts, bone points and scarred trees.
- Clause 7: Meaning of Aboriginal site**
The definition of “Aboriginal site” recognises the significance of a site regardless of whether it is on land which is freehold, leasehold or Crown reserve. Examples of Aboriginal sites include burial sites, shell middens, stone arrangements, stone quarries and fish traps.
- Clause 8: Meaning of exempt land activity**
Provides exemptions for certain land activities, unless there is registered Aboriginal heritage present and the activity will cause additional surface disturbance, or Aboriginal heritage is found. Examples of exempt land activities include minor works, alteration and maintenance works, demolition, one or two dwellings, works ancillary to an existing building (such as pools, sheds, fences and driveways), certain dam works, subdivisions of no more than four lots and other minor development that directly impacts less than 750 square metres. Exempt land activities do not require Aboriginal heritage approval under the Act.
- Clause 9: Declarations of exempt area and area of high sensitivity**
Provides for the declaration of an exempt area or an area of high sensitivity, by order of the Governor, on the recommendation of the Minister. Prior to making a recommendation to the Governor, notice is to be given to the municipal council in which the area is situated and consultation is to occur with the Aboriginal Heritage Council and such other persons as the Minister considers appropriate. An area of high sensitivity may only be declared if the Minister is satisfied that the area contains registered Aboriginal heritage and is highly likely to contain other Aboriginal heritage. Activities carried out in an exempt area are exempt, subject to two exceptions: if there is registered Aboriginal heritage in the affected area and the activity will cause additional surface disturbance, or if Aboriginal heritage is found during the works. Activities occurring in an area of high sensitivity, if they involve additional disturbance of the surface, are not exempt.
- Clause 10: Objectives to be taken into account by persons discharging certain responsibilities under Act**
Requires the objectives of the State’s resource management and planning system, and the planning process, to be taken into account in performing any functions under the Act, excluding in relation to Aboriginal human remains.
- Clause 11: Timing of actions and decisions**
Requires any decisions or actions under the Act, if a timeframe is not specified, to be made or taken as soon as practicable. Where a

decision is required within a specified period of time and that time includes days on which the relevant authority is closed during normal business hours, allows the period of time to be extended by that number of days.

Clause 12: **Act does not affect operation of certain other Acts**
Clarifies that the *Burial and Cremation Act 2002*, the *Coroners Act 1995* and the *Human Tissues Act 1985* continue to operate notwithstanding any provision of this Act.

Clause 13: **Act binds Crown**
Provides that the Bill binds the Crown in right of Tasmania and, so far as the legislative power of the Tasmanian Parliament permits, the Crown in all its other capacities.

PART 2 ADMINISTRATION

Clause 14: **Establishment of Aboriginal Heritage Council**
Establishes the Aboriginal Heritage Council ("the Council") as a body corporate with attendant rights and obligations, and confirms that it forms part of the State's resource management and planning system.

Clause 15: **Membership of Council**
Provides that the Council will be comprised of up to 9 members appointed by the Governor, on the nomination of the Minister. Each member must be an Aboriginal person who is resident in Tasmania, and must have, in the opinion of the Minister, knowledge, experience or expertise relevant to the Council's functions. The Council is to be broadly representative of the Tasmanian Aboriginal community and Aboriginal persons generally. Requires that there must be at least two members of each gender and provides for the appointment of a chairperson.

Clause 16: **Functions of Council**
Sets out the functions of the Council in relation to a wide range of matters relating to the protection and management of Aboriginal heritage, including both decision-making and advisory functions.

Specific decision-making functions include:

- decision on management plans, if the Council reaches agreement with the proponent on specified matters;
- decisions on permits relating to scientific research and specified dealings with Aboriginal objects (such as removal of an object from the State);
- preliminary registration determination in relation to the registration of objects and sites as nominated Aboriginal heritage; and
- decisions on entering into Aboriginal heritage agreements with other parties for the voluntary protection and management of heritage.

The advisory functions of the Council include advising the Minister on:

- the assessment of development activities which go through the integrated approvals process or require a permit from the Minister;

- the variation of management plans approved by the Council;
- cases requiring audits;
- protection orders and stop orders;
- criteria for registering nominated Aboriginal heritage; and
- management plans, if agreement could not be reached with the proponent.

The Council has an educational function, to promote Tasmanian community awareness and understanding of Aboriginal heritage.

Clause 17: Powers of Council
Provides that the Council has all the powers necessary for the performance of its functions under the Act.

Clause 18: Committees
Provides that the Council may establish committees to assist or advise it on any matter relating to the Act.

Clause 19: Delegation by Minister
Specifies the Minister's delegation powers. Specifically excludes delegation of the power to make nominations or appointments to the Council; the power to require, or determine applications for the approval of management plans; the power to issue protection orders and guidelines; and the power of delegation.

Clause 20: Guidelines
Provides the Minister with the ability to issue guidelines in relation to specified matters including the investigation and documentation of Aboriginal heritage, and sets out mandatory consultation requirements prior to issuance. Allows for the adoption, in whole or in part, of any codes, standards, other guidelines or other documents relevant to their subject matter.

PART 3 OWNERSHIP AND PROTECTION OF ABORIGINAL HERITAGE

Clause 21: Duty of persons having Aboriginal human remains at commencement of this section
Requires a person in possession of Aboriginal human remains to notify the Aboriginal organisation approved by the Attorney-General under the *Coroners Act 1995* of that possession and hand the remains to that organisation. Failure to do so is an offence under this Clause.

Clause 22: Duty of persons having Aboriginal objects at commencement of this section
Requires a person in possession of an Aboriginal object, otherwise than as part of a public collection, to notify the Secretary of that possession and take reasonable measures to protect the object. Failure to do so is an offence under this Clause.

Clause 23: Duty of persons finding Aboriginal objects or Aboriginal sites
Requires a person who discovers an Aboriginal object or site to report that discovery to the Secretary. Failure to do so is an offence if the person knew, or had a reasonable belief, of its character as an Aboriginal object or site. There is no obligation to report the discovery

if the person had a reasonable belief that the object or site was recorded in the Aboriginal Heritage Register (and therefore had been previously discovered and reported), or that another person was reporting the find.

Where the discovery is made during works, the person in charge of the work site is deemed responsible for reporting the discovery, rather than the workers employed, contracted or subcontracted on the site.

Clause 24: Disclosing locations of unregistered Aboriginal objects or Aboriginal sites

Allows an authorised officer to require a person to disclose the location of an Aboriginal object or Aboriginal site. Failure to do so is an offence if the authorised officer had a reasonable belief that the person knew where the Aboriginal object or site was located and that object or site was unable to be registered unless the person disclosed that knowledge. It is a defence in proceedings if the defendant establishes specified circumstances existed at the relevant time, including that he or she did not know the location of the Aboriginal object or site, or that such information was already in the public domain.

Clause 25: Dealing with reported, &c., Aboriginal objects and Aboriginal sites

Allows the Minister, in consultation with the Council and by agreement with the person in possession of the Aboriginal object or the owner of the land containing the Aboriginal site, to take action in relation to the object or site for specified purposes.

Clause 26: Notification of Aboriginal heritage

Allows the Secretary, if there is registered Aboriginal heritage on any land and if he or she reasonably believes that there may be similar unregistered heritage on adjoining private land, to notify the owner of the adjoining private land of the presence of the Aboriginal heritage and of his or her belief that there may be similar Aboriginal heritage on the adjoining land.

Clause 27: Continued enjoyment of private property rights

Provides that a person who is otherwise entitled to the use and enjoyment of land does not lose that right only because an Aboriginal object or site is located on the land. However this is subject to the condition that such use and enjoyment does not harm Aboriginal heritage, or is not likely to harm Aboriginal heritage.

Clause 28: Acquisition of Aboriginal sites

Provides for the Minister to acquire any land containing a registered Aboriginal site. In making a decision to acquire, the Minister must be satisfied of two things —

- firstly, that the site is of exceptional significance to the Aboriginal people of Tasmania; and
- secondly, that the acquisition is the only way of protecting or managing the site.

The procedures for the compulsory acquisition of land and related compensation under this clause are set out in the *Land Acquisition Act 1993*, except in one specific regard. No compensation will be payable for any Aboriginal heritage found on or in the land or for any additional value arising from the fact it is an Aboriginal site.

Clause 29:

Acts that harm Aboriginal heritage

Sets out the offence of harming Aboriginal heritage. The harming offence has three alternative parts.

The first and most serious relates to harm done by a person who knows that it is Aboriginal heritage.

The second relates to harm done by a person who is reckless as to whether it is Aboriginal heritage.

The third relates to harm done by a person who is negligent as to whether it is Aboriginal heritage.

All three constitute offences, but with different penalties depending on mental culpability.

Subclause (2) sets out exceptions which apply to all three offences.

The first defence is that the person acted in accordance with the terms of an applicable Aboriginal heritage permit (under Part 4) or approved management plan (under Part 5), or in accordance with an external regulatory approval (under Part 6).

The second defence is that the person acted in the course of preparing a management plan (under Part 5). This refers to acts which were reasonably necessary for the purpose of preparing the management plan.

The third defence is that the act was carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*.

The fourth defence is that the person acted in a way which was necessary in the circumstances of an emergency, for example a bushfire or other natural disaster.

The fifth defence is that the person acted in way which was a necessary response, in the circumstances prescribed by regulations, to a threat of harm to Aboriginal heritage/

Finally, it is a defence if the act occurs in the course of undertaking an activity in accordance with guidelines (under Part 2).

Clause 30:

Acts likely to harm Aboriginal heritage

Prohibits a person from doing an act which is likely to harm Aboriginal heritage. This offence relates to such action by a person who knew at the time that their act was likely to harm Aboriginal heritage (even if no harm eventuated). Such an act is an offence under this clause, unless specified exceptions apply.

The first defence is that the person acted in accordance with the terms of an applicable Aboriginal heritage permit (under Part 4) or approved management plan (under Part 5), or in accordance with an external regulatory approval (under Part 6).

The second defence is that the person acted in the course of preparing a management plan (under Part 5). This refers to acts which were reasonably necessary for the purpose of preparing the management plan.

The third defence is that the act was carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*.

The fourth defence is that the person acted in a way which was necessary in the circumstances of an emergency, for example a bushfire or other natural disaster.

PART 4

ABORIGINAL HERITAGE PERMITS

Clause 31:

Certain activities require Aboriginal heritage permits

Prohibits specified ("restricted") activities and dealings with Aboriginal heritage, except in compliance with an Aboriginal heritage permit.

The restricted activities (specified in Part 1, section 4) are —

- disturbing land or excavating for the purpose of uncovering or discovering Aboriginal heritage;
- scientific research at an Aboriginal site, including removing Aboriginal objects for that purpose;
- an activity that will, or is likely to, harm an Aboriginal object or site; or
- selling registered Aboriginal objects; or
- removing registered Aboriginal objects from Tasmania.

This offence does not apply if the activity is —

- an exempt land activity; or
- necessarily incidental to the preparation of a management plan; or
- done in accordance with an approved management plan; or
- carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or
- necessary in the circumstances of an emergency; or
- carried out in an affected area that has sustained total or widespread serious ground disturbance before the activity commenced.

Clause 32:

Applications for Aboriginal heritage permits

Provides that a person can apply to the issuing authority for a permit authorising the restricted activity (in the case of scientific research, the sale or removal of objects, the Council; in all other cases, the Minister). Sets out mandatory consultations requirements for the issuing authority and, if the activity is to be carried out on land, allows the issuing authority to require an Aboriginal heritage assessment of the affected area, having regard to any relevant guidelines and any requirements of the regulations which may apply. Includes the right to

ask the occupier of any land on or in which the heritage is located, for permission to inspect that land.

Clause 33:

Determination of applications for Aboriginal heritage permits

Provides a general discretion for the issuing authority to make a decision on a permit application and specifies matters to be considering in making its determination. These include the nature of the heritage, the impact or likely impact of the activity, and the extent to which the harm could be minimised. While these matters must be considered, the issuing authority may also take into account such other factors as it thinks fit in the circumstances.

Requires an application to be determined by the issuing authority within 42 days and makes provision for the Minister to determine applications which would otherwise be determined by the Council where the Council fails to determine the application within the 42-day period.

Provides that a permit must not be granted —

- in respect of Aboriginal human remains; or
- an activity for which a management plan is required under Part 5; or
- an activity for which a voluntary management plan is being prepared; or
- an activity for which an external regulatory approval is required.

Requires the issuing authority to provide a statement of reasons and to notify the applicant of appeal rights where a permit application is refused.

Clause 34:

Issue and registration of Aboriginal heritage permits

Requires the issuing authority to issue the permit, where approved, to the applicant and to notify the Secretary of the issuance to ensure the Aboriginal Heritage Register is updated.

Clause 35:

Nature of Aboriginal heritage permits

Governs the form, effect, duration (two years), extension, surrender and transfer of permits. Permits may be extended once only for a period no longer than that for which it was originally issued.

Clause 36:

Aboriginal heritage permit conditions

Allows the issuing authority to include conditions in a permit. Contravening a condition of a permit, or causing or allowing another person to contravene a condition of a permit is an offence.

Clause 37:

Variation of Aboriginal heritage permits

Allows the issuing authority to vary a permit on its own motion or on the application of the permit holder. Sets out consultation requirements when consideration is being given to whether to vary a permit. Following a variation by the issuing authority on its own motion, it must notify the permit holder of the reasons for the variation and when it takes effect and if the variation makes the permit more restrictive, the holder's appeal rights. If the permit is varied on the application of the permit holder, the issuing authority is to notify the holder of the variation and when it takes effect. If the issuing authority refuses to vary a permit on the application of the permit holder, it must

notify the holder of the reasons for the refusal and the holder's appeal rights.

Requires the issuing authority to notify the Secretary if a permit is varied, to ensure the Aboriginal Heritage Register is updated.

- Clause 38:** **Cancellation and suspension of Aboriginal heritage permits**
Specifies the process for cancellation and suspension of permits in circumstances where the issuing authority reasonably believes –
- the holder of the permit no longer requires the permit or can no longer demonstrate a legitimate need for the permit; or
 - the holder of the permit has contravened the conditions of the permit in a material way; or
 - the holder of the permit has contravened the provisions of the Act in a material way; or
 - the activity is having unforeseen Aboriginal heritage impacts; or
 - the holder of the permit has given the issuing authority false or misleading information in connection with the permit; or
 - circumstances prescribed by the regulations exist; or
 - the cancellation or suspension is merited on other grounds.

- Clause 39:** **Replacement of Aboriginal heritage permits**
Governs the issuance of replacement permits by the issuing authority, if satisfied that the original has been stolen, lost, destroyed or damaged to extent it is unsuitable for use.

- Clause 40:** **Extent of using authority powers**
Clarifies that an issuing authority is not entitled to take action in relation to a permit issued by a different issuing authority, or an application for a permit required to be issued by a different issuing authority.

- Clause 41:** **Appeal rights**
Provides that an aggrieved person, within 14 days of notification, may appeal a decision of an issuing authority to:
- refuse to approve an application for a permit; or
 - impose conditions or particular conditions on a permit; or
 - issue a permit for a term shorter than that applied for; or
 - refuse to extend the term of a permit; or
 - refuse to approve an application to vary a permit; or
 - vary a permit on the issuing authority's own motion so as to make it more restrictive; or
 - cancel or suspend a permit.

Appeals on permit decisions made by the Aboriginal Heritage Council are to be made to the Magistrates Court (Administrative Appeals Division).

Appeals on permit decisions made by the Minister are to be made to the Resource Management and Planning Appeal Tribunal (RMPAT).

PART 5 MANAGEMENT PLANS

- Clause 42:** **Mandatory management plans**

Subclause (1) clarifies “commence” in relation to a land activity means any physical works for the land activity other than –

- the erection of perimeter security fencing; or
- the clearance of vegetation, rubbish or hazards from the surface of the affected area, with only minimal disturbance of the topsoil; or
- surveying and mapping; or
- soil and water testing; or
- works associated with the preparation of a management plan for the area.

Subclause (2) provides that a management plan is mandatory if the proposed land activity is a high-impact land activity (defined in Part 1, s.4), or if the regulations or the Minister (by notice to the proponent) impose that requirement. The Minister may direct a person to prepare a management plan before undertaking a proposed land activity on his or her own motion, or on the recommendation of the Council. This may occur where the circumstances of the activity do not require a management plan under the Act or regulations, but the Minister believes that it is appropriate in the particular case to require such a plan.

Subclause (3) sets out exceptions to this requirement. It provides that a management plan is not required for a proposed land activity if:

- it is an exempt land activity; or
- it is carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or
- is otherwise, a necessary and proportionate response to an actual or impending emergency that threatens human life or property or threatens to injure any person.

Where a management plan is required for a proposed land activity, it is an offence under clause 42(4) to commence or carry out the activity without an approved management plan, unless an exemption applies to the land activity.

Clause 43:

Exemption from mandatory management plan requirements

Sets out the circumstances in which a proposed land activity is exempt from the requirement for a mandatory management plan.

Subclause (1) provides that a land activity that would otherwise require a management plan by virtue of its status as a high-impact land activity is exempt from that requirement if the regulations provide so.

Subclause (2) provides that a land activity that would otherwise require a mandatory management plan under section 42(2) is exempt from that requirement if the proponent has demonstrated to the satisfaction of the Minister, and in accordance with any requirements of the regulations that may apply or any relevant guidelines, that the affected area has been subject to total or widespread serious ground disturbance and that the disturbance was not caused to gain the benefit of the exemption.

Subclause (3) provides that a land activity that would otherwise require a mandatory management plan under section 42(2) is exempt from that requirement if the proponent has demonstrated to the satisfaction of the Minister, and in accordance with any requirements of the regulations that may apply or any relevant guidelines, that in the circumstances there is no need for a management plan. This may occur where high-impact land activities may have little or no impact on Aboriginal heritage, such as when occurring on reclaimed land or offshore.

The Minister may consult the Council in determining whether or not he or she is satisfied that serious ground disturbance has been sustained, or that in the circumstances a management plan is not needed.

Clause 44: Voluntary management plans

Provides that a management plan may be prepared voluntarily.

Clause 45: Who may prepare management plans?

Provides that the proponent of an activity, or an Aboriginal heritage consultant or any other person on the proponent's behalf, may prepare a management plan. Regardless, the proponent remains responsible for meeting the requirements relating to the preparation of the management plan under Part 5 of the Act.

Allows the preparation of a management plan to continue where there is a change of proponent, provided there is no change in the nature or scale of the land activity.

In practice it is likely that most management plans will be undertaken by proponents of activities as a mandatory requirement under this Act. However, it is open to other parties to undertake voluntary management plans to assess the Aboriginal heritage values of an area.

Clause 46: Notification of proposed management plans

Requires the proponent to provide formal prior notice to specified people of the intention to prepare a management plan. These are the Minister, the Council and if the land activity requires a statutory authorisation, the relevant decision-maker.

Notification must include specified information, including name and contact details, a description of the proposed activity, details of the affected area, the proposed methodology for the associated Aboriginal heritage assessment, and its start and end dates.

Clause 46(3) requires the Minister to provide written acknowledgment of the notification to the proponent. Any actions that occur after this notification that are necessarily incidental to the preparation of a management plan are in effect, for the purpose of the legislation, authorised actions.

Clause 47: Preparation requirements for management plans

Requires the proponent of a land activity to ensure that the preparation of a management plan and the activities undertaken during a heritage assessment meet the relevant regulatory requirements (prescribed both in regulations and through relevant guidelines).

Regulations will provide minimum standards for management plans, including the basic sections or headings for a management plan and conduct and reporting requirements.

A management plan is to be prepared within 12 months of a notice of intent, or such longer period as the Minister on one occasion during that 12-month period allows.

Clause 48:

Council to evaluate proposed management plan

Provides that the Council is taken to have elected to evaluate a management plan for which it has received a formal notice of intent from a proponent, unless within 30 days of receiving the notice of intent it notifies the proponent that it does not intend to evaluate the plan. If the Council elects not to evaluate a plan, the proponent may proceed with its preparation without further reference to the Council.

Clause 49:

Requirements for Council evaluations

Outlines the general obligations of the proponent and the Council in the evaluation of a management plan.

The proponent is obliged to make reasonable efforts to consult with the Council before beginning the Aboriginal heritage assessment and during the preparation of the plan.

The Council is obliged to make reasonable efforts to work co-operatively with the proponent in relation to the carrying out of the assessment and the preparation of the plan.

Provides for at least two formal stages of consultation between the parties: on the methodology for assessing the Aboriginal heritage and the preparation of the management plan (the “preliminary consultation period”); and on the Aboriginal heritage measures in the draft management plan (the “supplementary consultation period”). A 45-day statutory period is set for each of the two consultation stages. If agreed between the parties, the 45-day supplementary consultation period on the draft management plan may be extended, on one occasion only.

Makes provision for the proponent to proceed with the preparation of the management plan if the Council fails to make any representations during the preliminary consultation period.

Requires the proponent and the Council to make every reasonable effort to negotiate and reach agreement on specified matters in respect to the draft management plan (within the supplementary consultation period), including:

- whether the plan provides for the land activity to be carried out in a way that avoids or, if that is not possible, minimises harm to Aboriginal heritage; and

- whether the plan makes satisfactory provision for the protection and management of any Aboriginal heritage likely to be impacted by the relevant land activity, both during and after the cessation of the land activity; and
- measures in the plan for managing disputes, delays or other contingencies that may arise in respect of the land activity or the plan.

Allows the Council to approve the management plan if it reaches agreement with the proponent on the specified matters within the supplementary consultation period.

Provides that a management plan is not capable of being approved if it does not substantially comply with the relevant regulatory requirements or procedural requirements of Part 5 of the Act, or if it contains measures which require an owner of land to grant any person permanent access to that land (clause 49(9)).

Makes provision, if there is a dispute between the Council and the proponent which may substantially delay the preparation of the plan, for either party to refer the dispute to RMPAT for mediation. The referral of a dispute to RMPAT does not extend the supplementary consultation period, unless the council and proponent agree to both the extension and the period of the extension.

Allows the proponent to proceed with preparation of the management plan, without further reference to the Council, if the Council and proponent fail to reach agreement on the specified matters, either within the supplementary consultation period or, if agreed, an extension of that period.

Clause 50:

Form and content of management plans

Explains what a management plan is to include.

A management plan is to set out the results of the Aboriginal heritage assessment and the measures to manage and protect any Aboriginal heritage identified in the area. It must comply with the relevant regulatory requirements, set out in the regulations or relevant guidelines, and is not to contain any measures which require an owner of land to grant any person permanent access to that land.

Clause 51:

Applications for approval of management plans by Minister

Provides that the proponent may apply to the Minister for approval of the management plan, in specified circumstances only. Firstly, a proponent may apply to the Minister for approval if the Council elects not to evaluate a management plan, under clause 48. Secondly, a proponent may apply to the Minister for approval if the Council is proceeding with the preparation of the management plan after failing to reach agreement with the Council, under clause 49.

The application is to include the associated Aboriginal heritage assessment.

In making a decision, the Minister is to consult the Council and may consult such other persons as he or she thinks fit in the circumstances.

Clause 52: Determination of applications for approval of management plans
Provides for the Minister to make a decision on approval of a management plan in lieu of the Council, where specified circumstances under clause 51 apply.

Specifies the matters to be considered by the Minister when considering an application, including:

- whether the plan provides for the land activity to be carried out in a way that avoids or, if that is not possible, minimises harm to Aboriginal heritage; and
- whether the plan makes satisfactory provision for the protection and management of any Aboriginal heritage likely to be impacted by the relevant land activity, both during and after the cessation of the land activity; and
- measures in the plan for managing disputes, delays or other contingencies that may arise in respect of the land activity or the plan.

Requires the Minister to make a determination within 30 days of receiving the application.

The Minister is to notify both the proponent and the Council of his or her determination. If the application is refused, the notification to the proponent is to include the proponent's appeal rights.

If the Council submits advice to the Minister and the Minister does not follow that advice in making a determination to approve or refuse the management plan, the Minister is to notify the Council and state the reasons for not following the advice.

Clause 53: Registration, &c., of management plans
Requires the Council when it approves a management plan, or the Minister where he or she approves a plan, to notify the Secretary of the approval and provide a copy of the plan to ensure the Aboriginal Heritage Register is updated.

Clause 54: Commencement of management plans
Provides that a management plan takes effect when the Minister or Council approves it or on such later date as specified in the approval.

Clause 55: Implementation of management plans
Requires the proponent to ensure that the Aboriginal heritage measures of the management plan are implemented in accordance with the plan. Prohibits a person, in carrying out the land activity for a management plan, from taking an action that contravenes or renders nugatory an Aboriginal heritage measure of the plan, or from causing or allowing another person to do so.

Clause 56: Variation of management plans

Allows the Minister to vary a management plan, including on the recommendation of the Council if the plan was approved by the Council, or on the application of the proponent. A variation may comprise a change of proponent.

The Minister must notify both the proponent and the Council where he or she varies or refuses to vary a management plan. If the variation makes the management plan more restrictive, the notification is to include the proponent's appeal rights. If the Minister refuses to vary a management plan on either the recommendation of the Council or on the application of the proponent, the Minister is to notify the Council or the proponent respectively of the reasons for the refusal.

The variation takes effect on notification of the variation, or on such later date as is specified in the notice.

Requires the Minister, if a management plan is varied, to notify the Secretary to ensure the Aboriginal Heritage Register is updated.

Clause 57:

Cessation of management plans, &c.

Provides that a management plan is valid only in respect to the proponent specified in the plan and the relevant land activity.

Specifies the circumstances in which the management plan ceases to have effect. This includes where the proponent completes the relevant land activity and the Aboriginal heritage measures of the plan have been fully implemented, or if the land activity is not commenced within 3 years after approval of the plan (or such further period as the Minister allows, on one occasion, on application of the proponent) when that 3-year period of further period expires.

The Minister may revoke the approval of the management plan if satisfied that the proponent has contravened an Aboriginal heritage measure of the plan, under clause 55. Before revoking the approval, the Minister is to allow the proponent to make submissions in relation to the matter.

Clause 58:

Minister to notify external regulators if management plan required

Requires the Minister, where both a management plan and an external regulatory approval (a planning or dam permit) is required for the activity, to notify the external regulator of the requirement for a management plan and other specified details.

Clause 59:

Requirement for management plans to be approved ahead of other statutory authorisations

Prohibits the relevant decision maker, where a management is required under Part 5 or is being voluntarily prepared, from granting a statutory authorisation for the activity unless a management plan for that activity has been approved.

While this prevents a final decision on such an authorisation prior to approval of the management plan, it does not prevent a person applying for an authorisation before the plan has been approved. Equally it does not prevent a decision-maker from proceeding with the

decision-making process, up to but not including the final decision on the authorisation before the plan has been approved.

Clause 59(2) requires a proponent to provide the relevant decision-maker with a copy of the approved management plan. This is to enable the decision-maker to be able to proceed with granting any relevant authorisations.

Clause 59(4) prohibits the decision-maker from granting an authorisation for an activity that would be inconsistent with the management plan.

Some statutory authorisation regimes, for example planning, require a decision-maker to decide whether or not to grant the authorisation within a specified period. This requirement is overridden in the case of authorisations for activities which also require a management plan: clause 59(5) provides that the decision period does not start until the approved management plan is received by the relevant decision-maker.

However, clause 59(6) clarifies that any time limits that apply to preliminary decisions are not affected by clause 52(5) and continue to apply. This would capture applicable time limits for processing or considering an application, such as requesting more information from an applicant, deciding to refer an application to a body for advice etc.

Clause 60:

Discontinuation of management plan preparations

Requires the proponent, where preparation of a management plan does not continue to completion, to provide the Minister with notice of the decision to discontinue, as well as all assessment documentation gathered during the preparation of the plan.

The timeline for providing such notice and documents is 14 days after the decision to discontinue. This will ensure that information relating to Aboriginal heritage is not lost if a plan is discontinued before completion.

Failure to comply with this provision is an offence.

Clause 61:

Appeal rights

Provides a process for review by RMPAT, where an aggrieved person, within 14 days of notification, appeals:

- a decision of the Minister to refuse to approve a management plan; or
- a decision of the Minister to refuse to approve an application to vary a management plan;
- a decision of the Minister to vary a management plan so as to make the plan more restrictive; or
- a decision of the Minister to revoke the approval of a management plan.

PART 6

EXTERNAL REGULATORY APPROVALS

- Clause 62: Application of Part**
Establishes that this Part of the Act only applies where a person proposes to carry out a regulated land activity (that is an activity requiring a planning permit under the *Land Use Planning and Approvals Act 1993* or a permit for dam works under section 157(1)(a) of the *Water Management Act 1999*) and a mandatory management plan is not required for that activity.
- Clarifies that this Part does not apply if the person has an approved voluntary management plan for the regulated land activity.
- Clause 63: Application of Planning Act expressions**
Provides that expressions defined in the *Land Use Planning and Approvals Act* and used in this Part have the same meaning as in that Act, with the exception of “works”, and unless the contrary intention appears in this Part.
- Clause 64: Application of Planning Act, &c., to regulated land activities is subject to this Part**
Clarifies that this Part of the Act takes precedence over any provisions within the *Land Use Planning and Approvals Act* and any planning scheme, planning directive or special planning order, or any provisions within the *Water Management Act* or any dam permit in force, should there be any inconsistencies.
- Clause 65: Legal status of regulated land activities for Planning Act, &c.**
Clarifies that a regulated land activity for which an external regulatory approval under the *Land Use Planning and Approvals Act* is required is, for all purposes, taken to be a development under the *Land Use Planning and Approvals Act* and that development is taken to require a permit of a kind which the planning authority has a discretion to refuse or permit.
- Clause 66: Application of section 57(3) of Planning Act**
Provides that if the external application would not, but for the activity being a regulated land activity under this Act, be of a kind which a planning authority has a discretion to refuse or permit under section 57 of the *Land Use Planning and Approvals Act*, then no notice under section 57(3) of the *Land Use Planning and Approvals Act* is required.
- Clarifies that if the external application is of a kind which a planning authority has a discretion to refuse or permit under section 57 of the *Land Use Planning and Approvals Act* regardless of the fact it is a regulated land activity under this Act, then the external regulator must not give notice under section 57(3) of the *Land Use Planning and Approvals Act* until the first of the following occurs:
- the Minister has given notice under clause 68(4) as to whether he or she has an interest in the application; or
 - the period allowed under this Act for the Minister to give notice has elapsed.
- Provides that if the Minister notifies the planning authority that he or she wishes to be involved in determining the application, a notice given by the external regulator or the applicant under section 57(3) of

the *Land Use Planning and Approvals Act* must not include any information that the Minister states in that notification must not be included in such a notice.

Clause 67: Regulated land activities require Aboriginal heritage approval
Provides that a person must not carry out a regulated land activity unless the activity has Aboriginal heritage approval in accordance with this Part. Failure to comply with this provision is an offence.

Subclause (3) sets out exceptions to this requirement.

The first exception is if the regulated land activity is an exempt land activity.

The second exception is where the regulated land activity is authorised by an applicable Aboriginal heritage management plan, or the activity was necessarily incidental to the preparation of an Aboriginal heritage management plan for which a notice of intention has been given.

The third exception is if the regulated land activity is carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*.

The fourth exception is if the action taken was a necessary and proportionate response to an emergency.

The fifth exception is if the applicant is able to demonstrate that the affected area has been subject to serious ground disturbance.

The Minister may consult the Council in determining whether or not he or she is satisfied that serious ground disturbance has been sustained.

Clause 68: External application to be sent to and considered by Minister
Requires the external regulator (the local council or the Assessment Committee for Dam Construction) to refer an application for an external regulatory approval to the Minister, for Aboriginal heritage consideration. The referral is to occur within 5 days after the external regulator receives a valid application.

The Minister is to consider the application and notify the external regulator, within 7 days if the application is a planning permit or within 14 days if the external application is a dam permit, that:

- the Minister has no interest in the application, or
- the Minister wishes to be involved in determining the application.

If the application is for a planning permit and the Minister notifies the external regulator that he or she wishes to be involved in determining the application, the Minister is to state in the notification that the information contained in the application and identified in the

notification is not to be included in a notice given under section 57(3) of the *Land Use Planning and Approvals Act*.

If the Minister notifies the external regulator that he or she wishes to be involved in determining the application, the Minister may also state in the notification that he or she requires additional specified information to assess the application. This may include the results of an Aboriginal heritage assessment of the affected area.

If the application is for a dam permit and the Minister notifies the external regulator that he or she wishes to be involved in determining the application, the external regulator must notify the Minister of the day by which he or she is to give notification of his or her determination under clause 72(7).

Clause 69: Procedure if Minister requires additional information to consider external application

Outlines the process that the Minister and the external regulator are to follow if the Minister requires additional information to make a determination.

As soon as practicable after receiving the Minister's request for additional information, the external regulator is to use its power under either s54 of the *Land Use Planning and Approvals Act* if it is a planning permit, or section 154 of the *Water Management Act* if it is a dam permit, to ask the applicant for the information.

Once the external regulator receives the additional information, it must give the information to the Minister.

The Minister must inform the external regulator whether or not it is satisfied that the additional information addresses the request.

For the purposes of section 54 of the *Land Use Planning and Approvals Act* and any provision of the *Water Management Act*, the external regulator is satisfied that the additional information answers the request for additional information only when notified by the Minister that he or she is satisfied.

Clause 70: Procedure if Minister has no interest in external application under Planning Act

Outlines the process that the Minister and the external regulator are to follow if the Minister has no interest in an external application for a planning permit under clause 68(4)(a), or if it fails to give the external regulator any notification of its intention within the period required under clause 68(4).

If, but for the activity being a regulated land activity under this Act, no permit would have been required under the *Land Use Planning and Approvals Act*, the application is taken to be withdrawn.

If, but for the activity being a regulated land activity under this Act, no discretionary permit would have been required under the *Land Use Planning and Approvals Act*, but another planning permit would have been required for the activity, then the application is taken to be an

application made under the appropriate section of the *Land Use Planning and Approvals Act* and the external regulator is to determine the application under the appropriate provisions.

If a discretionary permit is required for the activity under section 57 of the *Land Use Planning and Approvals Act* regardless of the fact it is a regulated land activity under this Act, then the external regulator is to determine the application under the appropriate provisions.

In these circumstances the Minister is not entitled to make representations or take any other action in relation to the application.

The external regulator is to notify the Minister of its determination.

Clause 71: Procedure if Minister has no interest in external application under Water Management Act

Outlines the process that the Minister and the external regulator are to follow if the Minister has no interest in an external application for dam permit under clause 68(4)(a), or if it fails to give the external regulator any notification of its intention within the period required under clause 68(4).

In these circumstances the external regulator may determine the application without any further consultation with the Minister.

The Minister is not entitled to make representations or take any other action in relation to the application.

The external regulator is to notify the Minister of its determination.

Clause 72: Procedure if Minister wishes to be involved in determining external application

Outlines the process that the Minister and the external regulator are to follow if the Minister gives the external regulator notification of its interest in the external application under clause 68(4)(b).

Subclause (1) introduces a new definition relevant to this Part:

“**relevant period**” means: (a) in relation to an application for a planning permit and where the Minister has not sought an extra 14 days to determine the application, the period of 35 days from the application day, or where the Minister has sought an extra 14 days to determine the application, the period of 49 days after the application day; and (b) in relation to an application for a dam permit, within the period specified in the notice provided to the Minister by the external regulator under clause 68(8).

Specifies the matters to be considered by the Minister when considering an application and includes:

- the known and likely Aboriginal heritage impacts of the regulated land activity; and
- any representations made in respect of the application; and
- any matters prescribed by the regulations; and
- the objects of the Act and any relevant guidelines.

In considering an application, the Minister may liaise with the Council or the external regulator.

The Minister may notify the external regulator that he or she requires an extra 14 days to consider the external application. The external regulator must notify the applicant of the extension of time.

The external regulator must forward to the Minister a copy of any representations received in relation to the external application.

The external regulator is to notify the Minister of any extension of time that has been agreed to between the external regulator and the applicant for a planning permit.

The Minister must notify the external regulator, before the relevant period expires, that the external regulatory approval (planning or dam permit):

- may be issued without Aboriginal heritage conditions; or
- may be issued subject to the Aboriginal heritage conditions specified in the notification; or
- must be refused.

Subclause (9) clarifies the types of conditions the Minister may set including conditions that provide for the activity to be carried out in a way that avoids or (if that is not possible) minimises harm to Aboriginal heritage and for the protection and management of any Aboriginal heritage likely to be impacted, both during the carrying out and after the cessation of the activity.

If the Minister consents to the external application being granted and has not provided any additional comment or conditions, or it fails to notify the external regulator of its decision within the relevant period, the external regulator may determine the application without any further consultation with the Minister. The Minister is not allowed to then take any further action in relation to the application.

If the Minister consents to the external application being granted and has also requested Aboriginal heritage conditions be set, the external regulator must incorporate those conditions into the approval and cannot impose any condition that conflicts with a condition required by the Minister. The external regulator or any other person with responsibilities under the *Land Use Planning and Approvals Act* or the *Water Management Act* for enforcing an external regulatory approval, is not required or entitled to exercise any power to enforce the Aboriginal heritage conditions unless the Minister and external regulator agree otherwise.

The external regulator must refuse to confer the external regulatory approval if the Minister notifies the external regulator that the external application should be refused.

The external regulator is required to notify the Minister of its determination in relation to the external application, including where an application is withdrawn.

Where an external regulatory approval is conferred, the external regulator must also provide a copy to specified persons, including the Secretary to ensure the Aboriginal Heritage Register is updated.

Clause 73:

Amendment of external applications

Allows external applications to be amended pursuant to section 155B of the Water Management Act.

Outlines the procedure that the Minister and the external regulator are to follow if a request for an amendment to an external application for a dam permit is made.

Subclause (2) provide that if the Minister has not yet notified the external regulator under clause 68(4) as to whether he or she has no interest or wishes to be involved in determining the application and the 7-day period for that notification to be given has not ended, the external regulator may amend or refuse to amend the application without reference to the Minister. The external regulator is to immediately notify the Minister if the application is amended.

Subclause (3) provides that if the Minister has given notification under clause 68(4) that he or she has no interest in the application or has failed to give notice within the required period, the external regulator may amend or refuse to amend the application without reference to the Minister.

Subclause (4) provides that if the Minister has given notification under clause 68(4) that he or she wishes to be involved in determining the application, the external regulator must consult the Minister before amending the external application and have regard to any representations made by the Minister.

The external regulator is not obliged to comply with subclauses (2) or (4) if it reasonably determines the amendment will have no Aboriginal heritage impacts.

Clause 74:

Correction and amendment of external approvals

Clarifies what is to occur if the external regulator receives a request to correct or make an amendment to a discretionary planning permit, as allowed under s55 and s56 of the *Land Use Planning and Approvals Act*, or to a dam permit as allowed under sections 161 or 162 of the *Water Management Act*, and the Minister has given notice that he or she consents, or consents subject to conditions, to the conferral of the planning or dam permit under clause 72(7).

The external regulator must consult the Minister and take into consideration any representations made by the Minister, before making the correction or amendment.

Allows the external regulator to undertake corrections or amendments where that correction or amendment will have no impact on Aboriginal heritage or any Aboriginal heritage conditions set by the Minister.

Clause 75: **Contravention of Aboriginal heritage conditions**
Provides that contravening an Aboriginal heritage condition included in an external regulatory approval is an offence.

Clause 76: **Appeals concerning external applications**
Outlines the process for the review of decisions by RMPAT.

Subclause (1) joins the Minister as a respondent to any appeal against a request for additional information under section 61(3) of the *Land Use Planning and Approvals Act* or under section 276(1) of the *Water Management Act*, but only where the Minister has given the external regulator notification under clause 68(4)(b) that he or she wishes to be involved in determining the application.

Subclause (3) joins the Minister as a respondent to any appeal against any approval or approval with conditions of the external regulatory approval (planning or dam permit) under sections 61(4) or 61(5) of the *Land Use Planning and Approvals Act* or under section 276(1) of the *Water Management Act*, but only if the Minister notified the external regulator under clause 72(7) that he or she consented to the conferral or the external regulatory approval, or consented with conditions.

Subclause (4) joins the Minister as a respondent to any appeal against an external regulatory approval which has been refused partly on the grounds of the Minister's notification under clause 72(7)(c) and partly on the grounds of the external regulator.

Subclause (5) provides that the Minister is the sole respondent to any appeal under clause 61(4) of the *Land Use Planning and Approvals Act* or under section 276(1) of the *Water Management Act*, where the external regulatory approval is refused solely on the basis of the notification of the Minister under clause 72(7)(c) that the approval should be refused.

Subclause (6) provides that the Minister is to be a joint respondent to any appeal under s59(3) of the *Land Use Planning and Approvals Act* where a decision has not been made with the 42-day period or any other such agreed time.

Clause 77: **Referral to Minister of certain planning instruments**
Allows the Minister to give a planning interest notice to a planning authority to notify the authority that its municipal area is an area of planning interest to the Minister, if specified circumstances exist:

- if the Minister has first consulted the Council, and
- if the Minister is reasonably of the opinion that development in the municipal area is likely to have Aboriginal heritage impacts.

Requires a planning authority that has received a planning interest notice to notify the Minister of the commencement of the exhibition of any draft planning instrument and invite the Minister to make representations.

Requires the Minister to notify the Tasmanian Planning Commission (the Commission) and the Council if he or she gives a planning notice to a planning authority.

If the Minister makes a representation in relation to a draft planning instrument under section 43A of the *Land Use Planning and Approvals Act* and the Commission grants a planning permit that is not in accordance with a representation of the Minister, the Commission must give the Minister reasons in writing for its decision.

Clause 78: Commission to invite and consider Ministerial representations on certain dispensations

Requires the Commission to give the Minister a copy of an application made under section 30P of the *Land Use Planning and Approvals Act* for a dispensation from a local provision of an interim planning scheme, where it relates to land within a municipal area in which the Commission has received a planning interest notice from the Minister under clause 77(6)(a).

The Commission is to invite the Minister to make a representation in relation to the application. Before making any representations, the Minister is to consult the Council.

If the Minister makes representations and the Commission's determination of the application is not in accordance with those representations, the Commission is to notify the Minister of its reasons for the determination.

PART 7 ABORIGINAL HERITAGE AGREEMENTS

Clause 79: Power of Council to enter into Aboriginal heritage agreements

States that the Council may enter into voluntary agreements for the protection or management of Aboriginal heritage.

Such agreements may not deal with activities requiring permits under Part 4 or management plans under Part 5, or activities for which an external regulatory approval is required under Part 6, and may not restrict or permit access to any land without the consent of its owner. If the land is occupied by a person other than the owner, the consent of the occupiers is required.

Specified examples of matters that such agreements may cover include (but are not limited to):

- the protection, maintenance or use of an Aboriginal object or site;
- the use of, or access to, an Aboriginal object or site by Aboriginal persons;
- the rehabilitation of an Aboriginal object or site.

An Aboriginal heritage agreement is legally binding and enforceable, but does not attach to the land so as to bind any subsequent owner of the land.

Clause 80: Parties to agreements

States that the Council is to always be a party to an Aboriginal heritage agreement. The Council may enter into an agreement with any person. However, any agreement relating to a site must include as one of the parties to the agreement, the owner of the land, or where it is Crown land, the Minister responsible for the administration of the *Crown Lands Act 1976*.

Clause 81:

Form of agreements

Sets out the formal requirements for an Aboriginal heritage agreement.

In the first place, an agreement must be in a form approved by the Council. Where an agreement relates to an Aboriginal site, it must include information which clearly identifies that site, including a description or of the boundaries of the site by reference to its GDA coordinates.

Clause 82:

Duration of agreements

Provides when an Aboriginal heritage agreement can begin and end. An agreement relating to an Aboriginal site terminates automatically on the sale of the land.

Clause 83:

Variation of agreements

Allows for an Aboriginal heritage agreement to be varied by agreement between the parties.

Clause 84:

Lodgment and registration of agreements, &c.

Requires the Council to lodge a copy of an Aboriginal heritage agreement with the Secretary within 14 days of entering into or varying an agreement. The Council must also formally notify the Secretary of the termination of an agreement. The Secretary is to update the Register accordingly. These provisions will assist the Secretary to fulfil his or her obligation under clause 112(1)(g), which is to keep records of all agreements made on the Aboriginal Heritage Register.

PART 8

AUDITS

Clause 85:

Power of Minister to require audits of certain land activities

States when an audit of a controlled land activity may be ordered.

The Minister may require an authorised officer to carry out an audit if he or she reasonably believes certain grounds are present, namely—

- the conditions of the relevant approval (Aboriginal heritage management plan, Aboriginal heritage permit or external regulatory approval) are being materially contravened with respect to Aboriginal heritage; or
- the conditions of the relevant approval are deficient; or
- Aboriginal heritage measures required to be taken under the relevant approval are not being taken properly or at all; or
- the Aboriginal heritage impacts of the controlled land activity are greater or different than was contemplated when the approval was conferred; or

- there has been a material change in circumstances since the relevant approval was granted, with consequent implications for Aboriginal heritage; or
- the relevant approval was granted on erroneous premises, with consequent Aboriginal heritage impacts; or
- having regard to the objects of the act, it would be prudent to audit the controlled land activity.

The Minister may order an audit on his or her own initiative, or the Council may recommend to the Minister that an audit be undertaken.

Requires that when the Minister orders an audit of an activity, he or she must also issue a stop order to the person conducting the activity. This is to ensure that no further activity can be carried out until the audit is completed, both to facilitate the audit and to avoid any harm or further harm as a result of the activity.

Clause 86:

Audit orders

Requires the audit order to specify the manner in which the audit is to be conducted, including the name of the authorised officer required to carry out the order, and the Aboriginal heritage matters to be audited, as well as the period for the audit's completion. The audit order may specify that the services of a specified consultant or expert be engaged for the audit.

Clause 87:

Conduct of audits

Specifies the manner in which an audit is to be carried out by an authorised officer.

Clause 88:

Audit reports

Requires an authorised officer who conducts an audit to provide the Minister with a written report of its findings. The report may contain any recommendations concerning:

- the variation of the relevant approval (Aboriginal heritage management plan, Aboriginal heritage permit or external regulatory approval);
- the continuation or termination of the relevant approval;
- the monitoring of the controlled land activity;
- Aboriginal heritage conditions;
- Aboriginal heritage measures;
- measures relating to the conduct of the controlled land activity to avoid or minimise harm to Aboriginal heritage.

Clause 89:

Approval of refusal of audit reports

Provides for the Minister to approve an audit report, if satisfied that it addresses the requirements of the audit order.

Clause 90:

Actions following approval of audit reports

Requires the Minister to notify the auditor, the proponent or person holding the approval, the Council and the Secretary if he or she approves an audit report. If the audit report recommends the variation of the relevant approval, the Minister may implement that

recommendation. The Secretary is to update the Register accordingly.

Clause 91:

Action following rejection of audit reports

Provides that if the Minister rejects an audit report, he or she may:

- take no further action; or
- remit the matter to the auditor for remediation and resubmission; or
- order a fresh audit in the matter (once only).

The Minister is to notify the auditor, the proponent or person holding the approval, the Council and the Secretary if he or she rejects an audit report. The Secretary is to update the Aboriginal Heritage Register accordingly.

PART 9

STOP ORDERS

Clause 92:

Power of Minister to stop certain land activities

Provides for the issue of stop orders by the Minister in specified circumstances. These are where the Minister issues an audit order, or where the Minister reasonably apprehends that:

- the person is carrying out, or proposing to carry out, the land activity in contravention of the Act ; and
- the land activity or proposed land activity is harming or likely to harm Aboriginal heritage, and
- the Aboriginal heritage cannot be properly protected unless the land activity or proposed land activity is stopped.

In relation to a nominated object or site (defined in Part 1, s.4), the specified circumstances exist where the Minister reasonably apprehends that:

- the land activity or proposed land activity is impacting on or is likely to impact on a nominated object or site; and
- the land activity is harming or is likely to harm the nominated object or site; and
- the nominated object or site cannot be properly protected unless the land activity is stopped.

A stop order may be issued on the Minister's own initiative, or the Council may recommend to the Minister that a stop order be issued.

The Minister is to give a copy of the stop order to the Council and the Secretary if issued, and the Secretary is to update the Aboriginal Heritage Register accordingly.

Clause 93:

Power of authorised officers to stop certain land activities

Provides for the issue of interim stop orders by an authorised officer in specified circumstances. These are where the authorised officer reasonably apprehends that:

- the person is carrying out, or proposing to carry out, the land activity in contravention of the Act ; and
- the land activity or proposed land activity is harming or likely to harm Aboriginal heritage, and

- the Aboriginal heritage cannot be properly protected unless the land activity or proposed land activity is stopped; and
- the need for the stoppage is urgent and, in the circumstances, it is not possible or expedient to refer the matter to the Minister for action under clause 92.

In relation to a nominated object or site, the specified circumstances exist where the authorised officer reasonably apprehends that:

- the land activity or proposed land activity is impacting on or is likely to impact on a nominated object or site; and
- the land activity is harming or is likely to harm the nominated object or site; and
- the nominated object or site cannot be properly protected unless the land activity is stopped; and
- the need for the stoppage is urgent and, in the circumstances, it is not possible or expedient to refer the matter to the Minister for action under clause 92.

The authorised officer is to give a copy of the stop order to the Minister, the Council and the Secretary if issued, and the Secretary is to update the Aboriginal Heritage Register accordingly.

Clause 94: Form and content of stop orders and interim stop orders
Sets out the formal requirements for a stop order.

Requires a stop order to be in an approved form, to identify the relevant land activity and land, specify the perceived harm to the identified heritage and state what the order requires.

Clause 95: Duration of stop orders and interim stop orders
Specifies how long a stop order has effect.

A stop order operates for 30 days from the time it is issued, or such shorter time as is specified in the order.

An exception to this is where a stop order is issued in relation to a nominated object or site (that is heritage such to a public registration process prescribed in regulations) —in this case, where an application has been made for the registration of the object or site, the order operates until (whichever of the following occurs first), either the application requesting registration of the nominated object or site is determined, or the expiration of the period of 30 days or such shorter period as is specified in the order. Where the Council on its own motion has determined to consider registration of the nominated object or site, the order operates until (whichever of the following occurs first), the Council makes its preliminary registration determination if the order comes into force before that determination is made and the recommendation is that the object or site not be registered as nominated Aboriginal heritage; the object or site is registered as nominated Aboriginal heritage; it is finally determined that the object or site is not to be registered as nominated Aboriginal heritage; the expiration of the period of 30 days or such shorter period as is specified in the order.

An interim stop order comes into force as soon as it is served and can apply for no longer than 48 hours

Clause 96: Extension of stop orders
Provides the Minister with the power to extend (once only) a stop order for up to 14 days after the initial expiry date.

Clause 97: Service of stop orders and interim stop orders
Specifies how a stop order or interim stop order may be served.

An order may be served on the person to whom it applies (including a body corporate), by affixing the order in a prominent position at the location of the activity; or if issued to a body corporate, by giving it to the person who is on the relevant land and apparently supervising the relevant activity by that body.

Where the person authorised to deliver an order is required to enter land for this purpose, such entry is authorised by this Act and does not constitute a trespass. In all cases, such entry should be limited to the extent and time reasonably necessary for the delivery.

It is an offence to move, remove, deface, destroy or obscure an order affixed to land.

Clause 98: Revocation of stop orders and interim stop orders
Allows the Minister to revoke a stop order at any time or on application of the person subject to the order.

Allows an interim stop order to be revoked by the authorised officer who issued it, the Minister or the Secretary at any time or on application of the person subject to the order.

Requires notification of the revocation to specified parties, including the Council and the Secretary (for the purposes of the Aboriginal Heritage Register).

Clause 99: Contravention of stop orders and interim stop orders
Provides that it is an offence for a person issued with a stop order or interim stop order to contravene that order.

Clause 100: Effect of stop orders on audits
Clarifies that a stop order or interim stop order does not prevent a person from taking actions necessary or expedient for the purposes of an audit being carried out in accordance with an audit order, or giving effect to the recommendations of an approved audit report.

Clause 101: Appeal rights
Provides a process for review by RMPAT, where an aggrieved person, within 14 days of notification, appeals:

- a decision by the Minister to issue a stop order; or
- a decision by an authorised officer to issue an interim stop order; or

- a decision by the Minister to extend a stop order.

PART 10

ABORIGINAL HERITAGE PROTECTION ORDERS

Clause 102:

Power of Minister to issue Aboriginal heritage protection orders

Specifies the circumstances in which a protection declaration for a registered Aboriginal object or site may be issued.

Such orders may be issued by the Minister, only where he or she is satisfied that:

- the Aboriginal people of Tasmania have a special relationship with the object or site, and
- the protection of the object or site is essential for the preservation of that special relationship.

The Minister may issue a protection order on his or her own initiative or on the recommendation of the Council.

Allows for two types of protection orders to be issued by the Minister. The first is an enduring protection order which is described subclause (3)(a) and are essentially Ministerial orders specifying measures for the protection of a particular registered Aboriginal object or site, for an unlimited period of time. The second is an interim protection order which is described in subclause (3)(b) and are essentially Ministerial orders specifying measures for the protection of particular registered Aboriginal objects or places, for a limited period of time.

The Minister is able to make an interim protection order while an assessment is undertaken to determine if a place or object warrants permanent protection.

If an order is issued, the Minister is to give a copy of the order to the Secretary for the purpose of updating the Aboriginal Heritage Register.

Clause 103:

Form and content of protection orders

Sets out the formal requirements of a protection order. A protection order must be in an approved form and it must include:

- information which clearly identifies the relevant registered Aboriginal object or site to which it relates; and
- specify whether it is an enduring or interim order; and
- state why it has been issued; and
- specify the protective measures to be taken; and
- specify an individual or body who is responsible for taking the protective measures, if applicable; and
- such as matters as the Minister thinks fit in the circumstances; and
- information required by the regulations, if any.

Clause 104:

Publication of protection orders

Requires the Minister to publish a protection order in the Government Gazette and in a local newspaper published and circulating generally in the State.

If a person other than a State servant is required by the protection order to take protective measures in relation to the registered Aboriginal object or site, the Minister is to give that person a copy of the order.

The Minister may publish the order in such other ways as the Minister thinks fit, including by affixing the order on the relevant land, to indicate that the order is in force. The affixing of an order on land is authorised by this Act and does not constitute a trespass.

It is an offence to move, remove, deface, destroy or obscure an order affixed to land.

Clause 105:

Duration of protection orders

Specifies the terms of a protection order.

An enduring protection order is permanent, unless revoked by the Minister. It protects the site or object from activities likely to harm its Aboriginal heritage values, and provides for any necessary protective measures to be taken. Subclause (1) provides that an enduring protection order takes effect once published in the Government Gazette, or on such later day as specified in the order.

An interim protection order operates for three months and can be extended only once, by a further period of three months, provided this is done prior the expiry of the initial term. Such extension may be made by the Minister either on the Minister's own initiative, or on request from the Council. No further extension may be made, as interim protection orders are intended to provide protection only for a limited time. If long term protection is found to be required, the most appropriate measure will not be an interim order, but an enduring one, under clause 102(3)(a).

Subclause (2) provides that an interim protection order takes effect once published in the Government Gazette, or on such later day as specified in the order.

If an interim protection order is extended, the Minister is to notify the Secretary for the purpose of updating the Aboriginal Heritage Register.

Clause 106:

Variation or revocation of protection orders

Allows the Minister to vary or revoke a protection declaration at any time, on his or her own initiative, or at the request of the Council or on application of the person affected by the order.

If a protection order is varied or revoked, the Minister is to give a copy of the variation or revocation to the Secretary for the purpose of updating the Aboriginal Heritage Register.

Clause 107: Publication of extension, variation or revocation of protection orders

Provides that where an order is varied, extended or revoked, this must also be published in the Government Gazette and in a local newspaper published and circulating generally in the State.

If a person other than a State servant is required by the protection order to take protective measures in relation to the registered Aboriginal object or site, the Minister must give that person individual notice of the extension, variation or revocation.

The Minister may publish the notice extending, varying or revoking a protection order in such other ways as the Minister thinks fit, including by affixing the relevant notice on the relevant land. The affixing of such a notice on land is authorised by this Act and does not constitute a trespass.

It is an offence to move, remove, deface, destroy or obscure a notice affixed to land.

Clause 108: Consultation on protection orders, &c.

Provides that before issuing, extending, varying or revoking an order, the Minister is to consult the Council and any person who, to the Minister's knowledge, may be affected. The Minister must allow at least 14 days for the consultations and must consider any feedback that is provided.

Clause 109: Effect of protection orders

Provides that a protection order has an overriding effect in relation to any other law, or any authorisation under the Act or agreement. This ensures protection orders are the principal means of protecting Aboriginal objects and sites.

Clause 110: Contravention of protection orders

Provides that contravening a protection order is an offence. Penalties for contravention are set at the highest level in the Act, as a protection order is the strongest protective mechanism available under the Act.

Clause 111: Appeal rights

Provides a process for review by RMPAT, where an aggrieved person, within 14 days after notification was given (if the person received individual notice) or 14 days after publication in the Gazette in any other case, appeals a decision by the Minister to:

- issue a protection order; or
- extend an interim protection order; or
- vary a protection order; or
- require, by the issue of a protection order, a person to take a protective measure in relation to Aboriginal heritage.

PART 11 ABORIGINAL HERITAGE REGISTER

Clause 112: The Aboriginal Heritage Register

Requires the Secretary to establish and maintain the Aboriginal Heritage Register.

Sets out what information must be recorded in the Register. The two main categories are:

- details of all known Aboriginal heritage in Tasmania, in the form of objects, sites, human remains and nominated Aboriginal heritage; and
- records of all Aboriginal heritage instruments made under the Act (permits, management plans, external regulatory approvals, agreements, audits, protection orders, stop orders and orders declaring exempt areas and areas of high sensitivity).

Subclause (2) also provide the Secretary with the discretion to register any other matter which he or she deems necessary or appropriate.

In maintaining the Register, the Secretary is to have regard to specified matters, including any relevant registration criteria or guidelines.

The Secretary must be satisfied that a site, object or human remains constitutes Aboriginal heritage before entering it on the Register.

Clause 113:

Form of Register

Sets out the form of the Register and the information to be recorded, including details of the location of an Aboriginal object or site by reference to a plan in the Central Plan Register or its GDA coordinates and details of the area in relation to which any instrument under the Act has effect. The Register is also required to contain a separate part for entries relating to nominated heritage (that is heritage such to a public registration process prescribed in regulations).

The Secretary may amend the Register, or omit an entry, to ensure its accuracy and currency, subject to any restrictions specified in regulations.

Clause 114:

Access to Register

Specifies who can access the Register and for what purpose.

The Council is entitled to have access to the Register at any time for any purpose related to its responsibilities.

As the Register is not a public document, only persons and bodies expressly authorised under this clause can obtain access, on application, and only for the purpose specified and to the extent the Secretary and the Council jointly consider necessary.

These include:

- one or more representatives of the managing authority in relation to Crown land, for the purposes of managing that Crown land;
- the general manager or an employee of a municipal council, to enable the council to discharge its responsibilities within its municipal area;
- an authorised officer, to enable the authorised officer to discharge his or her responsibilities;
- a person undertaking research (including initial research to determine whether the person should apply for a permit to undertake scientific research), for the purpose of obtaining information relevant to that research;
- the Valuer-General, for the purposes of discharging his or her responsibilities;
- a State servant, for the purpose of discharging his or her duty to protect or manage Aboriginal heritage;
- a person who provides an infrastructure service, for the purposes of establishing and maintaining infrastructure, and managing land, required in relation to the provision of the service.

“Infrastructure service” is defined in Part 11 to mean:

- the transmission, supply or distribution of electricity; or
- the transmission, supply or distribution of gas by pipeline; or
- the provision, supply or distribution of water or the provision of infrastructure relating to the provision, supply or distribution of water; or
- the provision of sewers or drains; or
- the provision of a communications network; or
- the provision of infrastructure relating to road transport, rail transport, air transport or water transport; or
- a service, or a service of a class of services, prescribed by the regulations to be infrastructure services.

The Secretary may refuse to disclose information to any person or body specified if he or she considers, on the advice of the Council, that the information is of such special sensitivity that it should not be disclosed.

Nothing prevents the Secretary from disclosing registered information to the Minister; or disclosing registered information required by a court, RMPAT or other tribunal; or disclosing registered information to the Director of Public Prosecutions or a law enforcement agency; or granting State servants access to the Register for administrative purposes associated with maintaining the Register.

The Secretary may establish protocols, in consultation with the Council, for granting persons access to the Register.

Clause 115:

General public access to registered information

Allows the Secretary to establish a “synopsis” of the Register in the form of a computer database, to be available for public inspection online. This will ensure members of the public can gain quick and accurate access to the most basic information on the presence of Aboriginal heritage on particular land.

“**synopsis**”, of the Register, is defined in subclause (1) to mean a version of the Register that has been edited so as to –

- provide information on Aboriginal heritage in, on or under particular land or a particular area of the State, including geographic and mapping information derived from the Register; and
- exclude or neutralise any information that the Secretary, after consulting the Council, considers could be harmful to any Aboriginal heritage if publicly disclosed or is of such special sensitivity that it ought not be publicly disclosed; and
- exclude or neutralise any information that the Council, by notice, has specifically recommended to the Minister or Secretary not be publicly disclosed.

The Secretary is required to ensure , that a member of the public searching the synopsis can gain a quick and accurate indication as to which areas of the State contain Aboriginal heritage and are subject to management controls.

“**management controls**” are defined in subclause (1) to mean permits, management plans, external regulatory approvals, agreements, protection orders, stop orders and orders declaring exempt areas and areas of high sensitivity.

Clause 116:

General advice on entries in Register

The Secretary, on application, may provide advice to any persons about whether a specified record exists on the Register and indicate in general terms the nature and significance of the entry as well as what the entry means in regard to use or development of the area, unless:

- the Secretary , after consulting the council, considers that to do so could be harmful to any Aboriginal heritage; or
- the Secretary , after consulting the council, considers that the information is of such sensitivity that it ought not be disclosed; or
- the Council has recommended that the information not be disclosed (either at all or to a particular class of which the applicant is one).

An application made by an owner, mortgagee or occupier of land, or a representative on their behalf, or a prospective owner, mortgagee or occupier of land for the purposes specified, or an applicant for a permit or external regulatory approval or a proponent for a recognised management plan, or

a or a representative on their behalf, for the purpose specified is to be determined within 5 days of lodgment.

Applications by all other parties are to be determined within 10 days of lodgment.

PART 12

ENFORCEMENT

Clause 117:

Authorised officers

Specifies the process for appointing a State servant to be an authorised officer. An authorised officer holds office for the period specified in the instrument of appointment.

Clause 118:

Ex-officio authorised officers

Provides that police officers and park rangers are also authorised to exercise the powers of an authorised officer appointed under this Act.

Clause 119:

Identity cards

Requires the Secretary to issue authorised officers with identity cards in an approved form and containing a photograph of the officer to whom it is issued. The Secretary may also issue a person who is a police officer or park ranger with an identity card for use in relation to Aboriginal heritage responsibilities.

Requires an authorised officer to produce his or her identity card at any time while exercising such a power, if requested.

Where a person ceases to be an authorised officer, or loses that status for any reason, the Secretary must retrieve the card immediately.

Clause 120:

Power to require name and address

Authorises an authorised officer to require a person to give their full name and usual address, if the authorised officer reasonably suspects that the person has committed, or is committing, an offence against the Act. The authorised officer may require further evidence if he or she reasonably believes the name and address to be false. Failure or refusal to comply with an authorised officer's request under this clause, without reasonable excuse, is an offence.

Clause 121:

Power of seizure

Provides an authorised officer with a limited power to seize an object, provided he or she reasonably believes it is an Aboriginal object and an offence has been committed against this Act in relation to the object.

Provides an authorised officer with a limited power to seize a document without a search warrant, provided he or she reasonably believes it is an Aboriginal permit or other document issued under this Act and an offence has been

committed by the holder of the permit or other document against this Act.

Provides an authorised officer with a limited power to seize a thing without a search warrant, provided he or she reasonably believes it has been used in connect with an offence under this Act or constitutes evidence of the commission of an offence under this Act.

Clause 122:

Dealings with objects, documents or things seized

Requires an authorised officer to provide a receipt for any object, document or thing seized, to the person in possession or custody of that item.

The receipt must identify the seized item, state the name of the authorised officer, state the time and place of the seizure and the reason for the seizure.

Provides for the transfer to the Council of seized items that are Aboriginal objects. A seized item other than an Aboriginal object is to be placed in the custody of the Secretary.

If proceedings in relation to an offence under this Act are not commenced within 6 months after the day on which the item was seized, the Council or Secretary must return the seized item to its owner.

If proceedings in relation to an offence under this Act are commenced within 6 months after the day on which the item was seized, the Council or Secretary must return the seized item to its owner at the end of those proceedings unless the court, on application by the Council or Secretary, orders it confiscation.

The court hearing the proceedings may order the confiscation of the seized item if of the opinion that the item has been used for the purpose of committing an offence, or for any other proper reason.

If the court order the confiscation of the item, the Council or Secretary may dispose of it as it thinks fit and no compensation is payable.

Clause 123:

Power of search and entry

Provides that an authorised officer may search any premises, vehicle or container if he or she reasonably believes that an Aboriginal object, or a document or other thing that the authorised officer is entitled to seized is located in the premises, vehicle or container.

Outlines the search powers which an authorised officer may exercise upon entering premises, a vehicle or container under this clause.

It is an offence to fail to comply, without reasonable excuse, with a requirement made under this clause.

Provides that an authorised officer may only enter premises used as a principal residence with the consent of its occupier or a warrant.

Clause 124:

Power to require information

Specifies that an authorised officer who enters any premises, vehicle or container may require any person present to give information, or produce any document, reasonably required by the authorised officer in order to determine whether this Act is being complied with. Failure or refusal to comply with such request, without a reasonable excuse, is an offence, and an authorised officer must warn the person of this. The person has such an excuse if the giving of the information or document would tend to incriminate the person.

Clause 125:

Power to require persons to leave protected places

Allows an authorised officer to require a person, reasonably suspected to have committed an offence against this Act, to leave the protected place.

“**protected place**” is defined in subclause (1) to mean a registered Aboriginal site or a place in respect of which a stop order is in force.

Failure to comply with such a request, without reasonable excuse, is an offence.

Clause 126:

Power of arrest

Provides ex-officio authorised officers with a limited power of arrest in relation to the discharge of Aboriginal heritage responsibilities, where a person is founding offending in specified circumstances. These include where a person refuses or fails to comply, without reasonable excuse, with a request to leave a protected place.

Clause 127:

Obstruction of authorised officers

Provides that it is an offence to obstruct, hinder, threaten, attempt to intimidate or attempt to improperly influence an authorised officer.

Clause 128:

Infringement notices

Allows for the issue of infringement notices, to provide a simple and effective way to deal with minor offences. Penalties may not exceed 20% of the maximum penalty set in the Act. Infringement offences will be prescribed in the regulations.

Clause 129:

False and misleading statements

Provides that it is an offence for any person, in giving any information under this Act, to make a statement knowing it to be false or misleading, or to omit any matter from a statement

knowing that without that matter the statement is false or misleading.

Clause 130:

Offences by bodies corporate

Provides that if a body corporate commits an offence against this Act, other than those specified, an officer of the body corporate also commits an offence if the officer failed to exercise due diligence to prevent the commission of the offence. Matters which the court must have regard to in determining whether an officer of a body corporate exercised due diligence are specified in subclause (3). Subclause (4) sets out a defence to such a charge.

An officer of a body corporate may be convicted whether or not the body corporate has been prosecuted or found guilty of the offence.

Clause 131:

Liability of body corporate for offences by officers, &c.

Provides that offences committed by a person concerned in the management of a body corporate, or an employee or agent of the body corporate, are also automatically deemed to be offences by the body corporate, and the state of mind of that person, employee or agent is imputed to the body corporate.

A body corporate may be convicted whether or not the person, employee or agent has been prosecuted or found guilty of the offence.

Clause 132:

Time for instituting summary proceedings

Allows for a five-year period to prosecute a summary offence against this Act following the alleged offence, notwithstanding section 26 of the *Justices Act 1959* or any other law.

PART 13

MISCELLANEOUS

Clause 133:

Service of notices

Outlines the formal requirements for the service of notices or other documents under this Act.

Clause 134:

Protection from liability

Provides that a member of the Council does not incur any personal liability for acts done or omitted in relation to the exercise or performance of a power of function under this Act, or in relation to the administration of this Act.

Clause 135:

Application procedure

Outlines the formal requirements for an administrative application in relation to any matter under this Act, including lodgement in the approved form with the person to whom the application is to be made and supported by such evidence as is required. It includes the power to seek further information.

There is no obligation to consider or determine an administrative application if it fails to comply in a material way with the formal requirements for such applications, or it is the

same or substantially the same as an unsuccessful application made by the same applicant with the last 12 months and disclose nothing new.

Clause 136:

Waiver and refund of fees

Allows any fees payable to be waived or refunded in whole or in part by the person to whom the application is to be made.

Clause 137:

Regulations

Sets out the matters in respect of which the Governor may make regulations. This includes a general power to regulate for the purposes of the Act, and any matters necessary for implementing the statutory mechanisms including exemptions from the Act. This clause also includes a power to regulate the registration of objects and sites as nominated Aboriginal heritage, including registration criteria and appeals.

Provision is also made for the mapping, recording and documentation of Aboriginal heritage, including the recognition of such maps for the purposes of the Act.

There is also provision to set fees, although it is not intended to commence the legislation with any fees.

Clause 138:

Status of delegated instruments under Act

Provides that any orders, notices, directives, criteria, codes and guidelines made, issued or adopted under this Act are not statutory rules for the purposes of the *Rules Publication Act 1953*.

Clause 139:

Review of Act

Requires the Minister to conduct a review of the operation of the Act within three years of the day on which this clause commences. The Minister is required to table a report on the outcome of the review in Parliament within a further 6 months.

Clause 140:

Administration of Act

Assigns the administration of the Act to the Minister for Environment, Parks and Heritage and deems the Department of Primary, Industries, Parks, Water and Environment to be the department responsible to the Minister in relation to administration of the Act, until provision is made by order under section 4 of the *Administrative arrangements Act 1990*.

Clause 141:

Savings and transitional provisions

Specifies that Schedule 1 contains saving and transitional provisions.

Clause 142:

Legislation repealed

Repeals the legislation specified.

Clause 143:

Legislation revoked

Revokes the legislation specified.

- SCHEDULE 1: MEMBERSHIP OF COUNCIL**
Governs matters relevant to membership of the Council, including the term and conditions of appointment, disclosure of interest, termination of appointment, filling of vacancies and validation of proceedings.
- SCHEDULE 2: MEETINGS OF COUNCIL**
Governs matters relating to meetings of the Council, including who must preside, what constitutes a quorum, procedures at meetings and conflicts of interest.
- SCHEDULE 3: COUNCIL COMMITTEES**
Governs matters in relation to Committees established by the Council, including membership, conditions of appointment, meetings and disclosure of interests.
- SCHEDULE 4: SAVINGS AND TRANSITIONAL PROVISIONS**
Sets out transitional provisions to ensure that the legislation operates effectively and to allow for permits and other controls currently in place under the *Aboriginal Relics Act* to remain in place, for two years from its repeal.
- Specifies that all relics currently listed on the Tasmanian Aboriginal Site Index kept by the Department are to be entered in the Aboriginal Heritage Register, unless the Secretary determines that the relic is not Aboriginal heritage.
- Enables any codes, standards, guidelines or other documents prescribed in regulations to be recognised and adopted as initial guidelines for the purposes of this the Act, for a limited period of two years.
- Provides that a reference to the *Aboriginal Relics Act*, and to an Aboriginal relic, in any Act or other document is taken, where appropriate, to be a reference to the Act and to Aboriginal heritage registered under the Act.
- SCHEDULE 5: LEGISLATION REPEALED**
Repeals the *Aboriginal Relics Act 1975*.
- SCHEDULE 6: LEGISLATION REVOKED**
Revokes the following legislation:
- Proclamation under the *Aboriginal Relics Act 1975* (No.49 of 1976);
 - *Aboriginal Relics (West Point Aboriginal Site) Order 1979* (No. 217 of 1979);
 - *Aboriginal Relics (Sundown Point Aboriginal Site) Order 1979* (No.235 of 1979);
 - *Aboriginal Relics (Trial Harbour Aboriginal Site) Order 1981* (No. 307 of 1981).