TASMANIA

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ABORIGINAL HERITAGE BILL 2026

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ABORIGINAL HERITAGE BILL 2026

(Brought in by the Minister for Aboriginal Affairs, the Honourable Bridget Kathleen Archer)

A BILL FOR

An Act to provide for the recognition, protection and management of Aboriginal heritage, to establish the Aboriginal Heritage Council and to repeal the *Aboriginal Heritage Act 1975*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Aboriginal Heritage Act 2026*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Objects and principles

The objects and principles of this Act are –

(a) to recognise and protect Aboriginal heritage; and

(b) to recognise that Aboriginal people are the primary custodians and knowledge holders of Aboriginal heritage; and

(c) to ensure that it is the Tasmanian Aboriginal people who are primarily in control of the protection and management of Aboriginal heritage; and

(d) to provide for the protection and management of Aboriginal heritage as an integral part of the resource management and planning system as set out in Schedule 1 to the *Land Use Planning and Approvals Act 1993*; and

(e) to promote public awareness, understanding and appreciation of, and respect for, Aboriginal heritage.

4. Act does not affect operation of certain other Acts

For the avoidance of doubt, nothing in this Act –

(a) affects the operation of the *Burial and Cremation Act 2019*, the *Coroners Act 1995* or the *Human Tissue Act 1985*; or

(b) replaces or removes a requirement under any other Act to obtain an approval, permit, licence or other authorisation under that Act; or

(c) removes a requirement, under any Act, to take into account the objectives of the resource management and planning

system, and the planning process, as set out in Schedule 1 to the *Land Use Planning and Approvals Act 1993*.

5. Extraterritorial operation of Act

It is the intention of Parliament that the operation of this Act should, so far as is possible, operate in relation to each of the following:

(a) persons, areas or things situated outside Tasmania, whether in or outside Australia;

(b) acts, transactions and matters done, entered into and occurring outside Tasmania, whether in or outside Australia;

(c) persons, areas, things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of the Commonwealth, another State or a Territory or a foreign country.

6. Non-application of Act

(1) Subject to subsection (2), this Act does not apply to a land activity if –

(a) the land activity is –

(i) prescribed as a land activity to which this Act does not apply; or

(ii) an activity of a class of activities prescribed as a land activity to which this Act does not apply; or

(b) the land activity solely involves travelling on, over or under an area –

(i) as permitted under an easement, or covenant or right of way, that relates to the area; and

(ii) for the purpose of lawfully constructing, installing, altering, replacing, maintaining, repairing, refurbishing, demolishing or removing service infrastructure on the area; or

(c) the land activity consists solely of the carrying out of works that are –

(i) necessary works of a minor nature; and

(ii) incidental to an activity that is specified in paragraph (a) or (b).

(2) This Act applies to a land activity specified in subsection (1) if –

(a) the land activity –

(i) is being carried out in an area that is Aboriginal heritage; and

(ii) has, or is reasonably likely to have, more than an incidental or

temporary impact on the Aboriginal heritage; or

(b) while the land activity is being carried out, unforeseen Aboriginal heritage is found.

(3) For the purposes of this section –

service infrastructure means –

(a) infrastructure required for –

(i) communications; or

(ii) electricity, gas or water supplies; or

(iii) sewers or drains; or

(b) a building, structure, road, tower or other thing prescribed to be service infrastructure.

7. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – RECOGNITION OF CONNECTION TO COUNTRY

8. Acknowledgement of connection to Country

This Act is an acknowledgement that –

(a) Aboriginal heritage is an integral part of the world's oldest living culture; and

(b) Aboriginal people have an enduring and interconnected relationship with Country and Aboriginal heritage is a living expression of that connection to land, waters, sea, sky, culture and knowledge.

9. Acknowledgement of custodians of Aboriginal heritage

This Act is an acknowledgement that –

(a) Aboriginal people are the spiritual custodians of Aboriginal heritage within the State; and

(b) as far as practicable, Aboriginal heritage should be in the ownership or custody of Aboriginal people; and

(c) Aboriginal heritage that is in the custody of the State should be protected by the State while in its custody.

10. Traditions of the Aboriginal people

This Act acknowledges that Aboriginal heritage may include, or exist in connection with, the traditions of the Aboriginal people such as –

(a) the body of traditions, knowledge, observances, customs and beliefs of Aboriginal persons generally or of a particular group of Aboriginal persons; and

(b) any such tradition, knowledge, observance, custom or belief relating to particular persons, areas, objects or relationships.

11. Traditional use

(1) Nothing in this Act is intended to be construed in a manner –

(a) so as to take away or restrict any right or interest held or enjoyed by Aboriginal persons generally, or by a particular group of Aboriginal persons, in respect of Aboriginal heritage so long as the use of the Aboriginal heritage is not contrary to the Aboriginal traditions that are relevant to the heritage; or

(b) so as to require any Aboriginal person to disclose information, or to otherwise act, contrary to any relevant Aboriginal customary law or tradition.

(2) Despite subsection (1), this section does not authorise a person, or group of persons, to dispose of or exercise any right or interest, or any purported right or interest, in a manner that is, or appears to be, detrimental to the purposes of this Act.

(3) Unless otherwise specifically authorised, nothing in this Act is intended to give a right of access for Aboriginal people to an area –

(a) for the purpose of traditional use of the area; or

(b) on which Aboriginal heritage has been, or is likely to be, found, regardless of whether the access to the area is for the purpose of traditional use of the heritage.

PART 3 – INTERPRETATION

12. Interpretation

(1) In this Act –

Aboriginal heritage includes –

(a) Aboriginal heritage objects if the object –

(i) is registered; or

(ii) is held as part of a private collection or public collection; and

(b) Aboriginal heritage places; and

(c) Aboriginal heritage sites, whether registered or not; and

(d) Aboriginal human remains; and

(e) any other thing that is prescribed for the purposes of this definition;

Aboriginal heritage agreement means an agreement entered into by the Council under Part 8;

Aboriginal heritage assessment, in relation to a management plan or an Aboriginal heritage permit, means an assessment to determine the nature, extent and significance of Aboriginal heritage to which the plan or permit is to relate;

Aboriginal heritage object means an item, object or other thing that –

(a) was made, adapted or used by an Aboriginal person; and

(b) is of significance to the Tasmanian Aboriginal people; and

(c) is not an object excluded from this definition by virtue of section 16;

Aboriginal heritage permit means a permit issued under Part 6;

Aboriginal heritage place means an area of Tasmania that –

(a) has significance to the Tasmanian Aboriginal people; and

(b) is registered as an Aboriginal heritage place; and

(c) may include, but is not required to include an Aboriginal heritage site;

Aboriginal heritage site means an area of Tasmania if –

(a) the area includes, and immediately surrounds, one or more of the following objects that were used by Aboriginal persons

during the occupation of that area:

(i) an artefact or a scatter of a number of such artefacts;

(ii) a quarry, rock shelter, rock markings or other stone arrangements;

(iii) a hut depression, midden or scar tree or other physical evidence of Aboriginal occupation of the area;

(iv) an item of a prescribed class of items; and

(b) the area includes more than one object specified in paragraph (a), and the surrounding area, if the separation of the objects into multiple sites would diminish or destroy the significance of the area to the Tasmanian Aboriginal people; and

(c) the object specified in paragraph (a), that is within the area, is able to be assessed using historical, archaeological or scientific techniques; and

(d) the area, or the object specified in paragraph (a), is of significance

to the Tasmanian Aboriginal people;

Aboriginal human remains – see section 13;

Aboriginal land has the same meaning as in the *Aboriginal Lands Act 1995*;

Aboriginal Land Council means the Aboriginal Land Council of Tasmania established by the *Aboriginal Lands Act 1995*;

Aboriginal person has the same meaning as in the *Aboriginal Lands Act 1995*;

Aboriginal tradition – see section 10;

action includes the refusal to take an action;

approved management plan means a management plan approved under Subdivision 3 of Division 4 of Part 6;

area includes –

(a) an area of land or water including, but not limited to –

(i) the water that may cover such an area of land; and

(ii) the land that may cover such an area of water; and

(b) a building, or other structure or fixture, that is permanently affixed within an area;

audit, in relation to land activities, means an audit carried out under Division 5 of Part 6;

audit order means an order issued under section 75;

audit report means a report prepared, and given to the Minister, under section 78;

authorised officer means –

(a) a person appointed to be an authorised officer under section 102; or

(b) a police officer;

code of conduct, in relation to the Council, means the code of conduct prepared by the Council under section 19(3), as amended or substituted from time to time;

Council means the Aboriginal Heritage Council established by section 17;

Crown land has the same meaning as in the *Crown Lands Act 1976*;

cultural values assessment, in relation to an area of land, means an assessment to determine the nature, extent and significance of any cultural value that that area of land has in respect of the Tasmanian Aboriginal people due to its

relationship and connections to the context in which the land is located;

development has the same meaning as in the *Land Use Planning and Approvals Act 1993*;

enduring protection order means an order issued under section 34 as an enduring protection order;

harm – see section 14;

in, in relation to an object, area or vehicle, includes on the object, area or vehicle;

interim protection order means an order issued under section 33 as an interim protection order;

interim stop order means an order issued under section 86 or 87;

land activity, in relation to an area, means any development of the area, regardless of whether the activity is also regulated under another Act;

magistrate has the same meaning as in the *Magistrates Court Act 1987*;

management plan, in respect of land activity, means a plan prepared under Division 4 of Part 6;

member of the Council includes the person appointed under section 18(5) as the chairperson of the Council;

Ministerial guidelines means guidelines issued by the Minister under section 122;

owner, in relation to an area, has the same meaning as in the *Land Use Planning and Approvals Act 1993*;

permit activity, in relation to Aboriginal heritage, means an activity specified in section 42;

premises includes a part of premises;

proponent, in relation to a land activity, means the person on whose behalf the land activity is being, or is to be, undertaken;

protection order includes an interim protection order and an enduring protection order;

Register means the Aboriginal Heritage Register established, and maintained, under Part 9;

registered, in relation to Aboriginal heritage, means Aboriginal heritage that has been entered in the Register –

(a) under section 27 or 98; or

(b) as a result of a prescribed application, nomination or assessment process; or

regulations means the regulations made under this Act;

relevant land activity, in relation to a management plan, stop order or interim stop order, means the land activity in respect of which the relevant plan has been prepared or the relevant order has been issued;

responsibilities includes functions, powers and duties;

Secretary means the Secretary of the Department;

sell includes –

(a) to dispose of by sale, barter or exchange; and

(b) to agree, or offer, to dispose of by sale, barter or exchange; and

(c) to consign, or to have custody of on consignment, for the purposes of sale, barter or exchange; and

(d) to advertise, or expose, for the purposes of sale, barter or exchange;

significance – see section 15;

small business entity has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth;

State servant means a State Service officer or State Service employee;

stop order means an order issued under Part 7;

Valuer-General means the person for the time being holding, or acting in, the office referred to in section 5 of the *Valuation of Land Act 2001*.

(2) In this Act, a reference to Tasmania, or the State, is taken to include a reference to Tasmania's coastal waters.

13. Meaning of *Aboriginal human remains*

(1) In this Act –

Aboriginal human remains means the whole or any part of a deceased person who is recognised by the Tasmanian Aboriginal people as having been an Aboriginal person, other than –

(a) human remains or cremated remains that are buried, or otherwise interred, in accordance with the *Burial and Cremation Act 2019*; and

(b) any human tissue dealt with in accordance with the *Human Tissue Act 1985* or any other law of a State or a Territory or the Commonwealth relating to the medical treatment of human tissue; and

(c) any human tissue lawfully removed, with consent, from the Aboriginal person.

(2) If there is a dispute as to whether a deceased person is recognised as having been an Aboriginal person for the purposes of this section, the dispute is to be determined as prescribed.

14. Meaning of *harm*

(1) For the purposes of this Act, a person harms Aboriginal heritage if the person performs an act or omission that –

(a) results in desecration, damage, defacement or destruction of, or other interference with, Aboriginal heritage; or

(b) results in the permanent concealment of Aboriginal heritage; or

(c) is performed with the specific intention to –

(i) desecrate, damage, deface or destroy, or otherwise interfere with, Aboriginal heritage; or

(ii) permanently conceal Aboriginal heritage.

(2) Despite subsection (1), a person does not harm Aboriginal heritage if the person performs an act or omission that –

(a) is performed in accordance with this Act; or

(b) is performed in accordance with an Aboriginal heritage permit, or approved management plan, that is in force or effect under this Act; or

(c) is prescribed for the purposes of this section as being an act or omission that does not fall within the definition of harm; or

(d) is an act or omission within a class of acts or omissions prescribed for the purposes of this section as not being within the definition of harm.

15. Meaning of *significance*

For the purposes of this Act, if a person is determining whether something has significance to the Tasmanian Aboriginal people, the person is to take into account one or more of the following:

(a) the anthropological or archaeological significance of the thing;

(b) the contemporary or historical significance of the thing;

(c) the scientific, social or spiritual significance of the thing;

(d) whether the thing has significance in respect of –

(i) Aboriginal traditions, whether contemporary or historical; or

(ii) the traditional use of the thing by Aboriginal persons generally or a particular group of Aboriginal persons; or

(iii) the traditions, stories, rituals, festivals or social practices, performing arts, visual arts, crafts or environmental knowledge of Aboriginal persons generally or of a particular group of Aboriginal persons.

16. Certain objects excluded from definition of Aboriginal heritage object

(1) For the purposes of this Act, the following objects are not Aboriginal heritage objects:

(a) objects made, or likely to have been made, for the purposes of sale (other than by way of barter or exchange in accordance with Aboriginal tradition);

(b) objects that are being lawfully used by the persons who hold the intellectual property rights for the object;

(c) other objects prescribed for the purposes of this section.

(2) For the avoidance of doubt, Aboriginal human remains are not Aboriginal heritage objects for the purposes of this Act.

PART 4 – ABORIGINAL HERITAGE COUNCIL

17. Aboriginal Heritage Council established

(1) The Aboriginal Heritage Council is established.

(2) The Council –

(a) is a body corporate with perpetual succession; and

(b) may –

(i) have a seal; and

(ii) sue and be sued in its corporate name.

(3) If the Council has a seal, all courts and persons acting judicially are to take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Council.

18. Membership of Council

(1) The Council consists of 10 members, appointed by the Minister –

(a) with 5 members being persons who are nominated by the Tasmanian Aboriginal people, in accordance with the prescribed process; and

(b) with 5 members being selected by the Minister.

(2) A member of the Council, appointed under subsection (1), is appointed on such terms and conditions as the Minister considers appropriate.

(3) The Minister may only appoint a person as a member of the Council under subsection (1) if the Minister is satisfied that the person is an Aboriginal person.

(4) The Minister is to ensure that the members of the Council –

(a) are broadly representative of –

(i) Aboriginal persons generally; and

(ii) all regions of the State; and

(b) as far as practicable, reflect a diversity of genders; and

(c) collectively, have the following skills:

(i) experience in the protection and management of Aboriginal heritage;

(ii) experience in the management, or delivery, of projects of a significant scale or significant complexity;

(iii) contemporary board governance skills;

(iv) skills in interpreting, applying and enforcing legislation;

(v) skills prescribed for the purposes of this subsection.

(5) The Minister is to appoint a member of the Council as its chairperson.

(6) Schedule 1 has effect in respect of the membership of the Council.

(7) Schedule 2 has effect in respect of the meetings of the Council.

(8) Except as otherwise specified in this Act, the Council may regulate its own proceedings.

19. Functions and powers of Council

(1) The Council has the following functions and powers:

(a) to assess, consider, determine, approve or refuse to approve permits, management plans and agreements, in accordance with this Act, that relate to Aboriginal heritage and its protection;

(b) to advise, or make recommendations or determinations, about Aboriginal heritage including, but not limited to, its significance to the Tasmanian Aboriginal people and matters that may impact upon it;

(c) to develop and publish guidance materials, and other information, to educate people on the operation of this Act;

(d) to support public education and awareness activities in relation to Aboriginal heritage;

(e) to advise or make recommendations to the Minister on its own initiative, or at the request of the Minister, on –

(i) the registration of Aboriginal heritage under this Act; and

(ii) the need for audits, or protection orders, under this Act; and

(iii) any specific instrument or document, including plans and orders, prepared, approved or varied in accordance with this Act; and

(iv) any other matter under this Act;

(f) such other powers as are reasonably required to perform its functions, or exercise its powers, under this Act or any other Act;

(g) the functions and powers specified in this Act, or any other Act, as functions and powers of the Council;

(h) such other functions and powers as are prescribed.

(2) Despite subsection (1), the Council does not have the power to acquire, hold or dispose of real property.

(3) The Council is to –

(a) prepare a code of conduct, relating to the conduct of members of the Council; and

(b) ensure that the code of conduct is freely available to members of the public.

(4) In respect of any function of the Council under this Act –

(a) the Council must perform that function in accordance with the State's resource management and planning system, the objectives of which are set out in Schedule 1 to the *Land Use Planning and Approvals Act 1993*; and

(b) any function performed by the Council also forms part of that resource management planning system.

20. Delegation of Council functions and powers

(1) The Council may delegate one or more of its functions and powers, other than this power of delegation, subject to such conditions as the Council considers reasonable, to –

(a) one or more members of the Council, as specified in the delegation; or

(b) a committee made up of at least one member of the Council and such other persons as specified in the delegation; or

(c) the Secretary.

(2) The Secretary may, by written instrument, delegate to a person a function or power that has been delegated to the Secretary under subsection (1)(c).

(3) A person performing a function, or exercising a power, delegated to the person under subsection (2) must perform that function or exercise that power in accordance with –

(a) the conditions, if any, imposed on the Secretary, under subsection (1)(c), in respect of that function or power; and

(b) any additional conditions imposed on the function or power by the Secretary when delegating the function or power under subsection (2).

21. Council may delegate certain administrative or minor functions and powers

(1) The Council is to publish a list of its functions and powers, under this Act, that the Council considers to be administrative or minor in nature.

(2) If a function or power is specified in a list published under subsection (1) –

(a) the function or power is taken to be delegated to the Secretary in accordance with section 20(1)(c); and

(b) the Secretary may delegate each such function or power in accordance with that section.

22. Power of Council to amend administrative processes

(1) In this section –

administrative authorisation means –

(a) an application made to the Council under this Act; or

(b) an Aboriginal heritage permit issued by the Council; or

(c) a management plan approved by the Council; or

(d) an Aboriginal heritage agreement.

(2) The Council may waive all, or part, of a process under this Act in respect of an administrative authorisation if the Council –

(a) has consulted with each person who holds the administrative authorisation; and

(b) is satisfied that waiving the process does not cause harm, and is unlikely to result in or increase the risk of harm, to Aboriginal heritage.

(3) The Council may amend an administrative authorisation on its own initiative, or at the request of the holder of the administrative authorisation, without an application under this Act if –

(a) the amendment is to correct a minor, or perfunctory, matter relating to the administrative authorisation; and

(b) the amendment –

(i) does not have a significant impact on the administrative authorisation; and

(ii) is not required, under this Act, to be released for public consultation; and

(iii) is unlikely to cause, or result in or increase the risk of, harm to Aboriginal heritage.

23. Committees

(1) The Council may establish such committees as it considers necessary or expedient –

(a) to assist it in the performance and exercise of its responsibilities; or

(b) to advise it on any matter relating to this Act or Aboriginal heritage.

(2) Schedule 3 has effect in respect of the membership and meetings of committees established under subsection (1).

PART 5 – IDENTIFICATION OF ABORIGINAL HERITAGE

24. Person must report finding Aboriginal heritage

(1) If a person finds an object or area that the person knows, or reasonably believes, to be Aboriginal heritage, the person must report the object or area to the Secretary as soon as reasonably practicable after it is found.

Penalty: Fine not exceeding –

(a) 50 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; or

(b) 100 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

(2) Subsection (1) does not apply to a person who finds an object or area if –

(a) the person reasonably believes that another person –

(i) is reporting, or has reported, the object or area to the Secretary as required under subsection (1); or

(ii) is required under subsection (3) to report the object or area; or

(b) the person believed on reasonable grounds that, at the time at which it was found, the object or area –

(i) was registered; or

(ii) was the subject of an application or nomination, for entry in the Register, that had not been determined or withdrawn; or

(iii) was the subject of an assessment, for entry in the Register, that had not been completed; or

(c) the person –

(i) is an Aboriginal person; and

(ii) believes, on reasonable grounds, that a failure to report the object or area as required under subsection (1) is the best way to protect the object or area from harm.

(3) For the purposes of subsection (1), an object or area that is found in the course of carrying out any work at a location is taken to be found by the person who is –

(a) at the location of the works being carried out at the time at which the object or area is found; and

(b) in charge of, and with the most authority in respect of, the works.

25. Notification of potential Aboriginal heritage

(1) The Secretary may notify the owner of private land if the Secretary reasonably believes that there is, or may be, Aboriginal heritage in an area that adjoins the private land.

(2) A notification under subsection (1) in respect of private land is to clearly specify if the area adjoining the private land –

(a) is Aboriginal heritage; or

(b) contains Aboriginal heritage; or

(c) may contain Aboriginal heritage.

26. Rights if private land contains Aboriginal heritage

(1) This section applies if –

(a) the surface of any area is known, or suspected, to contain Aboriginal heritage; and

(b) under the tenure on which the area is held –

(i) the owner or occupier of the area is entitled to the use and

enjoyment of the surface of the area; or

(ii) another person is otherwise entitled to the use and enjoyment of the surface of the area.

(2) Despite the presence of Aboriginal heritage in the surface of an area to which this section applies, the owner or occupier of the area, or a person otherwise entitled to use the area –

(a) is entitled to the use and enjoyment of the area; and

(b) must comply with Division 1 of Part 6 in respect of the area.

27. Registration of Aboriginal heritage

(1) The Secretary is to ensure that an object or area is assessed in the prescribed manner if –

(a) in accordance with section 24, a person reports the object or area to the Secretary; or

(b) the Secretary has other grounds for believing that the object or area is Aboriginal heritage.

(2) If the Secretary is satisfied that an object or area is Aboriginal heritage, the Secretary is to make an entry, in respect of the object or area, in the Register in accordance with Part 9.

PART 6 – PROTECTION OF ABORIGINAL HERITAGE

Division 1 – General

28. Protection of Aboriginal heritage

(1) Aboriginal heritage may be protected under this Act –

(a) if the Aboriginal heritage is of exceptional significance to the Tasmanian Aboriginal people –

(i) by a protection order under Division 2; or

(ii) by being acquired under section 31; and

(b) by requiring a permit to be issued under Division 3 for certain activities to protect the Aboriginal heritage from harm; and

(c) by requiring certain activities to be performed under a management plan approved under Division 4 and by enabling a voluntary management plan to be approved under that Division for other activities; and

(d) by enabling the Minister to –

(i) audit certain activities under Division 5 to ensure the protection of Aboriginal heritage; or

(ii) issue stop orders under Part 7 in respect of certain activities that may harm Aboriginal heritage.

(2) For the avoidance of doubt, this Division applies to all Aboriginal heritage, regardless of whether the Aboriginal heritage –

(a) is registered under this Act; or

(b) is known by one or more Aboriginal persons.

(3) For the avoidance of doubt, an action under this Act is void to the extent that the action limits the operation of an order or declaration made under a prescribed Act of the Commonwealth as that order or declaration applies to Aboriginal heritage.

29. Person must not harm Aboriginal heritage

(1) A person must not cause harm to an object or area if the person knows, or ought reasonably to know, that the object or area is Aboriginal heritage.

Penalty: Fine not exceeding –

(a) 5 000 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 1 000 penalty units for each day

during which the offence continues; or

(b) 10 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 2 000 penalty units for each day during which the offence continues.

(2) A person must not cause harm to an object or area if the person is reckless, or is negligent, as to whether the object or area is Aboriginal heritage.

Penalty: Fine not exceeding –

(a) 1 000 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 200 penalty units for each day during which the offence continues; or

(b) 2 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 400 penalty units for each day during which the offence continues.

(3) A person must not perform an action that the person knows, or reasonably ought to know, is likely to harm Aboriginal heritage.

Penalty: Fine not exceeding –

(a) 1 000 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 200 penalty units for each day during which the offence continues; or

(b) 2 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 400 penalty units for each day during which the offence continues.

(4) It is a defence in proceedings for an offence under this section if the defendant establishes that –

(a) the defendant –

(i) took the action, to which the offence relates, under the authority of an Aboriginal heritage permit or an approved management plan; and

(ii) in taking the action, took all reasonable steps to avoid or, if

unable to be completely avoided, mitigate damage to known, or foreseeable, Aboriginal heritage; or

(b) the defendant –

(i) took the action, to which the offence relates, for the purposes of an application for a permit, or the preparation of a management plan, including an associated Aboriginal heritage assessment, under this Act; and

(ii) in taking the action, took all reasonable steps to avoid or, if unable to be completely avoided, mitigate damage to known, or foreseeable, Aboriginal heritage; or

(c) the action, to which the offence relates, was exempt from the requirement to have an Aboriginal heritage permit, or an approved management plan, and the defendant, in taking the action, took all reasonable steps to avoid or, if unable to be completely avoided, mitigate damage to known, or foreseeable, Aboriginal heritage; or

(d) the action, to which the offence relates, was taken in accordance with –

(i) this Act or the regulations; or

(ii) the Ministerial guidelines; or

(iii) the codes, standards, guidelines or other documents adopted under the regulations; or

(e) the action, to which the offence relates, was a necessary and proportionate response to –

(i) an actual or impending emergency that threatened the loss of human life or property or threatened to injure any person; or

(ii) a public health emergency within the meaning of the *Public Health Act 1997*; or

(iii) an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or

(iv) prescribed circumstances that existed at the time at which the action was taken.

(5) It is a defence in proceedings for an offence under this section if the defendant establishes that –

(a) the person believed on reasonable grounds that the object or area, purported to be Aboriginal heritage, to which the offence relates –

(i) had been reported as required under Part 5; and

(ii) was not registered; and

(iii) as far as the defendant was aware, was not the subject of –

(A) an application or nomination, for entry in the Register, that had yet to be determined or withdrawn; or

(B) an assessment, for entry in the Register, that had yet to be completed; and

(b) it was reasonable, in the circumstances, for the defendant to believe that the object or area was not Aboriginal heritage.

(6) If, in any proceedings for an offence against a provision of this section, the court –

(a) is not satisfied that the defendant is guilty of that offence; but

(b) is satisfied that the defendant is guilty of another offence within this Division –

the court may find the defendant guilty of the other offence.

30. Sale of objects that resemble Aboriginal heritage

(1) A person must not sell an object that purports to be, or could reasonably be mistaken for, Aboriginal heritage.

Penalty: Fine not exceeding –

(a) 250 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues; or

(b) 500 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.

(2) Subsection (1) does not apply in respect of a person who is selling an object –

(a) in accordance with a valid Aboriginal heritage permit; or

(b) that is not Aboriginal heritage and is clearly identifiable, or clearly specified, as not being Aboriginal heritage.

31. Acquisition of Aboriginal heritage sites and Aboriginal heritage places

(1) The Minister may acquire, in accordance with the *Land Acquisition Act 1993*, an Aboriginal heritage site or an Aboriginal heritage place if the Minister reasonably believes that –

(a) the site or place is of exceptional significance to the Tasmanian Aboriginal people; and

(b) the acquisition of the site or place is the only way of protecting or managing the site or place.

(2) Before acquiring any site or place under subsection (1), the Minister is to –

(a) consult the Council and any persons who, to the Minister's knowledge, would be likely to be affected by the acquisition or its extension, variation or revocation under the *Land Acquisition Act 1993*; and

(b) consider the matters and representations, if any, arising from those consultations.

(3) If a site or place is acquired in accordance with subsection (1), compensation under the *Land Acquisition Act 1993* is not to be determined under that Act with any regard to –

(a) the value of any Aboriginal heritage on or under the surface of the site or place; or

(b) any additional value of the site or place that arises from the fact that the site or place is Aboriginal heritage.

(4) If a site or place is acquired in accordance with subsection (1), the Aboriginal Land Council –

(a) may make a written request to the Minister that the land be transferred to the ownership of the Aboriginal Land Council; and

(b) if the land is so transferred, may apply to the Minister under section 35A of the *Aboriginal Lands Act 1995* for the site or place to be declared to be Aboriginal land.

32. Certain activities may not be undertaken in certain areas

(1) An Aboriginal heritage permit may not be issued, and management plan may not be approved, under this Part in respect of an activity that is to be undertaken on –

(a) any area of Macquarie Island; or

(b) Aboriginal land, if the Aboriginal Land Council has not approved the issuing of the permit or the approval of the management plan.

(2) An Aboriginal heritage permit that is issued or a management plan that has been approved, under

this Part, in contravention of subsection (1) is void.

Division 2 – Aboriginal heritage protection orders

33. Interim protection orders

(1) The Minister may issue an interim protection order in respect of Aboriginal heritage if the Minister is satisfied that –

(a) the Aboriginal heritage requires protection; and

(b) the issuing of the order is the only way of protecting from harm, or managing, the Aboriginal heritage; and

(c) the Aboriginal heritage is about to be the subject of an enduring protection order.

(2) An interim protection order –

(a) comes into force –

(i) on the day on which it is published in the *Gazette* in accordance with section 37; or

(ii) on such later day as is specified in the order; and

(b) remains in force until –

(i) the enduring protection order, referred to in subsection (1)(c), is issued under this Division; or

(ii) the Minister has determined that an enduring protection order is not to be issued, under this Division, in respect of the Aboriginal heritage to which the interim protection order applies.

(3) Before issuing, varying or revoking an interim protection order, the Minister is to –

(a) consult the Council and any persons who, to the Minister's knowledge, would be likely to be affected by the order or its variation or revocation; and

(b) consider the matters and representations, if any, arising from those consultations.

34. Enduring protection orders

(1) The Minister may issue an enduring protection order in respect of registered Aboriginal heritage, if the Minister is satisfied that –

(a) the Aboriginal heritage requires ongoing protection; and

(b) the Aboriginal heritage is of exceptional significance to the Tasmanian Aboriginal people; and

(c) the issuing of the order is the only way of protecting from harm, or managing, the Aboriginal heritage.

(2) An enduring protection order –

(a) comes into force –

(i) on the day on which it is published in the *Gazette* in accordance with section 37; or

(ii) on such later day as is specified in the order; and

(b) remains in force until revoked.

(3) Before issuing, varying or revoking an enduring protection order, the Minister is to –

(a) consult the Council and any persons who, to the Minister's knowledge, would be likely to be affected by the order or its variation or revocation; and

(b) undertake such public consultation as is prescribed; and

(c) consider the matters and representations, if any, arising from those consultations.

(4) For the purposes of subsection (3), the Minister must allow at least 28 days for the consultations and the making of representations.

(5) After consultation has occurred under subsection (3) and before an enduring protection order is issued, varied or revoked under this Division, a draft of the order must be approved by each House of Parliament.

(6) If an enduring protection order is issued, the Minister must –

(a) publish the order in accordance with section 37; and

(b) give a copy of the order to the Council.

35. Form of protection orders

(1) A protection order is to –

(a) be in a form approved by the Minister; and

(b) include a statement that the order has been made to protect Aboriginal heritage; and

(c) specify –

(i) whether it is an interim protection order or enduring protection order; and

(ii) the reasons for which it has been issued; and

(iii) if appropriate, the Aboriginal heritage in respect of which it is issued; and

(iv) the measures to be taken to protect the Aboriginal heritage; and

(v) who is responsible for taking the protective measures, if applicable; and

(vi) such other matters as the Minister considers appropriate in the circumstances; and

(d) contain the prescribed information, if any.

(2) A protection order may be issued –

(a) on the Minister's own initiative; or

(b) at the written request of the Council.

36. Variation or revocation of protection orders

(1) The Minister, by notice, may vary or revoke a protection order –

(a) on the Minister's own initiative; or

(b) at the written request of the Council; or

(c) on the application of a person, affected by the order, that is made and lodged in accordance with section 129.

(2) If the Minister varies or revokes a protection order, the Minister must publish, in accordance with section 37 –

(a) that the order has been so varied or revoked; and

(b) the reason for the variation or revocation.

37. Publication of protection orders

(1) In this section –

affixed means displayed –

(a) in a secure and conspicuous position; and

(b) in a weatherproof form with a bright red or bright orange border;

relevant protection order includes –

(a) a protection order; and

(b) the variation or revocation of a protection order under section 36.

(2) As soon as practicable after a relevant protection order is made, the Minister –

(a) must publish in the *Gazette* –

(i) the relevant protection order; and

(ii) if required under this Act, the reasons for making the relevant protection order; and

(b) is to publish the relevant protection order in at least one daily newspaper published and circulating generally in Tasmania; and

(c) may publish, or display, the relevant protection order in such other ways as

the Minister considers appropriate in the circumstances.

(3) Subsection (2) does not apply to a protection order if the Minister is satisfied that not publishing the protection order is the best way to protect the Aboriginal heritage to which the order relates.

(4) If a relevant protection order requires a person other than a State servant to take measures, specified in the order, to protect Aboriginal heritage, the Minister must give the person a copy of the relevant protection order.

(5) For the avoidance of doubt, the affixing of a copy of a relevant protection order in any area, in order to display the order under subsection (2)(c), and the associated entry into that area, does not constitute an offence if the entry into the area was reasonably necessary to display the copy of the order.

(6) A person must not, without lawful excuse, move, remove, deface, destroy or obscure a copy of a protection order that is affixed under subsection (2)(c).

Penalty: Fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

38. Effect of protection orders

(1) A protection order has effect despite anything to the contrary in any of the following:

(a) any other Act or law of the State;

(b) any municipal by-law;

(c) any Aboriginal heritage permit;

(d) any Aboriginal heritage agreement;

(e) any management plan, or similar instrument, under this Act or any other Act;

(f) any other agreement or contract.

(2) For the avoidance of doubt, a provision of an instrument or document specified in subsection (1) is void to the extent that it is inconsistent with a protection order, regardless of whether the instrument or document was made before or after the order.

39. Contravention of protection orders

(1) A person must not contravene a protection order.

Penalty: Fine not exceeding –

(a) 5 000 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 1 000

penalty units for each day during which the offence continues; or

(b) 10 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 2 000 penalty units for each day during which the offence continues.

(2) It is a defence to proceedings for an offence under this section if the defendant establishes that –

(a) in accordance with section 37(3), a copy of the relevant protection order was not published; and

(b) the defendant did not know, and could not reasonably be expected to have known, that the defendant had contravened the protection order.

40. Naming of area as protected when not protected

A person must not refer to an area of Aboriginal heritage as being protected if the person knows, or reasonably ought to know, that –

(a) the area of Aboriginal heritage is not the subject of a protection order; and

(b) referring to the area of Aboriginal heritage in that manner is likely to, or has the capacity to, mislead or deceive another person into thinking that the area is the subject of a protection order.

Penalty: Fine not exceeding –

(a) 25 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues; or

(b) 50 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

Division 3 – Aboriginal heritage permits

41. Certain activities require permits

(1) A person must not carry out a permit activity unless the person –

(a) is acting under the authority of an Aboriginal heritage permit that authorises the person to carry out the permit activity; and

(b) carries out the permit activity in accordance with that permit.

Penalty: Fine not exceeding –

(a) 250 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues; or

(b) 500 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.

(2) Despite subsection (1), a person is not required to hold an Aboriginal heritage permit to carry out a permit activity if –

(a) the activity –

(i) is necessary for the preparation of a management plan in respect of which notice has been given in accordance with section 58(1); and

(ii) is not intended, and is not likely, to harm Aboriginal heritage; or

(b) the activity is being performed in accordance with an approved management plan; or

(c) the activity is a necessary and proportionate response to –

(i) an actual or impending emergency that threatens human life or property or threatens to injure any person; or

(ii) a public health emergency within the meaning of the *Public Health Act 1997*; or

(iii) an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or

(iv) prescribed circumstances; or

(d) the activity only disturbs ground –

(i) in the same manner, and for the same purpose, as a previous activity on that ground; and

(ii) in such a manner that is not intended, and is not likely, to cause additional harm to any Aboriginal heritage.

42. Types of activities that require permits

(1) Subject to subsection (2), the following activities require an Aboriginal heritage permit:

(a) an activity, including a land activity, that involves or is reasonably likely to involve harm to Aboriginal heritage;

(b) the disturbance or excavation of an area for the primary purpose of discovering or uncovering Aboriginal heritage;

(c) the removal of Aboriginal heritage from Tasmania;

(d) the sale of Aboriginal heritage or a replica of Aboriginal heritage;

(e) the carrying out of scientific research at an Aboriginal heritage place, or Aboriginal heritage site, if that research is known to, or is likely to, harm Aboriginal heritage;

(f) the removal, for the purposes of scientific research, of Aboriginal heritage from –

(i) an Aboriginal heritage place or Aboriginal heritage site; or

(ii) a place that is likely to become an Aboriginal heritage place;

(g) an activity, including a land activity, that is undertaken for the purpose of assessing whether a management plan is required, or desired, in respect of an area;

(h) an activity, including a land activity, that is prescribed for the purposes of this definition.

(2) Despite subsection (1), the regulations may prescribe the circumstances in which an activity, specified in subsection (1), ceases to be an activity that requires an Aboriginal heritage permit.

43. Applications for Aboriginal heritage permits

(1) A person may apply to the Council, in accordance with section 129, for an Aboriginal heritage permit.

(2) Before the Council considers an application under subsection (1), the Council is to be satisfied that the applicant has complied with the Ministerial guidelines in respect of consultation.

(3) The Council may consent to a cultural values assessment being combined with an Aboriginal heritage assessment in respect of an application under subsection (1).

(4) The Council must consider each of the following when considering an application under subsection (1):

(a) the nature and significance of the relevant Aboriginal heritage;

(b) the nature of the permit activity to which the permit is to relate, including –

(i) all potential impacts that it may have on Aboriginal heritage; and

(ii) the ability to avoid or, if unable to be completely avoided,

mitigate such an impact on the relevant Aboriginal heritage;

(c) whether consultation requirements under subsection (2) were met to the satisfaction of the Council;

(d) the representations made, and information obtained, during any consultations conducted in respect of the application;

(e) any relevant Aboriginal heritage assessment or relevant cultural values assessment;

(f) this Act and all relevant regulations and Ministerial guidelines;

(g) such other factors as the Council considers appropriate in the circumstances.

(5) While considering an application under subsection (1), the Council may do one or more of the following:

(a) carry out such inquiries as it considers appropriate in the circumstances;

(b) consult owners of any area who may be affected by the issuing of the permit;

(c) require the applicant to carry out one or more of the following:

(i) such inquiries as the Council specifies to the applicant;

(ii) an Aboriginal heritage assessment or cultural values assessment, or both, in respect of any area to which the permit relates;

(d) with the permission of the relevant owners of an area, inspect or arrange for the inspection of any area in or adjoining to the area to which the permit relates.

44. Further information may be required for permit applications

(1) When considering an application for an Aboriginal heritage permit under section 43 –

(a) the Council may notify the applicant, in writing, that further information or consultation is required in respect of the application and specify the details of the further information or consultation so required; and

(b) the Council is not to consider the application again until the applicant has –

(i) provided all the specified information; and

(ii) completed all the specified consultation.

(2) Information may only be requested under subsection (1), in respect of an application for an Aboriginal heritage permit, if the information –

(a) relates to a material particular of the application; and

(b) is reasonably necessary to enable the Council to determine whether or not to grant a permit.

(3) If the Council has given the applicant a written notice under subsection (1), in respect of an application under section 43, the period between the written notice being provided to the applicant and the provision of the information or the completion of the consultation, as specified in the written notice, is not to be taken into account for the purpose of any time period specified under this Act.

45. Determination of permit applications

(1) After considering an application for an Aboriginal heritage permit under section 43, the Council may –

(a) subject to subsection (2), approve the application; or

(b) refuse to approve the application.

(2) Subject to section 129, an application under section 43 is to be determined within –

(a) 42 days after the day on which the application is lodged with the Council; or

(b) such further period as is agreed between the Council and the applicant.

(3) A decision under this section to refuse to approve an application for an Aboriginal heritage permit is an administrative decision under section 131.

46. Refusal of permit applications

(1) If the Council refuses to approve an application for an Aboriginal heritage permit under section 45(1), the Council is to notify the applicant –

(a) of the refusal of the application and the reasons for that refusal; and

(b) that the applicant has a right of appeal under this Act in respect of the refusal.

(2) The Council must not approve an application under section 43 for an Aboriginal heritage permit if the permit activity, to which the permit relates –

(a) involves, or is likely to involve, harm to, or the disturbance or relocation of, Aboriginal human remains, to which section 30 of the *Burial and Cremation Act 2019* applies, and the applicant has not complied with that section; or

(b) requires an approved management plan.

47. Failure to determine permit application

(1) If the Council does not determine an application for an Aboriginal heritage permit within the period specified in section 45(2) –

(a) the applicant may make a written request to the Minister to determine the application; and

(b) the Minister, within 30 days after receiving that request, must –

(i) determine the application to which the request relates; or

(ii) refer the application back to the Council, if the Minister is satisfied that the application will be determined by the Council within a reasonable period.

(2) If the Minister proceeds to determine an application for an Aboriginal heritage permit in accordance with subsection (1)(b)(i) –

(a) the Minister is to notify the Council of that fact; and

(b) the Minister is taken to be the Council for the purposes of –

(i) determining the application; and

(ii) if a permit is issued in respect of the application, the permit –

and this Act applies to the Minister in respect of the application, and any permit issued in respect of the application, as if the Minister were the Council; and

(c) the Minister is to notify the Council of –

(i) the result of the Minister's determination of the application; and

(ii) any action taken by the Minister in respect of a permit issued in respect of the application; and

(d) the Council is not entitled to take any further action in relation to –

(i) the determination of the application; and

(ii) any permit issued in respect of the application.

48. Issue of Aboriginal heritage permits

(1) If, under section 45(1), the Council approves an application for an Aboriginal heritage permit, the Council –

(a) is to notify the applicant of the approval and issue the Aboriginal heritage permit to the applicant; and

(b) may give such other private and public notices in relation to the matter as it

considers appropriate in the circumstances.

(2) An Aboriginal heritage permit –

(a) is to be in a form approved by the Council; and

(b) may be subject to such conditions as are determined by the Council and specified –

(i) in the permit itself; or

(ii) in another document attached to, or relating to, the permit; and

(c) may be surrendered at any time by written notice to the Council; and

(d) is only transferable to another person in accordance with section 51; and

(e) is not transferable to another permit activity.

(3) The holder of an Aboriginal heritage permit must not –

(a) contravene a condition of the permit; or

(b) cause or allow another person to contravene a condition of the permit.

Penalty: Fine not exceeding –

(a) 1 000 penalty units for an individual or a small business

entity and, in the case of a continuing offence, a further fine not exceeding 200 penalty units for each day during which the offence continues; or

(b) 2 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 400 penalty units for each day during which the offence continues.

(4) A person must not take an action if the person knows, or reasonably ought to know, that the action contravenes a condition of an Aboriginal heritage permit.

Penalty: Fine not exceeding –

(a) 50 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; or

(b) 100 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day

during which the offence continues.

(5) A decision to impose a condition in respect of an Aboriginal heritage permit is an administrative decision under section 131.

49. Duration of Aboriginal heritage permits

(1) An Aboriginal heritage permit issued under this Division –

(a) takes effect on the day on which it is issued or on such later day as is specified in the permit; and

(b) has effect for –

(i) such period as the Council specifies in the permit; or

(ii) if the Council does not specify a period in the permit, 5 years from the day on which it takes effect.

(2) The holder of an Aboriginal heritage permit may apply, in accordance with section 129, for the duration of the permit to be extended for one further period.

(3) After considering an application under subsection (2) in respect of an Aboriginal heritage permit, the Council may extend the permit for one further period as specified by the Council.

50. Variation of Aboriginal heritage permits

(1) The Council may vary an Aboriginal heritage permit, at any time –

(a) if the variation is minor or administrative in nature, on the Council's own initiative; or

(b) on the application, by the holder of the Aboriginal heritage permit, made and lodged in accordance with section 129.

(2) In considering whether to vary an Aboriginal heritage permit, the Council –

(a) if the variation is to be made on the Council's own initiative, is to consult the holder of the permit before making the change; and

(b) if the variation is to be made on the application of the holder of the permit, may require the applicant to take all reasonable efforts to consult –

(i) each Aboriginal person who the Council knows has a particular interest in, or knowledge of, the relevant Aboriginal heritage; and

(ii) such other persons as the Council considers appropriate in the circumstances; and

(c) is to take into account any feedback provided as part of the consultation.

(3) If the Council varies an Aboriginal heritage permit, the Council is to notify the holder of the permit –

(a) that the permit has been varied and the details of the variation; and

(b) if the variation is on the Council's own initiative, of the reasons for the variation; and

(c) of the day on which the variation takes effect; and

(d) if the variation makes the Aboriginal heritage permit more restrictive, that the applicant has a right of appeal under this Act in respect of the variation.

(4) If the Council refuses to vary the Aboriginal heritage permit on the application of the holder of the permit, the Council is to notify the holder of the permit –

(a) of that refusal and the reasons for the refusal; and

(b) that the holder of the permit has a right of appeal under this Act in respect of the refusal.

(5) The variation of an Aboriginal heritage permit takes effect on whichever of the following days last occurs:

(a) 14 days after the day on which the holder of the permit is notified of the variation;

(b) on such day as the Council specifies in the notice provided to the holder of the permit under subsection (3);

(c) if the variation of the permit is appealed under this Act, the day on which –

(i) the appeal is determined in a manner that affirms the variation; or

(ii) the appeal is withdrawn, abandoned or dismissed.

(6) On varying an Aboriginal heritage permit, the Council may issue the holder of the permit with fresh permit documentation incorporating the variations.

(7) Each of the following decisions under this section is an administrative decision under section 131:

(a) a decision to vary an Aboriginal heritage permit in a manner that makes the Aboriginal heritage permit more restrictive;

(b) a decision to refuse to vary an Aboriginal heritage permit.

51. Transfer of Aboriginal heritage permits

(1) Subject to this section, an Aboriginal heritage permit may be transferred with the consent of the Council.

(2) Without limiting the generality of subsection (1), the Council may refuse the transfer of an Aboriginal heritage permit if the Council is satisfied that –

(a) the transfer is likely to result in additional harm to Aboriginal heritage; or

(b) the transfer –

(i) is an attempt by the transferor to avoid liability under this Act; or

(ii) may result in the transferor avoiding liability under this Act.

(3) If the Council approves the transfer of an Aboriginal heritage permit under this section, the Council –

(a) is to notify the applicant and the proposed transferee of the approval; and

(b) may do either or both of the following:

(i) impose conditions on the transfer of the permit;

(ii) amend the terms and conditions of the permit as a result of the transfer of the permit.

(4) If the Council refuses to approve the transfer of an Aboriginal heritage permit under this section, the Council is to notify the applicant and the proposed transferee –

(a) of the refusal and the reasons for that refusal; and

(b) that the applicant and the proposed transferee have a right of appeal under this Act in respect of the refusal.

(5) A decision under this section to refuse to transfer an Aboriginal heritage permit is an administrative decision under section 131.

52. Suspension and cancellation of Aboriginal heritage permits

(1) The Council may cancel or suspend an Aboriginal heritage permit if the Council reasonably believes that –

(a) the holder of the permit –

(i) no longer requires the permit; or

(ii) can no longer demonstrate a legitimate need for the permit; or

(iii) has contravened the conditions of the permit, or the provisions of this Act, in a material way; or

(iv) has given the Council false or misleading information in connection with the permit; or

(b) the permit activity, to which the permit relates, is having unforeseen impact on Aboriginal heritage; or

(c) the prescribed circumstances exist; or

(d) the suspension or cancellation of the permit is otherwise reasonable in the circumstances.

(2) The cancellation, or suspension, of an Aboriginal heritage permit takes effect on whichever of the following days last occurs:

(a) 14 days after the day on which the holder of the permit is notified, in writing by the Council, of the suspension or cancellation;

(b) on such day, or at such time, as the Council specifies in the written notice;

(c) if the suspension or cancellation of the permit is appealed under this Act, the day on which –

(i) the appeal is determined in a manner that affirms the suspension or cancellation; or

(ii) the appeal is withdrawn, abandoned or dismissed.

(3) The written notice of the suspension or cancellation of an Aboriginal heritage permit under subsection (2) is to specify –

(a) the reasons for the cancellation or suspension; and

(b) when the cancellation or suspension takes effect; and

(c) in the case of a suspension –

(i) the period of suspension; and

(ii) any actions that must be taken for the suspension to be lifted; and

(d) that the holder of the permit has a right of appeal under this Act in respect of the suspension or cancellation.

(4) If an Aboriginal heritage permit is suspended under this section –

(a) except for the purposes of applying for an extension of the permit, the permit is of no effect during the period of suspension; and

(b) the Council, by written notice to the holder of the permit, may revoke the suspension at any time; and

(c) nothing in this section prevents the Council from cancelling the permit while it is so suspended.

(5) If requested to do so by the Council, a person whose Aboriginal heritage permit has been cancelled must return it to the Council.

(6) A decision under this section to suspend, or cancel, an Aboriginal heritage permit is an administrative decision under section 131.

53. Issue of replacement Aboriginal heritage permits

(1) The Council may issue the holder of an Aboriginal heritage permit with a replacement permit if the Council is satisfied that the original permit has been –

(a) stolen, lost or destroyed; or

(b) damaged to a degree that renders it unsuitable for use.

(2) The Council may issue the holder of an Aboriginal heritage permit with a replacement permit, on its own initiative, if the Council has amended the permit in accordance with section 22.

Division 4 – Management plans

Subdivision 1 – Management plans generally

54. Interpretation of Division

In this Division –

heritage protection measures, in relation to a management plan for a land activity, means measures specified in the plan –

(a) to protect and manage Aboriginal heritage; and

(b) to deal with the impact that the land activity may have, or is likely to have, on Aboriginal heritage.

55. Certain land activities require management plans

(1) An approved management plan is required for a land activity if –

(a) the land activity is within a class of land activities that are prescribed as requiring a management plan; or

(b) the Minister –

(i) after consultation with the Council, is satisfied that the land activity poses a serious risk of harm to Aboriginal heritage; and

(ii) imposes, by written notice to the proponent, the requirement for an approved management plan in respect of the land activity.

(2) An approved management plan is not required, under subsection (1), for a land activity if the activity –

(a) is the subject of an exemption under section 56; or

(b) is in a class of land activities that are prescribed as being exempt from requiring an approved management plan; or

(c) is carried out –

(i) in an actual or impending emergency that threatens human

life or property or threatens to injure any person; or

(ii) in a public health emergency within the meaning of the *Public Health Act 1997*; or

(iii) in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or

(d) is a necessary and proportionate response to an actual or impending emergency that threatens human life or property or threatens to injure any person.

(3) An approved management plan is only approved for and in respect of the proponent, and the land activity, specified in the plan.

(4) If an approved management plan is required under this section for a land activity, a person must not commence or carry out the land activity unless a management plan for the land activity has been approved –

(a) by the Council under section 66; or

(b) by the Minister under section 68.

Penalty: Fine not exceeding –

(a) 500 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 100 penalty

units for each day during which the offence continues; or

(b) 1 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 200 penalty units for each day during which the offence continues.

(5) Subsection (4) does not apply to the following work undertaken as part of a land activity:

(a) the erection of perimeter fencing that is not intended to be permanent fencing;

(b) the clearance of vegetation, rubbish or hazards from the surface of the area, where the land activity is to be carried out, if there is only minimal disturbance of the topsoil;

(c) the surveying, mapping and testing of the area where the land activity is to be carried out including, but not limited to, testing of soil and water;

(d) other prescribed works or activities.

56. Exemption from requirement for approved management plans

(1) A proponent may apply to the Council for an exemption from a requirement to have an approved management plan for a land activity.

(2) On receipt of an application from a proponent under subsection (1) in respect of a land activity, the Council must grant the proponent an exemption from the requirement to have an approved management plan for the land activity under this Part if the Council is satisfied that –

(a) in the circumstances, there is no need for a management plan, as the land activity is not likely to cause harm to Aboriginal heritage; or

(b) while Aboriginal heritage may be present in the area, the land activity is not likely to cause additional harm to the Aboriginal heritage, as –

(i) the area where the land activity is to be performed has sustained significant ground disturbance that was not caused to gain an exemption under this section; and

(ii) the significant ground disturbance of the area is total or widespread.

(3) For the purposes of subsection (1)(b), there has been significant ground disturbance of an area if there has been a disturbance of the topsoil, a

waterway or the surface rock layer of the ground, in the course of –

(a) digging, dredging, excavating, grading or trenching, using mechanical means in the area; or

(b) the ploughing of soil in the area but only if the ploughing involves –

(i) deep ripping undertaken with a ripper or subsoil cultivation tool; or

(ii) the ploughing of mounds above the surface rock layer of the ground.

(4) For the purposes of granting an exemption under subsection (1), the Council may –

(a) inform itself as the Council thinks fit; and

(b) consult with such persons as the Council considers relevant to the matter.

(5) If the proponent for a land activity applies for an exemption under this section and the Council refuses to grant the exemption, the Council is to notify the proponent –

(a) of the refusal and the reasons for that refusal; and

(b) that the proponent has a right of appeal under this Act in respect of the refusal.

(6) A decision to refuse to grant an exemption under this section is an administrative decision under section 131.

57. Voluntary management plans

(1) Nothing in this Act prevents the proponent for a land activity from preparing a management plan for the land activity even though there is no requirement under this Act to do so.

(2) If a proponent notifies the Council under section 58 that the proponent intends to prepare a management plan voluntarily, this Part applies to the preparation, approval and operation of that management plan.

Subdivision 2 – Preparation of management plans

58. Notification of intention to prepare management plans

(1) A proponent for a land activity is to notify each of the following persons in accordance with subsection (2) before the proponent commences to draft a management plan for the land activity:

(a) the Council;

(b) if the management plan relates to an activity that requires approval or authorisation under another Act, the person under that Act who is responsible for giving the relevant approval or authorisation.

(2) The notification under subsection (1) is to specify –

(a) the proponent's name and relevant contact details; and

(b) whether the management plan is required under this Act or is being prepared voluntarily; and

(c) the date by which, or a period within which, the plan is expected to be prepared; and

(d) the land activity to which the management plan is to relate; and

(e) the area in respect of which the proposed management plan is to apply; and

(f) if the notification is made under subsection (1)(a) –

(i) the proposed methodology for the Aboriginal heritage assessment to be performed as part of the preparation of the management plan; and

(ii) the proposed methodology for any cultural values assessment to be performed as part of the preparation of the management plan, if required; and

(iii) the consultation intended to be undertaken, by the proponent, as

part of the preparation of the management plan.

(3) The Council is to give a proponent written confirmation of the receipt of a notification under subsection (1)(a) within 14 days after the notification is received by the Council.

(4) For the purposes of this Act, written confirmation given to a proponent under subsection (3) –

(a) is taken to be an Aboriginal heritage permit issued under Part 6; and

(b) is taken to authorise such land activities –

(i) as are prescribed for the purposes of this section; and

(ii) as are specified in the written confirmation.

59. Council may choose not to consider management plans

(1) Within 30 days after being notified under section 58(1)(a) in respect of a proposed management plan, the Council –

(a) may choose not to consider the management plan under section 66; and

(b) if the Council chooses not to consider the management plan, is to notify the

proponent and the Minister of that choice and the reasons for the choice.

(2) The Council may choose not to consider a management plan for any reason.

(3) After receiving notification under subsection (1)(b) that the Council has chosen not to consider a management plan –

(a) the proponent may notify the Minister, in an approved form, that the proponent intends to apply under section 67 for the Minister to approve the management plan; and

(b) the Minister must give written confirmation to the proponent that the Minister has received notification under paragraph (a) from the proponent; and

(c) the Minister may issue advice, or directions, to the proponent that relate to the steps that must be taken in the preparation of the management plan.

(4) If the Minister gives written confirmation to a proponent under subsection (3)(b) in respect of a management plan, sections 62, 63 and 65 do not apply in respect of the management plan.

(5) For the purposes of this Act, written confirmation given to a proponent under subsection (3)(b) –

(a) is taken to be an Aboriginal heritage permit issued under Part 6; and

(b) is taken to authorise such land activities –

(i) as are prescribed for the purposes of written confirmation under section 58; and

(ii) as are specified in the written confirmation under this section.

(6) After preparing a management plan in accordance with advice or directions issued under subsection (3)(c), if any –

(a) the proponent may apply to the Minister under section 67 in respect of the management plan; and

(b) the Minister may consider the management plan under section 68.

60. Preparation of management plans

(1) A management plan in respect of a land activity may be prepared by, or on behalf of, the proponent for the land activity to which the management plan relates.

(2) For the avoidance of doubt, the preparation of a management plan on behalf of a proponent does not remove an obligation imposed on the proponent under this Act in respect of management plans.

(3) As part of the preparation of the management plan to be considered by the Council under

section 66 in respect of a land activity, the proponent must –

(a) comply with this Act, the regulations and all relevant Ministerial guidelines; and

(b) carry out an Aboriginal heritage assessment in respect of –

(i) the land activity to which the management plan relates; and

(ii) the area to which the management plan relates; and

(c) if required by the Council, carry out a cultural values assessment in respect of the area to which the management plan relates; and

(d) make all reasonable efforts –

(i) to consult the Council in relation to the Aboriginal heritage assessment, the proposed management plan and, if required, the cultural values assessment; and

(ii) to maintain regular contact with the Council, at intervals agreed between the proponent and the Council; and

(iii) to take into account any representations made by the

Council in respect of the assessment or plan.

(4) While a management plan to be considered by the Council under section 66 is being prepared in respect of a land activity, the Council is to make all reasonable efforts to consult and cooperate with the proponent in respect of the Aboriginal heritage assessment, the cultural values assessment and the proposed management plan, for the land activity.

(5) As part of the preparation of a management plan to be considered by the Minister under section 68 in respect of a land activity, the proponent must –

(a) comply with this Act, the regulations and all relevant Ministerial guidelines; and

(b) carry out an Aboriginal heritage assessment in respect of –

(i) the land activity to which the management plan relates; and

(ii) the area to which the management plan relates; and

(c) if required by the Minister, carry out a cultural values assessment in respect of the area to which the management plan relates; and

(d) comply with all advice, or directions, issued to the proponent under section 59(3)(c).

61. Form and content of management plans

(1) A management plan is to –

(a) specify –

(i) the results of the Aboriginal heritage assessment carried out during the preparation of the plan; and

(ii) if a cultural values assessment is carried out during the preparation of the plan, the result of that assessment; and

(iii) the known and likely impacts of the land activity, to which the plan relates, on Aboriginal heritage; and

(iv) the heritage protection measures, and any other measures, that may need to be taken under the plan; and

(b) be accompanied by a statement detailing the nature, extent and results of the consultation undertaken in respect of the management plan, as required under section 58(2)(f).

(2) A management plan may cover all stages of an activity including, but not limited to, construction, commissioning, operation, decommissioning and rehabilitation.

(3) A management plan –

(a) is to be prepared in good faith by the proponent; and

(b) is to be considered in good faith by the Council, or the Minister, in accordance with this Act; and

(c) is not to contain any provision that purports to require an owner of an area to grant any person permanent access to that area for the purpose of the management plan.

62. Change in proponent during preparation of management plan

(1) If, while a management plan is being prepared in respect of a land activity, there is a change in the identity of the proponent for the activity, the new proponent –

(a) may proceed with the preparation, and approval, of the plan in accordance with this Act; and

(b) is not required, in preparing the plan, to repeat any process completed by the former proponent for the activity.

(2) Within 14 days after there is a change in the identity of the proponent for a land activity, the new proponent is to give written notice of the change in proponent to –

(a) the Council; and

(b) if the management plan is to be considered by the Minister under section 68, the Minister.

(3) Subsection (1) does not apply in respect of a land activity if the nature or scale of the land activity changes as a result of the change in proponent for the land activity.

63. Council may request reasons to continue with management plan preparations

The Council may request that the proponent for a proposed management plan give reasons as to why the Council should not withdraw from the preparations of the plan under section 64 if –

(a) more than 12 months has passed after the Council is given notification under section 58(1) in respect of the management plan; and

(b) during the period referred to in paragraph (a), the Council has not been contacted by the proponent in respect of the plan.

64. Council may withdraw from management plan preparations

(1) At any time after receiving notification under section 58(1)(a) in respect of a management plan, the Council may choose to withdraw from the process of considering the management plan under this Division.

(2) The Council may choose to withdraw from the process of considering a management plan for any reason.

(3) If the Council chooses to withdraw from the process of considering a management plan –

(a) the Council must notify the proponent and the Minister of the decision and the reasons for the decision; and

(b) the Council is to –

(i) refer the proposed management plan to the Minister; and

(ii) forward all documents in its possession, in respect of the management plan, to the Minister; and

(c) the Minister may consider the proposed management plan under section 68.

65. Discontinuation of management plan preparations

(1) In this section –

associated documents includes photographs, maps, site records, draft Aboriginal heritage assessments and draft plans.

(2) If a proponent decides to discontinue the preparation of a management plan under this Part –

(a) as soon as practicable after making the decision, the proponent is to notify –

(i) the Council of the decision; and

(ii) if the management plan is to be considered by the Minister under section 68, the Minister of the decision; and

(b) the Council may request that the proponent provide one or more of the associated documents relating to the preparation of the plan, or copies of those documents, to the Council.

Subdivision 3 – Approval of management plans

66. Council approval of draft management plans

(1) In this section –

consultation period, in relation to a management plan, means –

(a) the 42-day period commencing on the day on which the proponent gives the finalised draft of the management plan to the Council under subsection (2)(a); or

(b) such further extensions of the period referred to in paragraph (a) as agreed by the proponent and the Council.

(2) As soon as practicable after a proponent has a finalised draft of a management plan –

(a) the proponent is to give a copy of the plan to the Council; and

(b) the proponent and Council must make all reasonable efforts to reach agreement on the matters specified in subsection (3).

(3) In determining whether to approve a management plan given to the Council under subsection (2)(a), the Council –

(a) is to consider the proposed heritage protection measures and, in particular, whether the management plan –

(i) provides for the relevant land activity to be carried out in a way that avoids, or minimises as much as possible, harm to Aboriginal heritage; and

(ii) makes satisfactory provision for the protection and management of any Aboriginal heritage likely to be affected by the relevant land activity, both during the carrying out of and after the relevant land activity; and

(iii) contains measures for managing disputes, delays or other contingencies that may arise in respect of the relevant land activity or the plan itself; and

(b) may consult with one or more of the following persons:

(i) the proponent;

(ii) any other persons having an interest in –

(A) the area to which the management plan is to apply; or

(B) an area adjoining the area to which the management plan is to apply; or

(C) Aboriginal heritage previously found in the area;

(iii) relevant experts and such other persons and organisations as the Council considers appropriate in the circumstances.

(4) Subject to subsection (5), the Council is to approve a management plan given to the Council under subsection (2)(a) if the proponent and the Council reach agreement on the matters specified in subsection (3) within the consultation period.

(5) The Council must not approve a management plan given to the Council under subsection (2)(a) if –

(a) the management plan has not been prepared substantially in accordance with the procedural requirements of this Act and all relevant regulations and Ministerial guidelines; or

(b) the preparation of the management plan contravenes section 61(3).

(6) If the Council approves a management plan given to the Council under subsection (2)(a), the Council is to provide the proponent with a written copy of the Council's approval –

(a) in a form approved by the Council; and

(b) in a document that is separate from the management plan.

(7) However, if the Council and proponent fail to reach agreement on the matters specified in subsection (3) within the consultation period, the proponent may apply to the Minister, under section 67, for approval of the management plan under section 68.

67. Applications for Minister to approve management plans

(1) A proponent may apply to the Minister for the Minister to approve a management plan under this Part if –

(a) under section 59, the Council chooses not to consider the management plan; or

(b) the proponent is proceeding with preparation of the management plan without further reference to the Council in accordance with section 66(7).

(2) An application under subsection (1) is to –

(a) be made and lodged in accordance with section 129; and

(b) include a copy of –

(i) the management plan to be approved; and

(ii) the associated Aboriginal heritage assessment, any cultural values assessment and any other documentation prepared or obtained in, or for the purposes of, those assessments; and

(c) contain such further information from the applicant as the Minister requests.

(3) In considering the application, the Minister –

(a) if the Council has chosen not to consider the management plan under section 59, is to take into account the grounds for that choice; and

(b) may consult such other persons as the Minister considers appropriate in the circumstances; and

(c) may require the proponent to consult such persons as the Minister considers appropriate in the circumstances; and

(d) with the permission of relevant owners, may inspect or arrange for the inspection of –

(i) any area to which the management plan is to apply; or

(ii) any adjoining area.

68. Minister may approve management plans

(1) If the Minister receives an application under section 67 to approve a management plan, or receives a draft management plan for approval under section 64, the Minister may –

(a) subject to subsection (5), approve the management plan subject to such conditions as the Minister considers appropriate in the circumstances; or

(b) refuse to approve the management plan.

(2) In making the determination under subsection (1), the Minister is to consider –

(a) the objects of this Act; and

(b) the results of the associated Aboriginal heritage assessment; and

(c) if a cultural values assessment is carried out during the preparation of the

management plan, the result of that assessment; and

(d) if a draft management plan is received under section 64, the grounds on which the Council withdrew from the process of considering the management plan; and

(e) any representations made to the Minister by the Council including, but not limited to, representations made to, and information obtained from consultations carried out by, the Council under section 66; and

(f) if applicable, the results of inspections carried out by the Council under section 66; and

(g) the proposed heritage protection measures and, in particular, whether the management plan –

(i) provides for the relevant land activity to be carried out in a way that avoids, or minimises as far as possible, harm to Aboriginal heritage; and

(ii) makes satisfactory provision for the protection and management of any Aboriginal heritage likely to be affected by the relevant land activity, both during the carrying out and after the cessation of the relevant land activity; and

(iii) contains measures for managing disputes, delays or other contingencies that may arise in respect of the relevant land activity or the plan itself; and

(h) such other matters as the Minister considers appropriate in the circumstances.

(3) The Minister is to make the determination under subsection (1) within –

(a) 30 days after the day on which the application for the approval of a management plan is lodged with, or the draft management plan is referred to, the Minister; or

(b) such further period as is agreed between the Minister and the applicant.

(4) Before the Minister approves a management plan under subsection (1), the Minister must give the Council an opportunity to provide feedback or comment on the management plan.

(5) The Minister must not approve a management plan under subsection (1) if –

(a) the management plan has not been prepared substantially in accordance with the procedural requirements of this Act, the relevant regulations and the Ministerial guidelines; or

(b) the preparation of the management plan contravenes section 61(3).

(6) If the Minister approves the management plan, the Minister is to notify the proponent and the Council of the approval.

(7) If the Minister refuses to approve the management plan, the Minister is to –

(a) notify the proponent –

(i) of the refusal and the reasons for the refusal; and

(ii) that the proponent has a right of appeal under this Act in respect of the refusal; and

(b) notify the Council of the refusal.

(8) If the Minister makes a determination under this section, in respect of a management plan, the Minister is to state the reasons for the determination and is to publish the reasons on a website operated by, or on behalf of, the Department.

(9) A decision of the Minister under this section to refuse to approve a management plan is an administrative decision under section 131.

Subdivision 4 – Operation of approved management plans

69. Commencement of approved management plans

A management plan takes effect when approved under this Division or on such later day as is specified in the management plan.

70. Effect of approved management plans

(1) In this section –

take, in relation to an action, includes not taking the action.

(2) In carrying out a relevant land activity under an approved management plan, a person must comply with the plan.

Penalty: Fine not exceeding –

(a) 1 000 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 200 penalty units for each day during which the offence continues; or

(b) 2 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 400 penalty units for each day

during which the offence continues.

(3) A person must not, in carrying out the relevant land activity under an approved management plan –

(a) take an action that contravenes or negates a heritage protection measure of the plan; or

(b) refuse to take an action, if the failure to take the action contravenes or negates a heritage protection measure of the plan; or

(c) cause or allow another person to take an action that contravenes or negates a heritage protection measure of the plan; or

(d) cause or allow another person to refuse to take an action, where the failure to take the action contravenes or negates a heritage protection measure of the plan.

Penalty: Fine not exceeding –

(a) 500 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues; or

(b) 1 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 200 penalty units for each day during which the offence continues.

71. Variation of approved management plans

(1) The Council may vary an approved management plan at any time –

(a) if the change is a minor or administrative change, on the Council's own initiative; or

(b) on the application of the proponent made and lodged in accordance with section 129.

(2) Without limiting the generality of this section, a variation may comprise a change of proponent.

(3) In considering whether to vary an approved management plan, the Council is to consult the proponent and such other persons as the Council considers appropriate in the circumstances.

(4) If the Council varies an approved management plan other than on application by the proponent, the Council is to notify the proponent –

(a) of the variation and the reasons for the variation; and

(b) of the day on which the variation takes effect; and

(c) that the proponent has a right of appeal under this Act in respect of the variation.

(5) If the Council varies an approved management plan on the application of the proponent, the Council is to notify each of the following persons of the variation and the day on which the variation takes effect:

(a) the proponent;

(b) in the case of a variation of proponent, the new proponent.

(6) If the Council refuses to vary an approved management plan on the application of the proponent, the Council is to notify the proponent and, in the case of a variation of proponent, the proposed new proponent –

(a) of the refusal and the reasons for the refusal; and

(b) that each proponent has a right of appeal under this Act in respect of the refusal to vary the management plan.

(7) The variation of an approved management plan under this section takes effect –

(a) as soon as the proponent is or, in the case of a variation of proponent, both the proponent and the new proponent are notified of the variation; or

(b) on such later day as the Council specifies in the notice.

(8) For the avoidance of doubt, the Council may determine an application under this section even if the management plan to which the application relates was approved by the Minister under section 68.

(9) Each of the following decisions by the Council under this section, in respect of an approved management plan, is an administrative decision under section 131:

(a) a decision to vary the management plan other than on application by the proponent;

(b) a decision to refuse to vary the management plan.

72. Minister may approve variation of management plans in certain circumstances

(1) If the Minister has approved a management plan under section 68, the Minister may vary the management plan at any time –

(a) if the change is a minor or administrative change, on the Minister's own initiative; or

(b) on the application of the proponent made and lodged in accordance with section 129.

(2) Without limiting the generality of this section, a variation may comprise a change of proponent.

(3) In considering whether to vary an approved management plan, the Minister –

(a) must consult the Council and the proponent; and

(b) may consult such other persons as the Minister considers appropriate in the circumstances.

(4) If the Minister varies an approved management plan other than on application by the proponent, the Minister is to notify –

(a) the proponent –

(i) of the variation and the reasons for the variation; and

(ii) of the day on which the variation takes effect; and

(iii) that the proponent has a right of appeal under this Act in respect of the variation; and

(b) the Council of the variation and the day on which the variation takes effect.

(5) If the Minister varies an approved management plan on the application of the proponent, the Minister is to notify each of the following persons of the variation and the day on which the variation takes effect:

(a) the proponent;

(b) in the case of a variation of proponent, the new proponent;

(c) the Council.

(6) If the Minister refuses to vary an approved management plan on the application of the proponent, the Minister is to notify the proponent and the Council and, in the case of a variation of proponent, the proposed new proponent –

(a) of the refusal and the reasons for the refusal; and

(b) that each proponent has a right of appeal under this Act in respect of the refusal to vary the management plan.

(7) The variation of an approved management plan under this section takes effect –

(a) as soon as the proponent is or, in the case of a variation of proponent, both the proponent and the new proponent are notified of the variation; or

(b) on such later day as the Minister specifies in the notice.

(8) Each of the following decisions by the Minister, under this section, in respect of an approved management plan is an administrative decision under section 131:

(a) a decision to vary the management plan other than on application by the proponent;

(b) a decision to refuse to vary the management plan.

73. Cessation of approved management plans &c.

(1) Subject to subsection (2), an approved management plan ceases to have effect –

(a) when –

(i) the proponent completes the relevant land activity; and

(ii) all of the heritage protection measures of the plan are fully implemented; or

(b) if the relevant land activity is not commenced within –

(i) the period of 3 years commencing on the day on which the plan is approved; or

(ii) if the management plan was approved by the Council, such further period as agreed between the proponent and the Council; or

(iii) if the management plan was approved by the Minister under section 68, such further period as

agreed between the proponent and the Minister; or

(c) if the proponent notifies the Council that the proponent –

(i) is abandoning the relevant land activity; or

(ii) is unable to complete the relevant land activity or fully implement all heritage protection measures; or

(d) if the proponent is a natural person and, before the relevant land activity is completed and all heritage protection measures are fully implemented, the proponent –

(i) dies; or

(ii) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the proponent's creditors or makes an assignment of the proponent's remuneration or estate for their benefit; or

(e) if the proponent is a body corporate and, before the relevant land activity is completed and all Aboriginal heritage measures are implemented, the proponent becomes subject to external

administration under the Corporations Act; or

(f) if the Council revokes the approval under subsection (4), on the day specified in that revocation.

(2) Nothing in this section prevents the Council and the proponent for an approved management plan from agreeing, as a term of the management plan, that the approved management plan is to remain in force until revoked by either the Council or the proponent.

(3) If the Minister approves a management plan under section 68, the Minister may specify that the management plan remains in force for a period not exceeding 10 years.

(4) The Council, by notice provided to the proponent for an approved management plan, may revoke the approved management plan if satisfied that the proponent has been convicted of an offence under section 70(2) or (3).

(5) Before revoking an approved management plan under subsection (4), the Council is to allow the proponent to make submissions in relation to the matter in the manner and within the time determined by the Council.

Division 5 – Audits of land activities

74. Interpretation of Division

In this Division –

authorised activity means a land activity, or part of a land activity, carried out under –

(a) an Aboriginal heritage permit; or

(b) an approved management plan;

relevant approval, in relation to an authorised activity, means –

(a) if the activity is carried out under an Aboriginal heritage permit, that permit; or

(b) if the activity is carried out under an approved management plan, that plan;

responsible person, in relation to an authorised activity, means –

(a) if the activity is carried out under an Aboriginal heritage permit, the holder of that permit; or

(b) if the activity is carried out under an approved management plan, the proponent in respect of that plan.

75. Power of Minister to order audits of certain activities

(1) The Minister may order an audit to be carried out in respect of an authorised activity if the Minister is satisfied that –

(a) the terms or conditions of the relevant approval are –

(i) deficient; or

(ii) being materially contravened in respect of Aboriginal heritage; or

(iii) not being complied with properly or at all; or

(b) the impact of the activity on Aboriginal heritage is different from what was contemplated when the relevant approval was conferred; or

(c) there has been a material change in circumstances since the relevant approval was conferred; or

(d) the relevant approval was conferred based on false or misleading information; or

(e) the order is reasonable in the circumstances, having regard to the objects of this Act.

(2) An audit order may be issued under subsection (1) –

(a) on the Minister's own initiative; or

(b) at the written request of the Council.

(3) If the Minister issues an audit order under subsection (1), the Minister –

(a) may also issue a stop order stopping the authorised activity or a specified part of the authorised activity; and

(b) must inform the holder of the relevant approval that there is a right of appeal under this Act in respect of the issuing of the audit order and the stop order, if issued.

(4) A decision of the Minister in relation to an audit order under this section is an administrative decision under section 131.

(5) If a decision of the Minister in relation to an audit order is appealed under this Act –

(a) the appeal is taken to relate to both the audit order and the related stop order issued by the Minister in accordance with subsection (3); and

(b) the related stop order is of no effect until the appeal is determined, withdrawn, abandoned or otherwise dismissed; and

(c) the Tasmanian Civil and Administrative Tribunal can make such orders in respect of either the audit order or stop order, or both, that the Tribunal considers reasonable in the circumstances.

76. Audit orders

(1) An audit order issued under section 75 is to –

(a) be in writing in a form approved by the Minister; and

(b) specify the Aboriginal heritage matters required to be audited; and

(c) specify the name of the authorised officer who is required to carry out the audit.

(2) An audit under an audit order is required to be completed –

(a) within 30 days of the order being made; or

(b) such further period as the Minister considers reasonable in the circumstances.

(3) An audit order may specify one or more of the following:

(a) that the services of a specified consultant or expert are to be engaged for the audit;

(b) that the proponent is required to pay the fees and costs of the audit in prescribed circumstances;

(c) the required form and required content of the audit report;

(d) such other matters and such procedural and other directions as the Minister considers appropriate in the circumstances.

(4) An audit order may not, either directly or indirectly, require the authorised officer who is carrying out the audit to make, or not to make, a particular finding.

(5) On issuing an audit order, the Minister is to –

(a) give it to the authorised officer who is required under the order to carry out the audit; and

(b) give a copy of the order to the responsible person for the authorised activity which is the subject of the audit; and

(c) give a copy of the order to the Council.

(6) The Minister may give a copy of the order to such other persons as the Minister considers appropriate in the circumstances.

77. Conduct of audits

(1) An authorised officer who is required by an audit order to carry out an audit must carry out the audit in accordance with the order.

(2) An authorised officer has such powers as are reasonably necessary to carry out the audit in accordance with the order.

78. Audit reports

(1) Once an audit has been completed, the authorised officer who carried out the audit is to –

(a) prepare a report on its outcome; and

(b) give the report to the Minister.

(2) An audit report prepared under subsection (1) is to –

(a) be in the form, if any, required by the relevant audit order; and

(b) identify any contraventions of this Act performed as part of the authorised activity; and

(c) include any matter required to be included by the relevant audit order.

(3) An authorised officer carrying out an audit may make in an audit report under subsection (1) such recommendations as the officer considers appropriate on one or more of the following matters:

(a) the variation of the relevant approval;

(b) the continuation or termination of the relevant approval;

(c) the monitoring of the authorised activity;

(d) if the relevant approval is an approved management plan, the appropriateness of

the heritage protection measures, within the meaning of section 54, specified in the plan;

(e) measures relating to the conduct of the authorised activity to avoid or minimise harm to Aboriginal heritage.

79. Approval or rejection of audit reports

(1) Within 30 days after receiving an audit report, the Minister is to –

(a) approve the audit report; or

(b) reject the audit report.

(2) The Minister may approve the audit report only if satisfied that it adequately addresses the requirements of the relevant audit order.

(3) The Minister is not entitled to reject an audit report solely on the basis that the Minister does not agree with its findings or recommendations.

80. Actions following approval of audit reports

(1) If the Minister approves an audit report under section 79, the Minister –

(a) is to notify the authorised officer who carried out the audit, the responsible person and the Council of the approval; and

(b) is to give the Secretary a copy of the audit report; and

(c) may notify such other persons of the approval as the Minister considers appropriate in the circumstances.

(2) If the audit report recommends the variation of a relevant approval issued by the Minister, the Minister may implement that recommendation in accordance with the applicable procedure under this Act.

(3) If the audit report recommends the variation of a relevant approval issued by the Council –

(a) the Minister is to –

(i) provide the Council with a copy of each recommendation; and

(ii) refer the relevant approval back to the Council with a request that it be amended as recommended in the report; and

(b) on receipt of the relevant approval, the Council may –

(i) implement one or more recommendations in accordance with the applicable procedure under this Act; or

(ii) refuse to implement one or more recommendations and give written notice of the refusal, and

the reasons for the refusal, to the Minister.

(4) The Minister may take such other actions under this Act consequent on the findings and recommendations contained in the audit report as the Minister considers appropriate in the circumstances.

81. Action following rejection of audit reports

(1) If the Minister rejects an audit report, the Minister may –

(a) take no further action in the matter; or

(b) remit the matter, with or without directions, to the authorised officer who carried out the audit, for remediation and resubmission; or

(c) make a fresh audit order in respect of the matter.

(2) The Minister may not use the power under subsection (1)(c) in respect of a matter more than once in any 6-month period.

(3) The Minister –

(a) is to notify the authorised officer who carried out the audit, the responsible person and the Council of –

(i) the rejection of the audit report; and

(ii) the reasons for the rejection; and

(iii) any action taken under subsection (1); and

(b) is to give the Secretary a copy of the audit report; and

(c) may notify such other persons of the rejection, and any action taken under subsection (1), as the Minister considers appropriate in the circumstances.

82. Effect of stop orders on audits

Except as specified in its terms, a stop order or an interim stop order does not prevent any person from taking any actions that are necessary or expedient for the purposes of –

(a) an audit being carried out under and in accordance with an audit order; or

(b) giving effect to the recommendations of an audit report that has been approved under section 79.

PART 7 – STOP ORDERS

83. Interpretation of Part

In this Part –

stop, in relation to an activity, includes –

(a) not starting the activity; and

(b) discontinuing all preparations for, or actions relating to, the activity.

84. Minister may stop land activities in certain circumstances

(1) The Minister, by order, may require a person to stop a land activity if –

(a) the Minister issues an audit order; or

(b) the Minister is satisfied that the activity is being, or is proposed to be, carried out in contravention of this Act; or

(c) the Minister believes on reasonable grounds that the activity –

(i) is harming or impacting on, or is likely to harm or impact on, Aboriginal heritage; and

(ii) must be stopped to protect the Aboriginal heritage.

(2) A stop order may be issued under subsection (1) –

(a) on the Minister's own initiative; or

(b) at the written request of the Council.

(3) If a stop order is issued under subsection (1), the Minister is to give a copy of the order to the Council, and the Secretary, as soon as practicable after the order is so issued.

(4) On receipt of a copy of a stop order under subsection (3), the Secretary is to enter the stop order in the Register.

85. Minister may stop permit activities in certain circumstances

(1) The Minister, by order, may require a person to stop a permit activity if –

(a) the Minister is satisfied that the activity is being, or is proposed to be, carried out in contravention of this Act; or

(b) the Minister believes on reasonable grounds that the activity –

(i) is harming or impacting on, or is likely to harm or impact on, Aboriginal heritage; and

(ii) must be stopped to protect the Aboriginal heritage.

(2) A stop order may be issued under subsection (1) –

(a) on the Minister's own initiative; or

(b) at the written request of the Council.

(3) If a stop order is issued under subsection (1), the Minister is to give a copy of the order to the Council, and the Secretary, as soon as practicable after the order is so issued.

(4) On receipt of a copy of a stop order under subsection (3), the Secretary is to enter the stop order in the Register.

86. Power to make interim stop orders for land activities

(1) The Secretary or an authorised officer, by order, may require a person to stop a land activity temporarily, if the Secretary or authorised officer reasonably believes that –

(a) the land activity –

(i) is being, or is proposed to be, carried out in contravention of this Act; or

(ii) is harming or impacting on, or is likely to harm or impact on, Aboriginal heritage; and

(b) Aboriginal heritage is not, or cannot be, properly protected unless the activity is stopped urgently; and

(c) it is not possible or expedient to refer the matter to the Minister for possible action under section 84.

(2) If an interim stop order is issued under subsection (1) by the Secretary, the Secretary is to give a copy of the order to the Minister and the Council as soon as practicable after the order is so issued.

(3) If an interim stop order is issued under subsection (1) by an authorised officer, the authorised officer is to give a copy of the order to the Minister, the Council and the Secretary, as soon as practicable after the order is so issued.

(4) On the issuing of an interim stop order by the Secretary under subsection (1) or the receipt of a copy of an interim stop order under subsection (3), the Secretary is to enter the interim stop order in the Register.

87. Power to make interim stop orders for permit activities

(1) The Secretary or an authorised officer, by order, may require a person to stop a permit activity temporarily, if the Secretary or authorised officer reasonably believes that –

(a) the activity –

(i) is being, or is proposed to be, carried out in contravention of this Act; or

(ii) is harming or impacting on, or is likely to harm or impact on, Aboriginal heritage; and

(b) Aboriginal heritage is not, or cannot be, properly protected unless the activity is stopped urgently; and

(c) it is not possible or expedient to refer the matter to the Minister for possible action under section 84.

(2) If an interim stop order is issued under subsection (1), the person issuing the interim stop order is to give a copy of the order, as soon as practicable after the order is so issued, to –

(a) if the order is issued by an authorised officer, the Minister, the Council and the Secretary; and

(b) if the order is issued by the Secretary, the Minister and the Council.

(3) On the issue of an interim stop order under subsection (1) or the receipt of a copy of an interim stop order under subsection (2), the Secretary is to enter the interim stop order in the Register.

88. Form and content of stop orders and interim stop orders

A stop order, or interim stop order, is to –

(a) be in writing; and

(b) be in a form approved by the Minister; and

(c) identify or describe the Aboriginal heritage in respect of which the order is issued; and

(d) clearly identify the area to which the order is to apply; and

(e) if the order relates to a land activity, specify the land activity to which the order is to apply; and

(f) if the order relates to a permit activity, specify the permit activity to which the order is to apply; and

(g) specify the harm or impact on, or the likely harm or impact on, the Aboriginal heritage that is intended to be prevented by the issuing of the order; and

(h) state what the order requires.

89. Duration of stop orders and interim stop orders

(1) A stop order comes into force as soon as it is served on the person to whom the order relates and remains in force until whichever of the following occurs first:

(a) if the order relates to an object or area that has been nominated for registration under this Act, the nomination for registration under this Act is refused;

(b) if the order relates to an object or area that the Council has recommended be

registered under this Act, the Council has withdrawn that recommendation;

(c) in relation to any order, the expiration of the period of 30 days immediately after the order was served on the person;

(d) in relation to any order, the expiry of the period specified in the order.

(2) If a stop order is issued under section 75(3), the stop order –

(a) comes into force as soon as it is served on the person to whom the order relates; and

(b) remains in force while the audit order, in respect of which the stop order was issued, remains in force unless extended under section 91.

(3) An interim stop order –

(a) comes into force as soon as it is served; and

(b) unless sooner revoked by the Minister, only remains in force for the 48-hour period immediately after it is so served.

(4) If a decision relating to a stop order is an administrative decision for the purposes of section 131 and a person makes an appeal against the decision in respect of the stop order, the stop order is of no effect until the appeal is

determined, withdrawn, abandoned or otherwise dismissed.

90. Service of stop orders and interim stop orders

(1) In this section –

affixed means displayed –

(a) in a secure and conspicuous position; and

(b) in a weatherproof form with a bright red or bright orange border;

relevant area means the area where the land activity that is the subject of the stop order or interim stop order is being, or is proposed to be, carried out;

relevant stop order includes –

(a) a stop order; and

(b) an interim stop order; and

(c) a notice under section 91 extending a stop order.

(2) Without limiting the application of section 127 to relevant stop orders, such an order is also effectively served for the purpose of this Division –

(a) on a person, if it is –

(i) given to the person; or

(ii) affixed to the relevant area in relation to the relevant stop order; and

(b) on a body corporate, if it is given to a person who –

(i) is physically present on the relevant area; and

(ii) appears to be supervising or directing the relevant land activity or preparations for the relevant land activity.

(3) For the avoidance of doubt, the affixing of a relevant stop order in any area, and the associated entry into that area, does not constitute an offence.

(4) A person must not, without lawful excuse, move, remove, deface, destroy or obscure a copy of a relevant stop order that is affixed under this section.

Penalty: Fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

91. Extension of stop orders

(1) Before the expiry of a stop order, the Minister, by written instrument, may extend the stop order for one further period not exceeding 14 days.

(2) If a stop order is extended under this section, the Minister is to serve notice of the extension on the person to whom the order relates.

(3) An interim stop order may not be extended.

92. Revocation of stop orders and interim stop orders

(1) A stop order may be revoked by the Minister at any time on –

(a) the Minister's own initiative; or

(b) the application of a person who was served with the order under this Part.

(2) An interim stop order may be revoked by the Minister, the Secretary or the authorised officer who issued it, at any time, on –

(a) the authorised officer's, or the Minister's or Secretary's, own initiative; or

(b) the application of the person who was served with the order under this Part.

(3) If a stop order or interim stop order is revoked under this section, the person who revokes the order is to –

(a) serve notice of the revocation on the person who was served with the order under this Part; and

(b) notify the Council; and

(c) if the person who revokes the order is not the Minister, notify the Minister.

93. Contravention of stop orders and interim stop orders

A person must not contravene a stop order or an interim stop order.

Penalty: Fine not exceeding –

(a) 5 000 penalty units for an individual or a small business entity and, in the case of a continuing offence, a further fine not exceeding 1 000 penalty units for each day during which the offence continues; or

(b) 10 000 penalty units for a body corporate other than a small business entity and, in the case of a continuing offence, a further fine not exceeding 2 000 penalty units for each day during which the offence continues.

PART 8 – ABORIGINAL HERITAGE AGREEMENTS

94. Power of Council to enter into Aboriginal heritage agreements

(1) The Council may enter into agreements that relate to, and provide for, the protection or management of Aboriginal heritage.

(2) An agreement under subsection (1) may provide for one or more of the following matters, but is not limited to the following matters:

(a) the protection, maintenance or use of Aboriginal heritage;

(b) the use of, or access to, Aboriginal heritage by Aboriginal persons;

(c) the rehabilitation of Aboriginal heritage;

(d) the rights or obligations that may apply in respect of the parties to the agreement.

(3) However, a provision of an Aboriginal heritage agreement is void, and unenforceable, to the extent that the provision purports to do any one or more of the following:

(a) regulate an activity for which an Aboriginal heritage permit or approved management plan is required under this Act;

(b) regulate an activity for which a permit, licence or other authority is required under another Act;

(c) restrict or permit access to any area without the consent of –

(i) the owner of the area; and

(ii) if the owner and occupier of the area are different persons, each occupier of the area.

(4) An Aboriginal heritage agreement –

(a) has effect as a contract; and

(b) is binding on, and enforceable by, the parties to the agreement; and

(c) if the agreement relates to an area of land –

(i) is not a dealing for the purposes of the *Land Titles Act 1980*; and

(ii) does not attach to the area; and

(iii) does not bind a subsequent owner of the area.

95. Parties to Aboriginal heritage agreements

(1) The Council may enter into an Aboriginal heritage agreement with any person.

(2) However, if an Aboriginal heritage agreement relates to an area of land, at least one of the parties to the agreement must be –

(a) if the area is Crown land, the Minister administering the *Crown Lands Act 1976*; or

(b) in any other case, the owner of the area.

96. Form and duration of agreements

(1) An Aboriginal heritage agreement is to be in a form approved by the Council.

(2) If an Aboriginal heritage agreement relates to an area, the agreement is to include a description or map of the boundaries of the area.

(3) An Aboriginal heritage agreement may provide that it takes effect wholly, or in part, on –

(a) its execution; or

(b) a later day specified in the agreement; or

(c) the occurrence of a future event specified in the agreement.

(4) Subject to subsection (5) or (6), an Aboriginal heritage agreement may provide that it terminates wholly, or in part, on –

(a) a day specified in the agreement; or

(b) the occurrence of an event specified in the agreement; or

(c) by agreement between the parties to the agreement.

(5) The Council may terminate an Aboriginal heritage agreement, by written notice to the parties to the agreement, if the Council is satisfied that one or more of the parties to the agreement are in breach of the agreement or this Act.

(6) An Aboriginal heritage agreement relating to an area is taken to terminate automatically on the sale of the area.

97. Variation of agreements

(1) An Aboriginal heritage agreement may be varied by agreement between the parties.

(2) A variation of an Aboriginal heritage agreement is to be in a form approved by the Council.

(3) A variation of an Aboriginal heritage agreement takes effect on the day specified in the instrument of variation.

PART 9 – ABORIGINAL HERITAGE REGISTER

98. Aboriginal Heritage Register

(1) The Secretary is to keep a register of the following matters:

(a) Aboriginal heritage;

(b) Aboriginal heritage permits;

(c) approved management plans;

(d) Aboriginal heritage agreements;

(e) stop orders and interim stop orders;

(f) protection orders;

(g) audit orders and audit reports;

(h) all information recorded in relation to identifying and assessing objects and areas as Aboriginal heritage including, but not limited to, information specifying that no Aboriginal heritage was identified as part of a survey of an area;

(i) other objects or areas as prescribed;

(j) such other matters that the Secretary considers relevant.

(2) The Register –

(a) is to be in such form as the Secretary considers appropriate; and

(b) must contain the prescribed information; and

(c) may include a record of intangible matters such as knowledge, traditions, practices and rituals that are significant to the Tasmanian Aboriginal people; and

(d) may include such other matters as the Secretary considers necessary or appropriate.

(3) In keeping the Register and in performing and exercising other responsibilities under this Part –

(a) the Secretary is to consider –

(i) the objects of this Act; and

(ii) the recommendations of the Council; and

(iii) any relevant registration criteria, Ministerial guidelines and guidelines issued under section 99(3); and

(b) the Secretary is to be satisfied that any Aboriginal heritage entered in the Register is Aboriginal heritage.

(4) The regulations may prescribe –

(a) notification requirements for –

(i) proposed entries into the Register; and

(ii) certain actions taken under this Act in respect of Aboriginal heritage; and

(b) the method for entering matters into the Register including, but not limited to, application, assessment or nomination requirements; and

(c) whether the approval of the Minister, or Parliament, is required before a matter is to be entered in the Register; or

(d) any restrictions, or prohibitions, in respect of the amendment of the Register.

99. Access to Register

(1) The Council is entitled to have access to the Register, at any reasonable time, if required for the purpose of performing and exercising the responsibilities of the Council.

(2) The Secretary may grant access to information in the Register, at any time, to one or more of the following persons:

(a) the Minister;

(b) a court or tribunal, if the information is relevant to proceedings being determined by that court or tribunal;

(c) the Director of Public Prosecutions or a law enforcement agency;

(d) State servants, if the information is required for administrative purposes associated with maintaining the Register.

(3) The Secretary, in consultation with the Council, is to issue guidelines relating to the Register including, but not limited to, access to the Register.

(4) In accordance with guidelines issued under subsection (3), the Secretary may determine that certain information in the Register is not to be accessed by members of the public.

(5) In addition to any other matter, the regulations may prescribe –

(a) the persons who may apply to access information in the Register; and

(b) the manner in which, and the purposes for which, such an application may be made.

100. Application of *Right to Information Act 2009*

The *Right to Information Act 2009* does not apply to information, as defined in that Act, that is kept in the Register and the information in the Register is not liable to disclosure under that Act.

PART 10 – ENFORCEMENT

Division 1 – General

101. Application of Part

A power of an authorised officer under this Act may not be exercised in respect of Aboriginal land except where –

(a) the Aboriginal Land Council has approved, whether generally or in a specified circumstance, the exercise of the power on Aboriginal land; or

(b) the conditions of appointment for the authorised officer clearly empower the authorised officer to exercise the power on Aboriginal land; or

(c) the Aboriginal Land Council has endorsed the authorised officer to exercise the power on Aboriginal land.

102. Authorised officers

(1) The Secretary may appoint a person to be an authorised officer for the purposes of this Act.

(2) An authorised officer appointed under subsection (1) –

(a) holds office for such period and on such conditions as are specified in the authorised officer's instrument of appointment; and

(b) may hold office in conjunction with State Service employment.

(3) The Secretary –

(a) is to issue each authorised officer appointed under subsection (1) with an identity card; and

(b) may issue a person who is a police officer with an identity card for use in connection with the performance, and exercise, of the functions and powers of an authorised officer.

(4) An identity card issued under subsection (3) is to –

(a) specify the name of the person to whom it is issued; and

(b) contain a photograph of the person to whom it is issued, taken for the purpose; and

(c) be in a form approved by the Secretary.

(5) If an authorised officer is issued an identity card under subsection (3), the authorised officer –

(a) is to carry the identity card at all times when performing the functions and exercising the powers of an authorised officer; and

(b) if requested to do so by any person who is or may be affected by the performance and exercise of those responsibilities,

must produce the identity card for inspection by that person as soon as practicable after the request is made.

(6) If practicable, a police officer performing the functions, and exercising the powers, of an authorised officer must provide identification, if requested to do so –

(a) if the police officer has been issued an identity card under subsection (3), by producing the identity card; or

(b) by stating the police officer's name and –

(i) the officer's rank and place of duty; or

(ii) the officer's identification number.

(7) However, a failure by an authorised officer to provide identification under this section does not invalidate an action taken in the performance of the functions and the exercise of the powers of an authorised officer by the authorised officer.

(8) A person issued with an identity card under subsection (3) must return the card to the Secretary if –

(a) the person ceases to be an authorised officer; or

(b) in the case of a police officer, the person ceases to hold that office.

Division 2 – Powers of authorised officers

103. Power of search and entry

(1) An authorised officer may, at all reasonable times and without warrant, do one or more of the following things, in order to perform or exercise the responsibilities of an authorised officer under this Act:

(a) enter any area, premises, vehicle or container;

(b) when entering an area, premises, vehicle or container under this Act, be accompanied by such assistants as the officer considers necessary;

(c) search any area, premises, vehicle or container if the officer reasonably believes that an Aboriginal heritage object, or a document or other thing that the officer is entitled to seize under this Act, is in the area, premises, vehicle or container;

(d) require a person to give the authorised officer such assistance as the officer requires to perform a search under this Part or perform or exercise any other function or power;

(e) in any area, premises, vehicle or container lawfully entered, search for, examine, make copies of or take extracts from –

(i) any document relating to Aboriginal heritage; or

(ii) any document that appears to indicate that an offence under this Act has been, or is being, committed;

(f) in any area, premises, vehicle or container lawfully entered, open any item or container;

(g) take any photographs, video or other recordings that the authorised officer considers necessary.

(2) For the purposes of searching a vehicle under this section, an authorised officer may –

(a) require that the vehicle be stopped; and

(b) if the officer considers it necessary or expedient to do so, bring the vehicle to a convenient place to enable the search to be done or cause or require it to be brought to such a place.

(3) Nothing in this section authorises an authorised officer to enter any premises being used as a principal residence by a person other than with –

(a) the permission of that person; or

(b) a warrant under subsection (4).

(4) If, on the application of an authorised officer, a magistrate or justice is satisfied that it is appropriate to do so in the circumstances, the

magistrate or justice may issue a warrant authorising an authorised officer to enter the premises specified in the warrant.

104. Power to require information

(1) An authorised officer may request that a person give the officer any information, and produce any document, that the officer reasonably requires to perform a function or exercise a power under this Act.

(2) A person must not refuse or fail to comply with a request given to the person under subsection (1) without lawful excuse.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(3) For the purposes of subsection (2), a lawful excuse includes the fact that complying with the request would tend to incriminate the person.

105. Power to require name and address

(1) An authorised officer who reasonably suspects that a person has committed an offence against this Act may –

(a) require the person to state the person's name and address; and

(b) if the authorised officer reasonably believes that the stated name or address is false, require the person to produce evidence of the correctness of the stated name or address.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this section.

Penalty: Fine not exceeding –

(a) 50 penalty units for an individual or a small business entity; or

(b) 100 penalty units for a body corporate other than a small business entity.

106. Power to require disclosure of location of Aboriginal heritage

(1) An authorised officer may require a person to disclose the location of an object or area if the authorised officer reasonably believes that –

(a) the object or area is Aboriginal heritage that is –

(i) not registered; and

(ii) is not the subject of an application or nomination, for entry in the Register, that has not been determined or withdrawn; and

(iii) is not the subject of an assessment, for entry in the Register, that has not been completed; and

(b) the person knows where the object or area is located; and

(c) the object or area is unable to be protected if the person does not disclose its location.

(2) A person must comply with a requirement made of the person, by an authorised officer, under subsection (1).

Penalty: Fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 4 penalty units for each day during which the offence continues.

(3) It is a defence in proceedings for an offence under subsection (2) in respect of the requirement relating to an object or area, if the defendant establishes that, at the time at which the requirement was made –

(a) the defendant did not know the location of the object or area; or

(b) the object or area was registered; or

(c) the defendant –

(i) was an Aboriginal person; and

(ii) believed, on reasonable grounds, that a failure to disclose the location of the object or area as required under subsection (1) was the best way to protect the object or area from harm; or

(d) the relevant authorised officer already knew, or ought to have known, the location of the object or area; or

(e) the object or area was not Aboriginal heritage.

107. Power of seizure

An authorised officer may seize an object from any person or area if –

(a) the authorised officer reasonably believes that –

(i) the object is Aboriginal heritage; and

(ii) an offence has been committed under this Act in respect of the object; or

(b) the object is a document and the authorised officer reasonably believes that –

(i) the document is an Aboriginal heritage permit or other document issued or approved under this Act; and

(ii) an offence has been committed under this Act that relates to the Aboriginal heritage permit or other document; or

(c) the authorised officer reasonably believes that the object has been used in, or in connection with, the commission of an offence under this Act; or

(d) the authorised officer reasonably believes that the object is, or may be, evidence that relates to an offence under this Act.

108. Dealing with objects, documents or things seized

(1) In this section –

related proceedings, in relation to an object seized under section 107, means proceedings for an offence under this Act in relation to which the object was seized.

(2) If an authorised officer seizes an object from a person under section 107, the authorised officer must, within 7 days after the object is seized, give the person a receipt for the seized object that –

(a) describes the seized object and its condition; and

(b) identifies the authorised officer; and

(c) states the time, and the location, at which the object was seized; and

(d) is in a form approved by the Secretary.

(3) As soon as practicable after an authorised officer seizes an object from a person under section 107, the authorised officer must transfer the object –

(a) to the custody of the Council, or another person nominated by the Council to receive such objects, if the authorised officer knows, or believes, that the seized object is Aboriginal heritage; or

(b) in any other case, to the custody of the Secretary.

(4) A person with care or charge of an object seized under section 107 must –

(a) take all reasonable steps to keep the seized object securely; and

(b) if related proceedings are not commenced within 3 years after the object is seized, return the seized object to the owner at the end of that period; and

(c) if related proceedings are commenced within 3 years after the object is seized, return the object to its owner at the conclusion of those proceedings unless the court hearing the related proceedings orders the forfeiture or destruction of the object.

(5) In addition to any other order that it may make in respect of related proceedings, the court hearing

the related proceedings may, on its own initiative or on the application of the Council or the Secretary –

(a) order that an object seized under section 107 be forfeited to the Council or the Secretary, if the court is of the opinion that –

(i) the seized object has been used for the purpose of committing an offence; or

(ii) it is reasonable in the circumstances to order its forfeiture; or

(b) order the destruction of an object seized under section 107, if the court is of the opinion that it is reasonable in the circumstances to do so.

(6) If a court orders the forfeiture of an object under this section –

(a) the Council or Secretary may dispose of the object as it thinks fit; and

(b) no compensation is payable to any person in respect of the seizure or forfeiture of the object.

109. Power to require persons to leave protected places

(1) In this section –

protected place means –

(a) a registered Aboriginal heritage site; or

(b) an Aboriginal heritage place; or

(c) an area that is the subject of a protection order; or

(d) an area in respect of which a stop order is in force.

(2) An authorised officer may require a person to leave a protected place if the authorised officer reasonably suspects that the person has committed, is committing or is about to commit an offence against this Act.

(3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under subsection (2).

Penalty: Fine not exceeding 50 penalty units.

110. Power of arrest

(1) In this section –

endorsed authorised officer means an authorised officer who –

(a) is a police officer; or

(b) also holds a position, under another Act, that authorises the person to use powers of arrest under that Act.

(2) An endorsed authorised officer may arrest, without warrant, any person who the endorsed authorised officer believes has committed, is committing or is about to commit one or more of the following offences, without apparent reasonable excuse:

(a) a refusal or failure to comply with a requirement under section 105 –

(i) to state the person's name and address; or

(ii) to produce evidence of the person's name or address; or

(b) in response to a requirement under section 105, stating a name or address that the endorsed authorised officer reasonably believes to be false; or

(c) a failure to give to an authorised officer anything in the person's custody, or under the person's control, that an authorised officer is entitled to seize under this Act, if requested to do so by an authorised officer; or

(d) a refusal or failure, without apparent reasonable excuse, to comply with a requirement under section 109 to leave a protected place.

Division 3 – Offences relating to authorised officers

111. Person must comply with request of authorised officer

A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person by an authorised officer under this Act.

Penalty: Fine not exceeding 50 penalty units.

112. Obstruction of authorised officer

A person must not –

(a) obstruct, hinder, intimidate or improperly influence; or

(b) attempt to obstruct, hinder, intimidate or improperly influence –

an authorised officer in the performance of the functions and the exercise of the powers of an authorised officer.

Penalty: Fine not exceeding 100 penalty units.

113. Assault of authorised officer

A person must not assault, abuse or threaten an authorised officer, or a person assisting an authorised officer, or encourage another person to do so.

Penalty: Fine not exceeding 100 penalty units.

114. False and misleading statements

A person must not, in giving any information under this Act –

(a) make a statement knowing it to be false or misleading; or

(b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

Division 4 – Offences generally

115. Court may impose certain orders in respect of offences

(1) In addition to any other penalty that may be imposed by a court in respect of an offence under this Act that relates to Aboriginal heritage, the court may order the defendant to pay compensation for –

(a) the cost of any repair or restoration to be carried out, in respect of the Aboriginal heritage, as a result of the offence; and

(b) the cost of any repair or restoration of anything else that is not Aboriginal heritage, but is associated with the Aboriginal heritage and needs to be

repaired or restored as a result of the offence.

(2) An order under subsection (1) may –

(a) be made by the court on its own motion or on application made by, or on behalf of, the person in whose favour the order is sought; and

(b) specify that the compensation is to be paid to the owner of the Aboriginal heritage to which the order relates, to the Council or to the Crown.

(3) An order under subsection (1) is taken to be a compensation order for the purposes of section 69 of the *Sentencing Act 1997*.

116. Infringement notices

(1) In this section –

infringement offence means an offence against this Act, or the regulations, that is prescribed as an infringement offence.

(2) An authorised officer may issue and serve an infringement notice on a person if the authorised officer reasonably believes that the person has committed an infringement offence.

(3) An infringement notice –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is not to relate to more than 3 offences.

(4) An infringement notice may not be served on an individual who has not attained 18 years of age.

(5) The regulations –

(a) may prescribe, for infringement offences, the penalties payable under infringement notices; and

(b) may prescribe different penalties for bodies corporate and individuals.

117. Offences by employees or agents

(1) If an employee or agent commits an offence under this Act, the employer or the principal of the agent is taken to have committed the same offence.

(2) Despite subsection (1), it is a defence in proceedings against an employer or principal for an offence if the defendant establishes that –

(a) after taking all reasonable precautions and exercising all due diligence, the defendant could not have prevented the offence; or

(b) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be committed.

(3) An employer or principal may be proceeded against, or convicted, for an offence in

accordance with this section whether or not the employee or agent has also been proceeded against for, or convicted of, the offence.

(4) It is not a defence in proceedings for an offence under this Act if the defendant was, at the time at which the offence was committed, an employee or agent acting for, or on behalf of, another person, unless the defendant establishes that –

(a) at the time at which the offence was committed, the defendant was acting under the direction or supervision of –

(i) the owner of the object, area or vehicle in respect of which the offence was committed; or

(ii) another person representing that owner; and

(b) the actions of the defendant that constitute the offence occurred as a direct result of that direction or supervision; and

(c) the defendant could not reasonably have known that those actions would constitute, or result in, an offence under this Act.

118. Offences by bodies corporate

(1) Each person who is a member of the governing body of a body corporate, or who is concerned in

the management of a body corporate, is taken to have contravened a provision of this Act if –

(a) the body corporate contravenes, whether by act or omission, that provision; and

(b) the person knowingly, or negligently, authorised or permitted the contravention.

(2) A person may be proceeded against for, or convicted of, an offence in accordance with this section whether or not the body corporate or another eligible person has also been proceeded against for, or convicted of, the offence.

(3) Nothing in this section affects any liability that may be imposed on a body corporate for an offence committed under this Act by the body corporate.

119. Presumption of state of mind

(1) Unless otherwise specified, in proceedings for an offence under this Act it is not necessary for the prosecution to prove any intention, or state of mind, to establish that the offence has been committed.

(2) Subsection (1) does not apply in respect of an offence under the regulations unless otherwise specified in the regulations.

120. Time for instituting proceedings

(1) Proceedings for an offence against a provision of this Act must be commenced no later than 3 years after the date on which evidence of any act or omission constituting the offence first came to the attention of any authorised officer.

(2) Subsection (1) has effect despite section 26 of the *Justices Act 1959* or any other law.

PART 11 – MISCELLANEOUS

121. Delegation

(1) The Minister may delegate any of the Minister's responsibilities under this Act other than –

(a) this power of delegation; and

(b) the power, under section 18 or under Schedule 1 –

(i) to appoint a person to, or remove a person from, the Council; and

(ii) to appoint or remove a person as the chairperson of the Council; and

(c) the power to compulsorily acquire an Aboriginal heritage place, or Aboriginal heritage site, in accordance with section 31; and

(d) the power, under section 55(1)(b), to require a land activity to have an approved management plan; and

(e) the power to grant a right to access the Register in accordance with section 99(2)(a); and

(f) the power to issue guidelines under section 122; and

(g) the power to issue protection orders under Division 2 of Part 6; and

(h) the power to approve, or refuse to approve, management plans under Division 4 of Part 6.

(2) The Secretary may delegate any of the Secretary's responsibilities under this Act, other than this power of delegation.

122. Ministerial guidelines

(1) The Minister may issue guidelines in relation to any one or more of the following:

(a) the administration of this Act;

(b) the process for the preparation of a management plan to be considered by the Minister under section 68;

(c) matters relating to Aboriginal heritage including, but not limited to, its management, documentation and assessment;

(d) other prescribed matters.

(2) Without limiting the generality of subsection (1), Ministerial guidelines may –

(a) provide for differing levels of assessment of Aboriginal heritage including, but not limited to, different standards and methodologies that may be used for those assessments; and

(b) provide for the engagement and use of Aboriginal heritage consultants,

archaeologists and other relevant experts, in specified circumstances.

(3) The Minister may issue, amend or revoke Ministerial guidelines –

(a) on the Minister's own initiative; or

(b) at the written request of the Council.

(4) Before issuing, amending or revoking any Ministerial guidelines under this section –

(a) the Minister –

(i) must consult with the Council; and

(ii) if the Ministerial guidelines relate to Aboriginal land, must consult with the Aboriginal Land Council; and

(iii) may consult with such other persons as the Minister considers appropriate; and

(b) after completing the consultation required under paragraph (a), the Minister must release a draft of the Ministerial guidelines for consultation with the public for a period of at least 4 weeks.

(5) The Minister is to publish notice in the *Gazette* of the issuance, amendment or revocation of Ministerial guidelines under this section.

(6) Ministerial guidelines, or an amendment to or the revocation of Ministerial guidelines, take effect on –

(a) the day on which the guidelines, or the amendment or revocation of the guidelines, are notified in the *Gazette*; or

(b) such later day as may be specified in that notice.

123. Approval by Parliament

If a document is required, under this Act, to be approved by each House of Parliament, the document is taken to be approved by a House of Parliament if a copy of the document has been laid on the table of the House of Parliament and –

(a) it is approved by the House; or

(b) at the expiration of 10 sitting-days after a copy of the document was laid on the table of the House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been withdrawn or the motion has been negatived; or

(c) if a notice of motion to disallow the document is given during that period of 10 sitting-days, the notice is, after the expiration of that period, withdrawn or the motion is negatived.

124. Effect of destruction of certain Aboriginal heritage

(1) An object or area ceases to be Aboriginal heritage for the purposes of this Act if –

(a) an Aboriginal heritage permit is issued, or management plan is approved, that recognises that the object or area may be destroyed under the permit or plan; and

(b) an action is taken, or is not taken, in good faith, under the authority of that permit or plan which results in the destruction of the object or area as recognised in the permit or plan.

(2) Subsection (1) does not prevent a person from being prosecuted, or found guilty, in respect of the destruction of Aboriginal heritage other than in accordance with this Act, an Aboriginal heritage permit or an approved management plan.

125. Recovery of certain costs

(1) The Secretary may charge a person (the ***liable person***) a fee for any action taken by the Department, or an authorised officer, in relation to the person or the property of the person if, in the opinion of the Secretary, it is reasonable to do so.

(2) A fee charged under subsection (1) is to be no more than is necessary to cover the reasonable costs and expenses incurred in connection with the action taken.

(3) A fee charged under subsection (1) –

(a) is a debt due and owing to the Department by the liable person; and

(b) may be recovered by the Department.

(4) A decision under this section to charge a fee is an administrative decision under section 131.

126. Certain money to be used for purposes of Act

(1) The Minister is to ensure that the following amounts are to be used for a purpose under this Act or a purpose relating to Aboriginal heritage generally:

(a) any payment made in respect of an infringement notice under this Act;

(b) any penalties payable in respect of an offence under this Act;

(c) any other prescribed fee, charge or amount.

(2) For the purposes of subsection (1), a purpose relating to Aboriginal heritage generally includes, but is not limited to, the following purposes:

(a) the purpose of research relating to Aboriginal heritage;

(b) the purpose of works undertaken to protect, or preserve, Aboriginal heritage;

(c) the purpose of interpreting Aboriginal heritage to improve understanding of its nature and values;

(d) a prescribed purpose.

(3) Before an amount specified in subsection (1) is used for a purpose under this Act or a purpose relating to Aboriginal heritage generally, the Minister must consult with the Council in respect of the purpose for which the amount is to be used.

127. Service of notices

A notice or other document is effectively served, lodged or given under this Act if –

(a) in the case of a natural person, it is –

(i) given to the person; or

(ii) left at or sent by post to the person's postal or residential address or place or address of business last known to the server of the notice or other document; or

(iii) emailed to the person's email address given for the purpose of service; and

(b) in the case of any other person, it is –

(i) left at or sent by post to the person's principal or registered

office or principal place of business; or

(ii) emailed to the person's email address given for the purpose of service.

128. Protection from liability

A member of the Council, or other person, does not incur any personal liability for an act done or omitted to be done by the member or person in good faith in, or in relation to –

(a) the exercise or performance, or purported exercise or performance, of a power or function under this Act; or

(b) the administration or execution, or purported administration or execution, of this Act.

129. Application procedures generally

(1) In this section –

relevant decision-maker means the person to whom an application under this Act is required to be made.

(2) In addition to any other requirement specified under this Act, an application in respect of any matter under this Act is to be –

(a) in a form approved by the relevant decision-maker; and

(b) lodged with the relevant decision-maker; and

(c) accompanied by the prescribed fee, if any; and

(d) supported by such evidence or information as the relevant decision-maker requires, either at the time of lodgement or subsequently.

(3) A relevant decision-maker may refuse to accept a document purporting to be an application under this Act if the relevant decision-maker is satisfied that –

(a) the document fails to comply with subsection (2) in a material way; or

(b) the document –

(i) is the same as, or substantially similar to, an unsuccessful application made by the same applicant, to the same relevant decision-maker, within the preceding 12 months; and

(ii) does not contain any material differences when compared to the previous application.

(4) The relevant decision-maker is to return a document refused under subsection (3) to the purported applicant, with a statement –

(a) that the document is not an application for the purposes of this Act; and

(b) of the reasons as to why the document is not an application under this Act.

130. Waiver and refund of fees

(1) In this section –

relevant authority, in respect of a fee, cost or charge, means the person to whom the fee or charge is required to be paid under this Act.

(2) A relevant authority in respect of a fee, cost or charge may waive or refund the whole or any part of the fee, or cost or charge, that is payable, or paid, under this Act.

131. Appeals

(1) In this section –

administrative decision means a decision –

(a) that is specified in this Act as an administrative decision under this section; or

(b) that is prescribed as an administrative decision for the purposes of this section;

appeal includes an application for review.

(2) A person who is aggrieved by an administrative decision may appeal to the Tasmanian Civil and Administrative Tribunal in relation to the decision.

(3) An application for an appeal of an administrative decision under this section may only be made on one or more of the following grounds:

(a) that a breach of the rules of natural justice happened relating to the making of the decision;

(b) that procedures that were required by law to be observed relating to the making of the decision were not observed;

(c) that the decision involved an error of law (whether or not the error appears on the record of the decision);

(d) that the decision was otherwise contrary to law.

(4) An application for the appeal is to be made within 14 days after the day on which the applicant is notified of the administrative decision to which the appeal relates.

(5) An appeal under this section is to be heard and determined in accordance with the *Tasmanian Civil and Administrative Tribunal Act 2020*.

132. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may –

(a) impose fees in respect of any matter under or relating to this Act, and prescribe the amount of those fees; and

(b) provide for any matter relating to –

(i) Aboriginal heritage; and

(ii) Aboriginal heritage permits, management plans, Aboriginal heritage assessments and Aboriginal heritage agreements, including matters relating to their preparation and approval; and

(iii) audits, stop orders, interim stop orders and protection orders; and

(iv) the mapping, recording or documentation of Aboriginal heritage, including the recognition, for any purpose related to the objects of this Act, of any such maps, records or documents; and

(v) the registration of Aboriginal heritage; and

(vi) the procedure for applying for registration of Aboriginal heritage and any registration criteria; and

(vii) whether or not there is a right to appeal in respect of decisions made under the regulations; and

(c) provide for exemptions, in whole or in part, from the operation of this Act or any of its provisions.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may authorise any matter to be from time to time approved, determined, applied or regulated by the Minister, the Council or the Secretary.

(5) The regulations may –

(a) provide that a contravention of any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(6) The regulations may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any codes, standards, guidelines or other documents relevant to the objects of this Act, whether or not those codes, standards, guidelines or other documents are published or issued before or

after the day on which this Act or any particular provision of this Act commences.

(7) A reference in subsection (6) to codes, standards, guidelines or other documents includes a reference to an amendment of those codes, standards, guidelines or other documents, whether the amendment is published before or after the day on which this Act or any particular provision of this Act commences.

(8) The regulations may –

(a) provide for savings and transitional matters necessary or expedient for bringing this Act into operation; and

(b) provide for any of those savings or transitional matters to take effect on the day on which this Act or any particular provision of this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

133. Status of certain instruments under Act

For the avoidance of doubt, orders, notices, directives, criteria, codes and guidelines made, issued or adopted under this Act are not –

(a) statutory rules for the purposes of the *Rules Publication Act 1953*; or

(b) subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

134. Review of Act

(1) In this section –

independent review means a review undertaken by persons who –

(a) in the Minister's opinion, are appropriately qualified for that task; and

(b) include one or more persons who are not State Service employees or State Service officers.

(2) The Minister is to cause an independent review into the operation of this Act within 5 years after the day on which this section commences.

(3) Without limiting the generality of a review into the operation of this Act under subsection (2), the review is to also consider –

(a) landscapes that are culturally significant to the Tasmanian Aboriginal people, including but not limited to whether this Act should apply to the definition, registration or protection of such landscapes; and

(b) intangible matters such as knowledge, traditions, practices and rituals that are significant to the Tasmanian Aboriginal people, including but not limited to

whether this Act should apply to the registration or protection of such heritage.

(4) The Minister is to cause a report on the outcome of the review to be tabled in each House of Parliament within 6 months after completion of the review under this section.

135. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Aboriginal Affairs; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of Natural Resources and Environment Tasmania.

136. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 4 have effect.

137. Legislation repealed

The legislation specified in Schedule 5 is repealed.

SCHEDULE 1 – MEMBERSHIP OF COUNCIL

Section 18(6)

1. Interpretation

In this Schedule –

member means member of the Council.

2. Term of office

(1) A member is appointed for such period not exceeding 3 years as is specified in the member's instrument of appointment.

(2) A member may be reappointed for no more than 2 further terms.

3. Holding other office

The holder of an office who is required by the terms of employment to devote the whole of the office holder's time to the duties of that office is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to a member.

4. Application of *State Service Act 2000*

(1) The *State Service Act 2000* does not apply in relation to a member in the member's capacity as a member.

(2) A person may hold the office of member in conjunction with State Service employment.

5. Remuneration and conditions of appointment

(1) A member is entitled to be paid such remuneration and allowances as the Minister determines.

(2) A member who is a State servant is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

(3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Vacation of office

(1) A member vacates office if the member –

(a) dies; or

(b) resigns by written notice given to the Minister; or

(c) is removed from office under subclause (2).

(2) The Minister may remove a member from office if –

(a) the member is absent from 3 consecutive meetings of the Council without the permission of the other members; or

(b) the member has breached the code of conduct in force in respect of the Council and the breach is not trivial or lacking in substance; or

(c) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(d) the member fails to declare a direct or indirect pecuniary interest, in accordance with Schedule 2 or 3, and the Minister is satisfied that the failure is significant enough to warrant the member's removal from office; or

(e) the member is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or

(f) the member has benefited from, or claimed to be entitled to benefit from, any agreement or arrangement made by or on behalf of the Council other than an agreement or arrangement for a service

ordinarily supplied or received by the Council on the same terms as that service is supplied or received by other persons in the same situation; or

(g) the member is convicted of an offence under this Act; or

(h) the Minister is satisfied that the member is unable to perform adequately or competently the duties of office.

(3) If the office of a member becomes vacant, the Minister may appoint an Aboriginal person to the vacant office for the remainder of that member's term of office.

(4) For the avoidance of doubt, the Minister may remove a member appointed under subclause (3) in accordance with this clause.

(5) A member must not be removed from office otherwise than in accordance with this clause.

7. Validation of proceedings, &c.

An act or proceeding of the Council, or of a person acting under a direction of the Council, is not invalid solely on the basis that –

(a) at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member; or

(b) there is a defect in the appointment of a member; or

(c) a person appointed as member was disqualified from acting as, or incapable of being, a member.

8. Presumptions

In any proceeding by or against the Council, unless evidence is given to the contrary, proof is not required of –

(a) the constitution of the Council; or

(b) the validity of the appointment of any member.

SCHEDULE 2 – MEETINGS OF COUNCIL

Section 18(7)

1. Interpretation

In this Schedule –

member means member of the Council;

chairperson means the person appointed under section 18(5) as the chairperson of the Council.

2. Convening of meetings

(1) The chairperson, after giving each member reasonable notice of a meeting –

(a) may convene a meeting at any time; and

(b) must convene a meeting when requested to do so by 2 or more other members.

(2) If the chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given, by –

(a) two or more other members; or

(b) a person authorised by the Council to do so.

(3) The Council may determine what constitutes reasonable notice for the purposes of subclauses (1) and (2).

(4) Despite subclauses (1) and (2), the Council must ensure that it meets at least 10 times each calendar year.

3. Presiding at meetings

(1) The chairperson is to preside at all meetings of the Council at which the chairperson is present.

(2) If the chairperson is not present at a meeting of the Council, a member elected by the members present at the meeting is to preside at the meeting.

4. Quorum and voting at meetings

(1) A quorum at a meeting of the Council consists of whichever of the following is the greater number of members:

(a) a majority of members appointed to the Council;

(b) 5 members.

(2) A meeting of the Council at which a quorum is present is competent to transact any business of the Council.

(3) At a meeting of the Council –

(a) a question is decided by a majority of votes of the members present and voting; and

(b) the member presiding over the meeting has a deliberative vote and, in the event of an equality of votes, also a casting vote.

5. Conduct of meetings

(1) The Council may permit members to participate in a particular meeting or all meetings by –

(a) telephone; or

(b) video conference; or

(c) any other means of communication approved by the Council.

(2) A member who participates in a meeting under a permission conferred under subclause (1) is taken to be present at the meeting.

(3) The Council may allow a person to attend a meeting for the purpose of advising or informing it on any matter or for any other purpose.

6. Minutes

The Council is to keep accurate minutes of its meetings.

7. Disclosure of interests

(1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Council, the member must, as soon as practicable after the relevant facts

come to the member's knowledge, disclose the nature of the interest to the Council.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the Council and, unless the Council otherwise determines, the member who has made the disclosure must not –

(a) be present during any deliberation of the Council in relation to the matter; or

(b) take part in any decision of the Council in relation to the matter.

(3) For the purpose of the Council making a determination under subclause (2), the member to whom the determination relates must not –

(a) be present during any deliberation of the Council for the purpose of making the determination; or

(b) take part in making the determination.

(4) Subclause (1) does not apply in respect of an interest that arises only because the member is also a State servant.

8. Presumptions

In any proceeding by or against the Council, unless evidence is given to the contrary, proof is not required of –

(a) any resolution of the Council; or

(b) the presence of a quorum at any meeting of the Council.

SCHEDULE 3 – COUNCIL COMMITTEES

Section 23

1. Membership of committees

(1) A committee consists of such number of persons as the Council determines.

(2) A committee may be composed, wholly or partly, of members of the Council.

(3) The Council is to appoint a member of the committee as chairperson of the committee.

2. Conditions of appointment

(1) A member of a committee is entitled to be paid any remuneration and allowances that the Minister determines.

(2) A member of a committee who is a State servant is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

(3) A member of a committee holds office for the period, and on the conditions, determined by the Council.

3. Meetings

(1) Meetings of a committee are to be held in accordance with any directions given by the Council.

(2) A committee may obtain assistance, information and advice from any person.

(3) A committee is to keep accurate minutes of its meetings.

(4) Except as otherwise provided by this Act or directed by the Council, a committee may regulate the calling of, and the conduct of business at, its meetings.

4. Disclosure of interests

(1) If –

(a) a member of a committee has a direct or indirect pecuniary interest, in a matter being considered, or about to be considered, by the committee; and

(b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter –

that member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the committee.

(2) Unless the committee otherwise determines, a member of a committee who has made a disclosure under subclause (1) in relation to a matter must not –

(a) be present during any deliberation of the committee in relation to the matter; or

(b) take part in any decision of the committee in relation to the matter.

(3) For the purpose of the committee making a determination under subclause (2), the member of the committee to whom the determination relates must not –

(a) be present during any deliberation of the committee for the purpose of making the determination; or

(b) take part in making the determination.

(4) Subclause (1) does not apply in respect of an interest that arises only because a member of the committee is also a State servant.

5. Council may remove committee member

The Council may remove a member of a committee from that office if –

(a) the member is absent from 3 consecutive meetings of the committee without the permission of the other members; or

(b) the member fails to declare a direct or indirect pecuniary interest, in accordance with clause 4, and the Council is satisfied that the failure is significant enough to warrant the member's removal from office; or

(c) the member has benefited from, or claimed to be entitled to benefit from, any agreement or arrangement made by

or on behalf of the committee or the Council other than an agreement or arrangement for a service ordinarily supplied or received by the Council on the same terms as that service is supplied or received by other persons in the same situation; or

(d) the member is convicted of an offence under this Act; or

(e) the Council is satisfied that the member is unable to perform adequately or competently the duties of office.

SCHEDULE 4 – SAVINGS AND TRANSITIONAL PROVISIONS

Section 136

1. Interpretation

In this Schedule –

former Act, in any clause, means the *Aboriginal Heritage Act 1975* as in force immediately before the commencement day for that clause;

former Council means the Aboriginal Heritage Council established by section 3 of the *Aboriginal Heritage Act 1975*.

2. References to former Act

(1) On the day on which this clause commences (the ***commencement day***), a reference in any Act or other document to the former Act is taken, if appropriate, to be or to include a reference to this Act.

(2) On the commencement day, a reference in any Act or other document to an Aboriginal relic is taken, if appropriate, to be or include a reference to Aboriginal heritage.

3. Aboriginal Heritage Council continued

(1) On the day on which this clause commences (the ***commencement day***), if members have not been appointed to the Council established by

section 17 of this Act, the former Council, as constituted immediately before the commencement day, is to continue until the Council is appointed under this Act.

(2) The chairperson of the former Council immediately before the commencement day is taken, on the commencement day, to be the chairperson of the Council on the same terms and conditions.

(3) A member of the former Council is taken, on the commencement day, to be a member of the Council on the same terms and conditions.

(4) On the day on which the Council is appointed under this Act –

(a) the former Council is dissolved; and

(b) any person appointed as a member of the former Council, ceases to be such a member.

4. Permits continued

(1) A permit issued under the former Act, that is in force immediately before the day on which this clause commences (the ***commencement day***), remains in force on and from the commencement day, on the same terms and conditions under which it was issued.

(2) The former Act, as in force immediately before the commencement day, applies to a permit

continued in force under subclause (1) while it remains in force.

(3) For the avoidance of doubt, a person complying with a permit continued in force under subclause (1) is not in breach of this Act in respect of any action lawfully taken in accordance with the permit.

5. Assessment processes continue to apply

(1) On and from the day on which this clause commences (the ***commencement day***), the following codes and procedures are taken to form part of Ministerial guidelines issued under section 122 of this Act:

(a) the Aboriginal Heritage Tasmania Standards and Procedures, as approved by the Department in October 2024;

(b) the Procedures for managing Aboriginal cultural heritage when preparing Forest Practices Plans, as approved by the Forest Practices Authority on 10 September 2018;

(c) the Mineral Exploration Code of Practice, released by Mineral Resources Tasmania in April 2012.

(2) A code or procedure adopted under this clause is adopted as in force on the commencement day.

(3) On and after the commencement day, the Minister may, by notice published on a website

operated by or on behalf of the Department, accept an amendment of a code or procedure adopted under this clause by specifying, in the notice –

(a) the amendment to the code or procedure that is to be adopted for the purposes of this Act; and

(b) the date on which that amendment takes effect for the purposes of this Act, being a date that is on or after the date on which the amendment to the code or procedure takes effect.

(4) For the avoidance of doubt, the adoption of a code or procedure, under this clause, may be revoked in the regulations.

6. Reporting of privately owned Aboriginal heritage objects

(1) A person who, on the day on which this clause commences, owns, has possession of or is in control of an object that is Aboriginal heritage must –

(a) within 12 months after the commencement of this clause, notify the Secretary, in writing, of the object in the person's ownership, possession or control; and

(b) while the object is in the person's ownership, possession or control, take all

reasonable steps to protect the object from harm.

Penalty: Fine not exceeding –

(a) 50 penalty units for an individual or a small business entity; and

(b) 100 penalty units for a body corporate other than a small business entity.

(2) On receipt of written notice in respect of an object under subclause (1)(a), the Secretary is to enter the object in the Register.

(3) For the avoidance of doubt, nothing in this clause requires an object that is Aboriginal heritage to be surrendered or returned.

7. Database taken to be Register

On the day on which this clause commences, the database kept and maintained by the Department in relation to Aboriginal heritage is taken, on and after that day, to be the Register for the purposes of this Act.

SCHEDULE 5 – LEGISLATION REPEALED

Section 137

Aboriginal Heritage Act 1975 (No. 81 of 1975)