

TASMANIA

**ABORIGINAL HERITAGE PROTECTION BILL
2013**

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ABORIGINAL HERITAGE PROTECTION BILL 2013

*(Brought in by the Minister for Environment, Parks and
Heritage, the Honourable Brian Neal Wightman)*

A BILL FOR

An Act to provide for the recognition, protection and management of Aboriginal heritage, to establish an Aboriginal Heritage Council, to repeal the *Aboriginal Relics Act 1975*, to consequentially amend certain other legislation and for related purposes

Be it enacted by His 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 Protection Act 2013*.

2. Commencement

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

3. Objects of Act

The objects of this Act are as follows:

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- (a) to recognise, provide for and promote the protection of Aboriginal heritage;
- (b) to provide for the involvement of the Aboriginal community in the management and protection of Aboriginal heritage;
- (c) to promote the management of Aboriginal heritage as an integral part of the State's resource management and planning system;
- (d) to establish workable and effective procedures for the Aboriginal heritage assessment, conduct and oversight of land activities and other activities with regard to Aboriginal heritage impacts;
- (e) to provide appropriate sanctions and penalties to prevent harm to Aboriginal heritage;
- (f) to promote public awareness and understanding of Aboriginal heritage.

4. Interpretation

(1) In this Act –

Aboriginal heritage means –

- (a) Aboriginal human remains; or
- (b) Aboriginal objects; or
- (c) Aboriginal sites; or

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(d) nominated Aboriginal heritage;

Aboriginal heritage agreement means an agreement entered into by the Council under section 79 providing for the protection or management of Aboriginal heritage;

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

Aboriginal heritage condition, in relation to an external regulatory approval or other instrument, means a condition, providing for the protection or management of Aboriginal heritage, imposed on the external regulator pursuant to a notification of the Minister under section 72(7)(b);

Aboriginal heritage measures, in relation to a management plan, means measures for the protection and management of Aboriginal heritage and for dealing with the likely Aboriginal heritage impacts of the relevant land activity;

Aboriginal heritage permit means an Aboriginal heritage permit issued under section 34(1);

Aboriginal heritage responsibility means a power or other responsibility of an authorised officer under this Act;

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Aboriginal human remains has the meaning given by section 5;

Aboriginal object has the meaning given by section 6;

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

Aboriginal site has the meaning given by section 7;

affected area, in relation to a land activity, proposed land activity or restricted activity, means one or more areas that are, will be or are likely to be directly affected by the land activity, proposed land activity or restricted activity;

appeal rights means appeal rights under section 41, section 61, section 101 or section 111;

application day, in relation to a regulated land activity, means the day on which the external regulator receives a valid external application for an external regulatory approval to carry out the regulated land activity;

approved, in relation to a management plan, means approved under Part 5;

area includes –

- (a) an area of land; and
- (b) an area of water; and

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- (c) a natural feature, formation or landscape; and
- (d) an archaeological feature or deposit; and
- (e) an area immediately surrounding another area referred to in paragraph (c) or (d), to the extent that the surrounding area cannot be separated from the other area without harming or diminishing its significance to Aboriginal people of Tasmania; and
- (f) land set aside for the purpose of enabling Aboriginal human remains to be re-interred or otherwise permanently deposited; and
- (g) a building or structure;

audit means an audit of a controlled land activity, by reference to Aboriginal heritage matters, carried out under Part 8;

auditor means the authorised officer who carries out an audit;

audit order means an order issued under section 85(1);

audit report means a report prepared by an auditor, and given to the Minister, under section 88(1);

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authorised officer means an authorised officer appointed under section 117;

chairperson means the chairperson of the Council;

condition includes restriction;

confer includes approve, grant and issue;

controlled land activity means a land activity carried out under an Aboriginal heritage permit, management plan or external regulatory approval, and includes any part of the controlled land activity;

convict includes find guilty;

Council means the Aboriginal Heritage Council established under section 14;

Crown land means Crown land within the meaning of the *Crown Lands Act 1976*;

custody includes possession;

dam permit means a permit to undertake dam works granted under section 157(1)(a) of the Water Management Act;

development means development within the meaning of paragraph (a), (b), (c), (d), (e) or (f) of the definition of *development* in section 3(1) of the Planning Act;

discretionary planning permit means a permit granted under section 57 of the Planning Act;

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enduring protection order means an order issued under section 102 as an Aboriginal heritage enduring protection order;

entry means an entry in the Register;

exempt land activity has the meaning given by section 8;

external application means an application for an external regulatory approval to carry out a regulated land activity;

external regulator, in relation to an external regulatory approval, means the person authorised to confer that approval;

external regulatory approval means –

- (a) a planning permit; or
- (b) a dam permit;

GDA means –

- (a) the Geocentric Datum of Australia (also known as the “GDA” or “GDA94”) as defined in the *Commonwealth Gazette* No. GN 35, 6 September 1995, as amended from time to time; or
- (b) another geodetic reference system substituted for the Geocentric Datum of Australia referred to in paragraph (a) by the Intergovernmental Committee on Surveying and Mapping

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(established in 1988), as amended
from time to time;

guidelines means guidelines issued by the
Minister under section 20;

harm includes damage, deface, destroy,
conceal and otherwise interfere with, but
does not include an act or omission that
is prescribed by the regulations not to be
included;

high-impact land activity means –

- (a) a level 1 activity within the
meaning of the *Environmental
Management and Pollution
Control Act 1994* in respect of
which the Director of
Environmental Management has
issued a requirement under
section 24(1) of that Act; or
- (b) a level 2 activity within the
meaning of the *Environmental
Management and Pollution
Control Act 1994*, other than such
a level 2 activity prescribed by
the regulations as an activity to
which this paragraph does not
apply; or
- (c) a major infrastructure project
within the meaning of the *Major
Infrastructure Development
Approvals Act 1999*; or

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- (d) a project of regional significance within the meaning of Division 2A of Part 4 of the Planning Act; or
- (e) a land activity involving the construction of a dam, within the meaning of the *Water Management Act 1999*, of a kind or of a capacity not greater than the maximum capacity, or both, prescribed by the regulations; or
- (f) a land activity involving a subdivision of land within the meaning of Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*, of a kind prescribed by the regulations; or
- (g) a prescribed land activity for this definition;

in, in relation to any premises, vehicle or container, includes on the premises, vehicle or container;

interim protection order means an order issued under section 102 as an interim protection order;

interim stop order means an order issued under section 93;

issuing authority means –

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- (a) in relation to an Aboriginal heritage permit for a restricted activity referred to in paragraph (a), (b) or (c) of the definition of *restricted activity* in this section, the Council; and
- (b) in relation to an Aboriginal heritage permit for a particular restricted activity referred to in paragraph (f) of the definition of *restricted activity* in this section, the Minister or the Council, as prescribed in the regulations in relation to that particular restricted activity; and
- (c) in relation to any other Aboriginal heritage permit, the Minister;

land activity, in relation to any land, means –

- (a) any development or use of the land; or
- (b) forest practices, within the meaning of the *Forest Practices Act 1985*, on the land;

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

management plan means a plan in respect of a proposed land activity setting out –

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- (a) the results of an Aboriginal heritage assessment of the affected area; and
- (b) the known and likely Aboriginal heritage impacts; and
- (c) the Aboriginal heritage measures, and other measures, that will need to be taken;

mandatory management plan means a management plan required by this Act;

member means a member of the Council;

nominated Aboriginal heritage means an object or site that is entered in the Register as nominated Aboriginal heritage;

nominated object or site means –

- (a) an object or site that is the subject of an application –
 - (i) that is made under the regulations for registration of the object or site as nominated Aboriginal heritage; and
 - (ii) that has not been finally determined; or
- (b) an object or site in relation to which –

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- (i) the Council has determined to consider, on its own motion, whether to recommend that the object or site be registered as nominated Aboriginal heritage; and
- (ii) either the Council has not determined not to make a recommendation to the Secretary as to whether or not the object or site be registered as nominated Aboriginal heritage, or the Secretary has not determined whether or not to so register the object or site;

notify means give notice in writing;

owner has the same meaning as in the Planning Act;

parks ranger means –

- (a) a ranger within the meaning of the *National Parks and Reserves Management Act 2002*; or
- (b) a ranger within the meaning of the *Nature Conservation Act 2002*;

person includes a body of persons, whether corporate or unincorporate;

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Planning Act means the *Land Use Planning and Approvals Act 1993*;

planning permit means a permit under the Planning Act;

premises includes any part of the premises;

private land means land owned by a person other than the Crown;

proponent means –

- (a) in relation to a proposed land activity, the person proposing to carry out the land activity; and
- (b) in relation to a proposed management plan or a recognised management plan, the person proposing to prepare the plan or to carry out the relevant land activity; and
- (c) in relation to an approved management plan, the person specified in the plan as the proponent;

protection order means an order issued under section 102 as an Aboriginal heritage enduring protection order or an Aboriginal heritage interim protection order;

recognised management plan, means a management plan for which a notice of

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intention has been given under section 46(1)(a);

Register means the Aboriginal Heritage Register established and maintained under Part 11;

registered means entered in the Register;

registered Aboriginal object includes an object that is registered as nominated Aboriginal heritage;

registered Aboriginal site includes a site that is registered as nominated Aboriginal heritage;

regulated land activity means a land activity that requires external regulatory approval;

regulations means regulations made and in force under this Act;

relevant approval, in relation to a controlled land activity, means –

- (a) for a controlled land activity carried out under an Aboriginal heritage permit, that permit; and
- (b) for a controlled land activity carried out under a management plan, that plan; and
- (c) for a controlled land activity carried out under an external

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regulatory approval, that
approval;

relevant decision-maker, in relation to a
statutory authorisation, means –

- (a) if the statutory authorisation is an
external regulatory approval, the
external regulator; or
- (b) in any other case, the person
having the statutory responsibility
for conferring the statutory
authorisation;

relevant land activity –

- (a) in relation to a management plan,
means the land activity in respect
of which the plan is being or has
been prepared; and
- (b) in relation to a stop order or
interim stop order, means the
land activity in respect of which
the order is issued;

relevant planning scheme, in relation to a
regulated land activity, means the
planning scheme in force in the area
where the regulated land activity is
carried out or proposed to be carried out;

relevant regulatory requirements, in relation
to a provision of this Act, means –

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(a) such requirements of the regulations as may apply to the provision; and

(b) such guidelines as may apply to the provision;

relevant special planning order, in relation to a regulated land activity, means the special planning order in force in the area where the regulated land activity is carried out or, if applicable, proposed to be carried out;

responsibilities means powers, functions and duties;

responsible person, in relation to a controlled land activity, means –

(a) for a controlled land activity carried out under an Aboriginal heritage permit, the holder of that permit; and

(b) for a controlled land activity carried out under a management plan, the proponent for that plan under Part 5; and

(c) for a controlled land activity carried out under an external regulatory approval, the person holding that approval.

restricted activity means –

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- (a) the carrying out of scientific research at a registered Aboriginal site or the removal of an Aboriginal object from such a site for the purposes of scientific research; or
 - (b) the removal of a registered Aboriginal object from Tasmania; or
 - (c) the sale of a registered Aboriginal object; or
 - (d) the disturbance or excavation of any land for the purposes of uncovering or discovering Aboriginal heritage; or
 - (e) a land activity or other activity involving, or reasonably likely to involve, harm to an Aboriginal object or Aboriginal site; or
 - (f) a land activity or other activity prescribed by the regulations;

RMPAT means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

Secretary means the Secretary of the Department;

sell means –

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- (a) dispose of by sale, barter or exchange; or
- (b) agree or offer to dispose of by sale, barter or exchange; or
- (c) consign or have custody of on consignment for the purposes of sale, barter or exchange; or
- (d) advertise or expose for the purposes of sale, barter or exchange;

serious ground disturbance means the disturbance of the topsoil, or a waterway or the surface rock layer of the ground, in the course of –

- (a) digging, dredging, excavating, grading or trenching using mechanical means; or
- (b) the ploughing of soil but only if –
 - (i) the ploughing involves deep ripping undertaken with a ripper or subsoil cultivation tool; or
 - (ii) is mound ploughing;

significance, of any area, object or other thing, includes its archaeological, anthropological, contemporary, historical, scientific, social and spiritual significance;

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

statutory authorisation means –

- (a) an external regulatory approval; or
- (b) a permit, licence, accreditation, approval or authorisation of any other kind under any other Act;

stop, in relation to a land activity that a person is proposing to carry out, means –

- (a) not start the proposed land activity; and
- (b) discontinue all preparations for the proposed land activity;

stop order means an order issued under section 92;

use has the same meaning as in the Planning Act;

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*;

voluntary management plan means a management plan referred to in section 44;

Water Management Act means the *Water Management Act 1999*.

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- (2) A reference to *Tasmania* or *the State* in this Act is taken to include a reference to Tasmania's coastal waters.
- (3) A note in the text of this Act does not form part of this Act.

5. Meaning of *Aboriginal human remains*

In this Act –

Aboriginal human remains means the whole or any part of the bodily remains of an Aboriginal person, other than –

- (a) a body or bodily remains buried –
 - (i) in a cemetery, within the meaning of the *Burial and Cremation Act 2002*; or
 - (ii) in other land as allowed by, and in accordance with the permissions required by, section 41 of the *Burial and Cremation Act 2002*; or
- (b) an object made from human hair; or
- (c) an object made from bodily material, other than human hair, that is not readily recognisable as being bodily material; or

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- (d) 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; or
- (e) any human tissue lawfully removed from an Aboriginal person.

6. Meaning of *Aboriginal object*

(1) In this Act –

Aboriginal object means –

- (a) any object in Tasmania that –
 - (i) relates to the Aboriginal occupation of any part of Australia, whether or not the object existed before that part of Australia was occupied by persons of non-Aboriginal descent; and
 - (ii) is of significance to the Aboriginal people of Tasmania; or
- (b) any object, material or thing in Tasmania that –

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- (i) is removed or excavated from an Aboriginal site; and
 - (ii) is of significance to the Aboriginal people of Tasmania.
- (2) Despite subsection (1), objects made, or likely to have been made, for the purposes of sale (otherwise than by way of barter or exchange in accordance with Aboriginal tradition) are not Aboriginal objects for the purposes of this Act.
- (3) To avoid doubt, Aboriginal human remains are not Aboriginal objects for the purposes of this Act.

7. Meaning of *Aboriginal site*

In this Act –

Aboriginal site means –

- (a) an area of Tasmania that is of significance to the Aboriginal people of Tasmania; or
- (b) unless the contrary intention appears, a part of an Aboriginal site.

8. Meaning of *exempt land activity*

- (1) In this Act, a land activity is an *exempt land activity* if –

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- (a) it is carried out on, in or under an area declared by an order made under section 9 to be an exempt area; or
 - (b) it consists solely of one or more of the following uses or developments:
 - (i) the construction, alteration, maintenance, demolition or removal of a fence or freestanding wall;
 - (ii) the construction, alteration, maintenance, demolition or removal of a temporary seating structure, temporary stage or temporary platform;
 - (iii) the carrying out of construction or maintenance works on, over or under established transport infrastructure;
 - (iv) the demolition or removal of transport infrastructure;
 - (v) the carrying out of maintenance, demolition or removal works associated with a high-impact land activity;
 - (vi) the construction of a building ancillary to an existing dwelling, or the carrying out of works ancillary to an existing dwelling, within an affected area that is not

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- larger than the maximum size prescribed by the regulations;
- (vii) the construction of a building ancillary to an existing building that is not a dwelling, or the carrying out of works ancillary to an existing building, that is not a dwelling within an affected area that is not larger than the maximum size prescribed by the regulations;
 - (viii) the alteration, maintenance, subdivision, demolition or removal of a building;
 - (ix) the construction of a building of a kind, and within an affected area that is not larger than the maximum size, prescribed by the regulations;
 - (x) the installation of service infrastructure in conjunction with the construction of a building referred to in subparagraph (ix);
 - (xi) the construction of not more than the maximum number of dwellings prescribed by the regulations on one discrete parcel of land that, under a planning scheme or special planning order under the Planning Act, is zoned,

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- exclusively or otherwise, as residential;
- (xii) the construction of one or more additional dwellings on one discrete parcel of land that already contains one or more dwellings and that, under a planning scheme or special planning order under the Planning Act, is zoned, exclusively or otherwise, as residential if the construction of the additional dwellings would not cause the total number of dwellings on the land to exceed the maximum number of dwellings prescribed by the regulations for the purposes of subparagraph (xi);
- (xiii) the installation of service infrastructure in conjunction with the construction of a dwelling referred to in subparagraph (xi) or (xii);
- (xiv) dam works, within the meaning of the Water Management Act, in relation to a dam of a kind, or of a capacity not greater than the maximum capacity, or both, prescribed by the regulations;
- (xv) the subdivision of land, within the meaning of Part 3 of the

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Local Government (Building and Miscellaneous Provisions) Act 1993, that comprises not more than the maximum number of lots prescribed by the regulations and that is within an area not larger than the maximum size prescribed by the regulations;

- (xvi) the construction or installation of service infrastructure in conjunction with a subdivision referred to in subparagraph (xv);
 - (xvii) the construction, installation, alteration, replacement, maintenance, demolition or removal of, or the carrying out of such works in relation to, service infrastructure;
 - (xviii) the carrying out of works of a minor nature that are necessarily ancillary to a land activity referred to in this subsection; or
- (c) it consists of moving on, over or under land in accordance with an easement, covenant or right of way permitting that movement for the purpose of constructing, installing, altering, replacing, maintaining, demolishing or removing, or the carrying out of such works in relation to, service infrastructure; or

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(d) it is a land activity, or a land activity of a class, prescribed by the regulations to be an exempt land activity.

(2) For the purposes of subsection (1) –

maintenance includes repair and refurbishment;

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 by the regulations to be infrastructure required for communications, electricity, gas, water supplies, sewers or drains;

transport infrastructure means an aerodrome, railway, road or port, together with its associated infrastructure including, but is not limited to –

(a) for an aerodrome – aeronautical control and safety facilities, fences, hangars, lighting, fuel tanks, service infrastructure, sheds and terminals; and

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- (b) for a port – cranes and gantries, jetties and wharves, navigational control and safety facilities, service infrastructure, slipways and storage facilities; and
- (c) for a railway – bridges, machine shops, service infrastructure, sidings, stations and tunnels; and
- (d) for a road – bridges, overpasses and underpasses, safety barriers and embankments, service infrastructure, traffic lights and signs and street lighting;

works ancillary to an existing dwelling or existing building includes, but is not limited to, the construction, alteration, maintenance, demolition and removal of driveways, fences, paving, landscaping, recreational facilities, sheds, garages, service infrastructure and water tanks.

(3) However –

- (a) subsection (1) does not apply to a land activity if –
 - (i) the affected area contains registered Aboriginal heritage; and
 - (ii) by reason of the carrying out of the land activity, there will be, or is likely to be, a surface disturbance to the affected area

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that has a lasting impact and, if there was any such previous surface disturbance to the area, is different, and additional, to that previous surface disturbance; and

- (b) a land activity that has the status of an exempt land activity by reason of subsection (1) loses that status instantly if, while it is being carried out, Aboriginal heritage is found in the affected area; and
- (c) subsection (1)(b), (c) and (d) does not apply to a land activity if –
 - (i) the affected area is an area that has been declared by an order made under section 9 to be an area of high sensitivity; and
 - (ii) by reason of the carrying out of the land activity, there will be, or is likely to be, a surface disturbance to the affected area that has a lasting impact and, if there was any such previous surface disturbance to the area, is different, and additional, to that previous surface disturbance.

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9. Declarations of exempt area and area of high sensitivity

- (1) The Governor, on the recommendation of the Minister, by order, may declare an area to be an exempt area or an area of high sensitivity.
- (2) The Minister may make a recommendation under subsection (1) on his or her own motion or on the nomination of the Council or a council.
- (3) Before making a recommendation under subsection (1), the Minister –
 - (a) is to consult with the Council; and
 - (b) may consult with such other persons as the Minister considers appropriate; and
 - (c) is to give to the council for the municipal area in which is situated the area that the Minister intends to recommend to the Governor be declared an exempt area or area of high sensitivity written notice that –
 - (i) the Minister proposes to make the recommendation; and
 - (ii) sets out the Minister’s reasons for proposing to make the recommendation; and
 - (iii) informs the council that it may make written submissions in respect of the proposed recommendation to the Minister

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within 21 days after it receives the notice; and

(iv) includes, or is accompanied by, a draft of the proposed recommendation; and

(d) is to consider the response to the notice provided by the council under subsection (4).

(4) Within 21 days after receiving a notice under subsection (3)(c), a council must provide to the Minister a written response that states –

(a) whether or not it supports the recommendation; and

(b) if it does not support the recommendations, its reason for not doing so.

(5) The Minister may not make a recommendation under subsection (1) until the expiration of the period of 28 days after the council, or the last of the councils, has received the notice under subsection (3)(c).

(6) The Minister may not recommend to the Governor that an area be declared an area of high sensitivity unless satisfied that –

(a) the area contains registered Aboriginal heritage; and

(b) is highly likely to contain other Aboriginal heritage.

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- (7) An order under subsection (1) –
 - (a) is not a statutory rule for the purposes of the *Rules Publication Act 1953*; and
 - (b) is to be published in the *Gazette*.
- (8) The Minister is to cause an order under subsection (1) to be laid before each House of Parliament within the first 10 sitting-days of the House after it is published in the *Gazette*.
- (9) An order under subsection (1) is of no effect until it has been approved by both Houses of Parliament.
- (10) For the purposes of subsection (7), a House of Parliament is taken to have approved an order under subsection (1) if a copy of it has been laid on the table of that House and –
 - (a) it is approved by that House; or
 - (b) at the expiration of 15 sitting-days after it was laid on the table of that House, there is no notice of a motion to disallow it before that House; or
 - (c) if a notice of a motion to disallow it is given during that period of 15 sitting-days, the notice is, after the expiration of that period, withdrawn or negatived.
- (11) As soon as practicable after an order under subsection (1) has taken effect, the Minister is to –

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- (a) give written notice of the taking effect of the order to the Council, the Secretary and the council for the municipal area in which the exempt area or area of high sensitivity is situated; and
 - (b) advertise, in a newspaper circulating in the area within which the exempt area or area of high sensitivity is situated, that the order has taken effect.
- (12) On receipt of a notice under subsection (11)(a), the Secretary is to enter the order in the Register.

10. Objectives to be taken into account by persons discharging certain responsibilities under Act

In discharging any responsibilities under this Act in relation to Aboriginal heritage other than Aboriginal human remains, a person must take into account the objectives of the State's resource management and planning system, and the planning process, set out in Schedule 1 to the Planning Act.

11. Timing of actions and decisions

- (1) In this section –

regulatory authority means –

- (a) for a matter concerning a statutory authorisation, the relevant decision-maker; or

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- (b) for any other matter, the Minister,
the Secretary or the Council.
- (2) Where a provision of this Act requires or directs a person to take an action consequent on making a decision or another occurrence, then, unless the contrary intention appears, the provision is to be taken as requiring or directing the person to take the action as soon as practicable after the making of the decision or the other occurrence.
- (3) Where a provision of this Act requires or directs a regulatory authority to make a decision in respect of any matter within a specified period of time and the period of time includes any days on which the office of the regulatory authority is closed during normal business hours, the period of time is extended by that number of days.

12. Act does not affect operation of certain other Acts

Nothing in this Act affects the operation of the *Burial and Cremation Act 2002*, *Coroners Act 1995* or *Human Tissue Act 1985* in their application to Aboriginal persons.

13. 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 – ADMINISTRATION

Division 1 – Aboriginal Heritage Council

14. Establishment of Aboriginal Heritage Council

- (1) The Aboriginal Heritage Council is established.
- (2) The Council is part of the State's resource management and planning system, the objectives of which are set out in Schedule 1 to the Planning Act.
- (3) The Council –
 - (a) is a body corporate with perpetual succession; and
 - (b) may have a seal; and
 - (c) may sue and be sued in its corporate name.
- (4) If the Council has a seal –
 - (a) it is to be kept and used as authorised by the Council; and
 - (b) 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.

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Part 2 – Administration

15. Membership of Council

- (1) The Council consists of not more than 9 members appointed by the Governor on the nomination of the Minister.
- (2) Each nominee is to be an Aboriginal person who –
 - (a) is resident in Tasmania; and
 - (b) has, in the Minister’s opinion, knowledge, experience or expertise relevant to the Council’s functions.
- (3) In nominating the members of the Council, the Minister is to ensure that the members nominated are broadly representative of the Tasmanian Aboriginal community and Tasmanian Aboriginal persons generally.
- (4) To ensure that the Council has a reasonable gender balance, there are to be no fewer than 2 members of each sex at any time.
- (5) The Minister is to appoint a member of the Council as its chairperson.
- (6) Schedule 1 has effect with respect to the membership of the Council.
- (7) Schedule 2 has effect with respect to the meetings of the Council.

16. Functions of Council

The Council has the following functions:

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- (a) to approve certain management plans;
- (b) to recommend to the Minister the variation of management plans approved by it;
- (c) to determine certain applications for Aboriginal heritage permits;
- (d) to advise the Minister generally or act as a Ministerial consultant on –
 - (i) Aboriginal heritage and its significance; and
 - (ii) the Aboriginal heritage impacts of land activities and other activities; and
 - (iii) public education and awareness regarding Aboriginal heritage; and
 - (iv) certain Aboriginal heritage permits; and
 - (v) certain management plans; and
 - (vi) the variation of certain management plans;
 - (vii) audit orders; and
 - (viii) protection orders; and
 - (ix) stop orders (including interim stop orders); and

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- (x) registration criteria for nominated Aboriginal heritage;
- (e) to assess and make recommendations to the Secretary on the registration of objects and sites as nominated Aboriginal heritage;
- (f) to make recommendations to the Minister on the need for audits and protection orders;
- (g) to make recommendations to the Minister on such other matters as this Act provides;
- (h) such other functions as it is given by this or any other Act.

17. Powers of Council

- (1) The Council has –
 - (a) power to do anything necessary or convenient to be done to perform its functions; and
 - (b) such other powers as it is given by this or other any other Act.
- (2) However, the Council may not acquire, hold or dispose of real property.
- (3) Except as provided by this Act or the regulations, the Council may not acquire, hold or dispose of personal property.

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- (4) Except as provided by this Act or the regulations, the Council may regulate its own proceedings.

18. Committees

- (1) The Council may establish such committees as it considers necessary or expedient to assist it in the discharge of its responsibilities or advising it on any matter relating to this Act.
- (2) Schedule 3 has effect with respect to the membership and meetings of committees.

Division 2 – Miscellaneous

19. Delegation by Minister

The Minister may delegate any of his or her responsibilities under this Act other than –

- (a) this power of delegation; and
- (b) the power to make nominations or appointments under section 15; and
- (c) the power to require, or determine applications for the approval of, management plans; and
- (d) the power to issue protection orders; and
- (e) the power to issue guidelines.

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20. 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 protection or management of Aboriginal heritage;
 - (c) the investigation and documentation of Aboriginal heritage;
 - (d) Aboriginal heritage assessments;
 - (e) matters prescribed by the regulations.
- (2) Without limiting the generality of subsection (1)(d), guidelines relating to Aboriginal heritage assessments may provide for –
 - (a) differing levels of assessment of Aboriginal heritage; and
 - (b) standards and methodologies for carrying out assessments of Aboriginal heritage; and
 - (c) consultation processes; and
 - (d) supervisory and reporting arrangements; and
 - (e) the engagement and use of Aboriginal heritage consultants, archaeologists and other relevant experts; and

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- (f) timetables for Aboriginal heritage assessments; and
 - (g) the form and content of Aboriginal heritage assessments.
- (3) The Minister may issue guidelines on –
- (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council.
- (4) Guidelines –
- (a) are to be written in plain language; and
 - (b) are to be as brief as possible consistent with their intended application; and
 - (c) are to follow a standard style and format; and
 - (d) may provide for any matter to be determined by the Minister, Council or Secretary; and
 - (e) may be issued so as to apply differently according to matters, limitations or restrictions, whether as to time circumstance or otherwise, specified in the guidelines; and
 - (f) may not impose fines or other penalties for failure to comply with them; and

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- (g) may not contain provisions that are repugnant to the other provisions of this Act or the regulations.
- (5) Guidelines may adopt, either wholly or in part and with or without modification, and either specifically or by reference, any codes, standards, other guidelines or other documents relevant to their subject matter, whether or not those codes, standards, other 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.
- (6) A reference in subsection (5) to codes, standards, other guidelines or other documents includes a reference to an amendment of those codes, standards, other 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.
- (7) The Minister may amend or revoke any guidelines on –
 - (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council.
- (8) Before issuing any guidelines, or amending or revoking any guidelines, the Minister –
 - (a) is to consult with the Council, if the Minister is proceeding on his or her own motion; and

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- (b) is to consult with such other persons as the Minister thinks fit having regard to the likely impact of the guidelines, the amendment or the revocation.
- (9) The Minister is to give notice in the *Gazette* of the issuance, amendment or revocation of any guidelines.
- (10) The Minister –
 - (a) may publish guidelines as he or she thinks fit; and
 - (b) is to ensure that the public has reasonable access to guidelines; and
 - (c) is to ensure that a member of the public can, on the payment of a reasonable fee determined by the Minister, purchase a copy of any guidelines.
- (11) A guideline issued, or the amendment or revocation of a guideline, takes effect on the day on which notice of the issuance, amendment or revocation is notified in the *Gazette* or on such later day as may be specified in that notice.

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Part 3 – Ownership and Protection of Aboriginal Heritage

**PART 3 – OWNERSHIP AND PROTECTION OF
ABORIGINAL HERITAGE**

Division 1 – Aboriginal human remains

**21. Duty of persons having Aboriginal human remains
at commencement of this section**

A person who has possession of any Aboriginal human remains immediately before the commencement of this section must –

- (a) notify the Aboriginal organisation approved by the Attorney-General under section 23(1) of the *Coroners Act 1995* of that possession as soon as practicable after the commencement of this section; and
- (b) hand those remains to that Aboriginal organisation –
 - (i) at the time and place; and
 - (ii) in the manner –
determined by that Aboriginal organisation.

Penalty: Fine not exceeding –

- (a) 50 penalty units for an individual; or
- (b) 100 penalty units for a body corporate.

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Division 2 – Aboriginal objects and Aboriginal sites

22. Duty of persons having Aboriginal objects at commencement of this section

- (1) A person who owns or has possession of an Aboriginal object, otherwise than as part of a public collection, immediately before the commencement of this section must –
 - (a) notify the Secretary, in writing, of that fact within 12 months after the commencement of this section; and
 - (b) take reasonable measures to protect the Aboriginal object.

Penalty: Fine not exceeding –

- (a) 50 penalty units for an individual; or
 - (b) 100 penalty units for a body corporate.
- (2) On receipt of a notice under subsection (1)(a), the Secretary is to enter the Aboriginal object in the Register.

23. Duty of persons finding Aboriginal objects or Aboriginal sites

- (1) This section applies if a person finds a site or object that the person knows, or reasonably believes, to be an Aboriginal object or Aboriginal site.

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- (2) The person must report the find to the Secretary unless the person reasonably believes that –
- (a) another person is reporting, or has reported, the find to the Secretary; or
 - (b) the Aboriginal object or Aboriginal site is registered.

Penalty: Fine not exceeding –

- (a) 50 penalty units for an individual; or
 - (b) 100 penalty units for a body corporate.
- (3) If an Aboriginal object or Aboriginal site is found in the course of carrying out any works at a place, the person who is in attendance at that place and in operational charge of the works at the relevant time is taken, for the purposes of this section, to have found the Aboriginal object or Aboriginal site.

24. Disclosing locations of unregistered Aboriginal objects or Aboriginal sites

- (1) This section applies if an authorised officer reasonably believes that –
- (a) a person knows where an unregistered Aboriginal object or unregistered Aboriginal site is located; and
 - (b) unless the person discloses that knowledge, the Aboriginal object or

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Aboriginal site will not be able to be registered.

- (2) The authorised officer, either orally or by notice, may require the person to disclose the location of the Aboriginal object or Aboriginal site.
- (3) The person must comply with the authorised officer's requirement.

Penalty: Fine not exceeding 20 penalty units.

- (4) It is a defence in proceedings for an offence under subsection (3) if the defendant establishes that, at the relevant time –
 - (a) he or she did not know the location of the relevant Aboriginal object or Aboriginal site; or
 - (b) the relevant Aboriginal object or Aboriginal site was registered; or
 - (c) information disclosing the location of the relevant Aboriginal object or Aboriginal site was already in the public domain; or
 - (d) the relevant authorised officer already knew the location of the relevant Aboriginal object or Aboriginal site; or
 - (e) the relevant object or site was not an Aboriginal object or Aboriginal site.

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Part 3 – Ownership and Protection of Aboriginal Heritage

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

- (1) This section applies to an Aboriginal object or Aboriginal site if its finding or location is reported or disclosed under section 23 or 24.
- (2) The Minister, after consulting the Council and by agreement with the person in possession of the Aboriginal object or the owner of the land comprising or containing the Aboriginal site, may take such action as the Minister considers necessary or expedient for the –
 - (a) protection; or
 - (b) management; or
 - (c) exhibition; or
 - (d) scientific or other study or investigation –of the Aboriginal object or Aboriginal site.
- (3) The Secretary is to enter the Aboriginal object or Aboriginal site in the Register.

Division 3 – Land and property matters

26. Notification of Aboriginal heritage

- (1) This section applies if –
 - (a) there is registered Aboriginal heritage on any land; and

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- (b) the Secretary reasonably believes that there may be similar, though unregistered, Aboriginal heritage on any adjoining private land.
- (2) The Secretary may notify the owner of the adjoining private land of –
 - (a) the presence of the Aboriginal heritage; and
 - (b) the Secretary’s belief that there may be similar, though unregistered, Aboriginal heritage on the adjoining private land.

27. Continued enjoyment of private property rights

- (1) This section applies if there is an Aboriginal object or Aboriginal site on the surface of any land and –
 - (a) under the tenure on which the land is held, the owner or occupier of the land is entitled to the use and enjoyment of the surface of the land; or
 - (b) a person is otherwise entitled to the use and enjoyment of the surface of the land.
- (2) Despite the presence of the Aboriginal object or Aboriginal site, the owner, occupier or other person is entitled to the use and enjoyment of the land to the extent that the owner, occupier or person does not contravene section 29 or 30.

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28. Acquisition of Aboriginal sites

- (1) The Minister may acquire a registered Aboriginal site for the purposes of this Act if he or she reasonably believes that –
 - (a) the site is of exceptional significance to the Aboriginal people of Tasmania; and
 - (b) the acquisition is the only way of protecting or managing the Aboriginal site.
- (2) The *Land Acquisition Act 1993* applies to the acquisition of the Aboriginal site.
- (3) However, a person is not entitled to additional compensation under the *Land Acquisition Act 1993* –
 - (a) for the value of any Aboriginal heritage on or under the surface of the Aboriginal site acquired; or
 - (b) specifically relating to any additional value of the Aboriginal site acquired arising from the fact that it is an Aboriginal site.

Division 4 – Protection of Aboriginal heritage

29. Acts that harm Aboriginal heritage

- (1) A person must not harm any Aboriginal heritage if the person knows that it is Aboriginal heritage.

Penalty: Fine not exceeding –

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- (a) 2 000 penalty units for an individual; or
 - (b) 10 000 penalty units for a body corporate.
- (2) A person must not harm any Aboriginal heritage if the person is reckless as to whether it is Aboriginal heritage.

Penalty: Fine not exceeding –

 - (a) 1 300 penalty units for an individual; or
 - (b) 6 600 penalty units for a body corporate.
- (3) A person must not harm any Aboriginal heritage if the person is negligent as to whether it is Aboriginal heritage.

Penalty: Fine not exceeding –

 - (a) 650 penalty units for an individual; or
 - (b) 3 300 penalty units for a body corporate.
- (4) For the purposes of subsections (1), (2) and (3), it is immaterial whether the Aboriginal heritage is registered or unregistered.
- (5) However, subsections (1), (2) and (3) do not apply if the relevant harmful act –

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- (a) is sanctioned by an Aboriginal heritage permit, approved management plan or external regulatory approval; or
- (b) is necessarily incidental to the preparation of a recognised management plan, including the associated Aboriginal heritage assessment; or
- (c) is carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or
- (d) is, otherwise, a necessary and proportionate response to an actual or impending emergency that threatens human life or property or threatens to injure any person; or
- (e) is a necessary and proportionate response, in the circumstances prescribed by the regulations, to a threat of harm to Aboriginal heritage; or
- (f) occurs in the course of a land activity done in accordance with the guidelines, including –
 - (i) any code, standards or guidelines; or
 - (ii) any part of a code, standards or guidelines –
adopted, or adopted as modified, by the guidelines.

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30. Acts likely to harm Aboriginal heritage

(1) A person is guilty of an offence if –

- (a) the person does an act that is likely to harm any Aboriginal heritage; and
- (b) the person knows, when doing the act, that the act is likely to harm Aboriginal heritage.

Penalty: Fine not exceeding –

- (a) 1 300 penalty units for an individual; or
 - (b) 6 600 penalty units for a body corporate.
- (2) It is immaterial, for the purposes of subsection (1), whether the Aboriginal heritage is registered or unregistered.
- (3) However, subsection (1) does not apply if the harmful act –
- (a) is sanctioned by an Aboriginal heritage permit, approved management plan or external regulatory approval; or
 - (b) is necessarily incidental to the preparation of a recognised management plan, including the associated Aboriginal heritage assessment; or
 - (c) is carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or

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

PART 4 – ABORIGINAL HERITAGE PERMITS

31. Certain activities require Aboriginal heritage permit

- (1) A person must not carry out a restricted activity unless the person holds an Aboriginal heritage permit authorising the person to carry out the restricted activity.

Penalty: Fine not exceeding –

- (a) 125 penalty units for an individual; or
 - (b) 250 penalty units for a body corporate.
- (2) However, subsection (1) does not apply if the restricted activity is –
- (a) an exempt land activity; or
 - (b) necessarily incidental to the preparation of a recognised management plan; or
 - (c) sanctioned by an approved management plan or external regulatory approval; or
 - (d) carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or
 - (e) otherwise, a necessary and proportionate response to an actual or impending emergency that threatens human life or

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property or threatens to injure any person; or

(f) a land activity referred to in paragraph (d), (e) or (f) of the definition of *restricted activity* in section 4(1) and the person, before carrying out the restricted activity, has demonstrated to the satisfaction of the Minister, in accordance with the relevant regulatory requirements, that –

(i) the affected area has sustained serious ground disturbance; and

(ii) the serious ground disturbance is, in extent, total or widespread; and

(iii) the serious ground disturbance was sustained before the restricted activity commenced; and

(iv) the serious ground disturbance was not caused to gain the benefit of this exemption.

(3) For the purposes of determining whether or not he or she is satisfied of the matters specified in subsection (2)(f), the Minister may consult with the Council.

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Part 4 – Aboriginal Heritage Permits

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32. Applications for Aboriginal heritage permits

- (1) An application for an Aboriginal heritage permit is to be made to, and lodged with, the issuing authority in accordance with section 135.
- (2) In considering the application, the issuing authority is to consult –
 - (a) in the case of the Council, any Aboriginal persons known by it to have a particular interest in or knowledge of the relevant Aboriginal heritage and such other persons as it thinks fit in the circumstances; and
 - (b) in the case of any other issuing authority, the Council and such other persons as the issuing authority thinks fit in the circumstances.
- (3) In considering the application, the issuing authority may –
 - (a) carry out such consultations and inquiries as it thinks fit in the circumstances; and
 - (b) if the restricted activity would affect, or be carried out on, any land –
 - (i) require the applicant to carry out an Aboriginal heritage assessment for the affected area for the restricted activity, being an assessment of such level as the issuing authority, having regard to the relevant regulatory

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requirements, thinks fit in the circumstances; and

- (ii) consult relevant land owners; and
- (iii) with the permission of relevant land owners, inspect or arrange for the inspection of any land in or adjoining the affected area.

33. Determination of applications for Aboriginal heritage permits

- (1) After considering an application for an Aboriginal heritage permit made under section 32, the issuing authority may –
 - (a) approve the application; or
 - (b) refuse to approve the application.
- (2) However, the application is incapable of being approved if it concerns –
 - (a) a restricted activity involving, or likely to involve, the destruction, disturbance or relocation of Aboriginal human remains; or
 - (b) a restricted activity for which a management plan is required under Part 5; or
 - (c) a restricted activity for which a recognised management plan that is a voluntary management plan is being prepared; or

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- (d) a restricted activity for which an external regulatory approval is required.
- (3) In making its determination under subsection (1), the issuing authority is to have regard to –
- (a) the nature and significance of the relevant Aboriginal heritage; and
 - (b) the nature of the restricted activity and its known and likely Aboriginal heritage impacts; and
 - (c) the extent to which any harm to the relevant Aboriginal heritage could be minimised; and
 - (d) the representations made and information obtained during any consultations conducted pursuant to section 32(2) or (3); and
 - (e) any relevant Aboriginal heritage assessment; and
 - (f) the relevant regulatory requirements; and
 - (g) such other factors as the issuing authority thinks fit in the circumstances.

Note By virtue of section 10, the issuing authority is also required to take into account the objectives of the resource management and planning system, and the planning process, set out in Schedule 1 to the Planning Act.

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- (4) Subject to section 135(3), the application is to be determined within 42 days after the day on which it is lodged.
- (5) If the issuing authority is the Council and it fails to determine the application within the 42-day period referred to in subsection (4) –
 - (a) the applicant may request the Minister, in writing, to determine the application; and
 - (b) the Minister, on receipt of that request, may determine the application; and
 - (c) if the Minister proceeds to determine the application –
 - (i) the Minister is to notify the Council of that fact; and
 - (ii) the Minister is taken to be the issuing authority and this section applies to the Minister as the issuing authority; and
 - (iii) the Council is not entitled to take any further action in relation to the application.
- (6) If the issuing authority approves the application –
 - (a) the issuing authority is to notify the applicant of the approval; and
 - (b) the issuing authority, if it is the Minister or a person prescribed in the regulations,

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is to notify the Council of the approval;
and

- (c) the issuing authority may give such other private and public notices in the matter as it thinks fit in the circumstances.

(7) If the issuing authority refuses to approve the application, the issuing authority –

- (a) is to notify the applicant of the refusal, the reasons for the refusal and the applicant's appeal rights; and
- (b) if the issuing authority is the Minister or a person prescribed in the regulations, is to notify the Council of the refusal.

(8) If –

- (a) the issuing authority consults the Council in relation to the application pursuant to section 32(2); and
- (b) the Council submits advice; and
- (c) the issuing authority does not follow that advice in determining the application –

the issuing authority, in the notification given to the Council under subsection (6) or (7), is to state the reasons for not following the advice.

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34. Issue and registration of Aboriginal heritage permits

- (1) If an issuing authority approves an application for an Aboriginal heritage permit under section 33(1)(a), the issuing authority is to issue the Aboriginal heritage permit to the applicant.
- (2) On issuing an Aboriginal heritage permit –
 - (a) the issuing authority is to give an appropriate notification to the Secretary for registration purposes; and
 - (b) on receipt of the notification, the Secretary is to update the Register accordingly.

35. Nature of Aboriginal heritage permits

An Aboriginal heritage permit –

- (a) is to be in a form approved by the issuing authority; and
- (b) takes effect when it is issued or on such later day as the issuing authority specifies in the permit; and
- (c) has effect for such period not exceeding 2 years as the issuing authority specifies in the permit; and
- (d) may, on the application of the holder of the permit made and lodged in accordance with section 135, be extended in effect by the issuing authority, once,

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for a period not exceeding that for which it was originally issued; and

- (e) by notice to the issuing authority, may be surrendered at any time; and
- (f) with the consent of the issuing authority, may be transferred to another person; and
- (g) is not transferable to another restricted activity.

36. Aboriginal heritage permit conditions

- (1) An Aboriginal heritage permit may be issued on such conditions as the issuing authority determines.
- (2) The conditions may be set out in the Aboriginal heritage permit itself or in an attachment to the Aboriginal heritage permit.
- (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) 125 penalty units for an individual; or
- (b) 250 penalty units for a body corporate.

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37. Variations of Aboriginal heritage permits

- (1) The issuing authority may vary an Aboriginal heritage permit at any time on –
 - (a) the issuing authority’s own motion; or
 - (b) the application of the holder of the Aboriginal heritage permit made and lodged in accordance with section 135.
- (2) In considering whether to vary an Aboriginal heritage permit, the issuing authority is to consult –
 - (a) in the case of the Council, any Aboriginal persons known by it to have a particular interest in or knowledge of the relevant Aboriginal heritage and such other persons as it thinks fit in the circumstances; and
 - (b) in the case of the Minister or a person prescribed in the regulations, such persons (including the Council) as the issuing authority thinks fit in the circumstances.
- (3) If the issuing authority varies an Aboriginal heritage permit on its own motion, the issuing authority is to notify the holder of the Aboriginal heritage permit of the variation, the reasons for the variation, when the variation takes effect and, if the variation makes the Aboriginal heritage permit more restrictive, the holder’s appeal rights.

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- (4) If the issuing authority varies an Aboriginal heritage permit on the application of the holder of the Aboriginal heritage permit, the issuing authority is to notify the holder of the variation and when the variation takes effect.
- (5) If, on receipt of the application of the holder of the Aboriginal heritage permit, the issuing authority refuses to vary the Aboriginal heritage permit, the issuing authority is to notify the holder of the refusal, the reasons for the refusal and the holder's appeal rights.
- (6) The variation of an Aboriginal heritage permit takes effect as soon as the holder of the permit is notified of it or at such later time as the issuing authority specifies in the notice.
- (7) On varying an Aboriginal heritage permit, the issuing authority may issue the holder of the permit with fresh permit documentation incorporating the variations.
- (8) If an Aboriginal heritage permit is varied –
 - (a) the issuing authority is to give an appropriate notification to the Secretary; and
 - (b) on receipt of the notification, the Secretary is to update the Register accordingly.

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38. Cancellation and suspension of Aboriginal heritage permits

- (1) The issuing authority may cancel or suspend an Aboriginal heritage permit if it reasonably believes that –
- (a) the holder of the Aboriginal heritage permit no longer requires it or can no longer demonstrate a legitimate need for it; or
 - (b) the holder of the Aboriginal heritage permit has contravened the conditions of the permit in a material way; or
 - (c) the holder of the Aboriginal heritage permit has contravened the provisions of this Act in a material way; or
 - (d) the relevant restricted activity is having unforeseen Aboriginal heritage impacts; or
 - (e) the holder of the Aboriginal heritage permit has given the issuing authority false or misleading information in connection with the permit; or
 - (f) circumstances prescribed by the regulations exist; or
 - (g) the cancellation or suspension is merited on other grounds.
- (2) The cancellation or suspension takes effect as soon as the holder of the Aboriginal heritage

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permit is notified of it by the issuing authority, or at such later time as the issuing authority, by the notice, specifies.

- (3) The notice of cancellation or suspension 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, the period of suspension; and
 - (d) the appeal rights of the holder of the Aboriginal heritage permit.
- (4) If an Aboriginal heritage permit is suspended –
 - (a) it is, except for the purposes of conferring an extension, of no effect during the period of suspension; but
 - (b) the issuing authority, by notice to the holder of the permit, may revoke the suspension at any time.
- (5) If an Aboriginal heritage permit is cancelled or suspended –
 - (a) the issuing authority is to give an appropriate notification to the Secretary; and

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- (b) on receipt of the notification, the Secretary is to update the Register accordingly.
- (6) A person whose Aboriginal heritage permit has been cancelled must return it to the issuing authority within 14 days after the day on which the person is notified of the cancellation by the issuing authority.

Penalty: Fine not exceeding 10 penalty units.

39. Replacement of Aboriginal heritage permits

The issuing authority, on receipt of the prescribed fee, if any, may issue the holder of an Aboriginal heritage permit with a replacement Aboriginal heritage permit if satisfied that the original has been –

- (a) stolen, lost or destroyed; or
- (b) damaged to a degree that renders it unsuitable for use.

40. Extent of issuing authority powers

- (1) To avoid doubt, an issuing authority is not entitled to take any action in respect of –
 - (a) an Aboriginal heritage permit issued by a different issuing authority; or
 - (b) an application for an Aboriginal heritage permit required to be issued by a different issuing authority.

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- (2) An action taken by an issuing authority in contravention of subsection (1) is void.

41. Appeal rights

- (1) In this section –

adverse administrative decision means a decision of an issuing authority to –

- (a) refuse to approve an application for an Aboriginal heritage permit; or
- (b) impose conditions or particular conditions on an Aboriginal heritage permit; or
- (c) issue an Aboriginal heritage permit for a term shorter than that applied for; or
- (d) refuse to extend the term of an Aboriginal heritage permit; or
- (e) refuse to approve an application to vary an Aboriginal heritage permit; or
- (f) vary an Aboriginal heritage permit on the issuing authority's own motion so as to make it more restrictive; or
- (g) cancel or suspend an Aboriginal heritage permit;

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appeal includes, in its application to the Magistrates Court (Administrative Appeals Division), an application for review;

relevant tribunal means –

- (a) for a decision made by the Council, the Magistrates Court (Administrative Appeals Division); or
 - (b) for a decision made by the Minister, RMPAT; or
 - (c) for a decision made by a person prescribed by the regulations, the prescribed tribunal.
- (2) A person who is aggrieved by an adverse administrative decision made in respect of the person under this Part may appeal that decision.
- (3) The appeal is to be –
- (a) made to the relevant tribunal; and
 - (b) instituted within 14 days after the day on which the decision-maker notifies the person of the adverse administrative decision.
- (4) The relevant tribunal is to hear and determine the appeal in accordance with –
- (a) in the case of RMPAT, the *Resource Management and Planning Appeal Tribunal Act 1993*; and

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- (b) in the case of the Magistrates Court (Administrative Appeals Division), the *Magistrates Court (Civil Division) Act 1992*.

PART 5 – MANAGEMENT PLANS

42. Mandatory management plans

(1) In this section –

commence, in relation to a land activity, means to commence, in the affected area and in accordance with the relevant regulatory requirements, any physical works for the land activity other than –

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

(2) A management plan is required for a proposed land activity if –

- (a) the proposed land activity is a high-impact land activity; or
- (b) the regulations impose that requirement;
or

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- (c) the Minister, by notice to the proponent, imposes that requirement.
- (3) However, subsection (2) does not apply to a proposed land activity that –
- (a) is an exempt land activity; or
 - (b) is carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or
 - (c) is, otherwise, a necessary and proportionate response to an actual or impending emergency that threatens human life or property or threatens to injure any person.
- (4) If a management plan is required for a proposed land activity, a person must not commence or carry out the land activity unless –
- (a) a management plan for the land activity has been approved by the Minister under section 52; or
 - (b) a management plan for the land activity has been approved by the Council under section 49(8); or
 - (c) an exemption under section 43 applies to the land activity.

Penalty: Fine not exceeding –

- (a) 250 penalty units for an individual; or

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(b) 500 penalty units for a body corporate.

(5) A requirement under subsection (2)(c) may be imposed on –

(a) the Minister’s own motion; or

(b) the written recommendation of the Council.

43. Exemption from mandatory management plan requirements

(1) A proposed land activity that would otherwise require a management plan by virtue of section 42(2)(a) is exempt from that requirement if the regulations provide that a management plan is not required for the proposed land activity.

(2) A proposed land activity that would otherwise require a management plan by virtue of section 42(2)(a), (b) or (c) is exempt from that requirement if –

(a) the proponent has demonstrated to the satisfaction of the Minister, in accordance with the relevant regulatory requirements, that –

(i) the affected area has sustained serious ground disturbance; and

(ii) the serious ground disturbance is, in extent, total or widespread; and

- (iii) the serious ground disturbance was not caused to gain the benefit of this exemption; or
 - (b) the proponent has demonstrated to the satisfaction of the Minister, in accordance with the relevant regulatory requirements, that in the circumstances there is no need for a management plan.
- (3) For the purposes of determining whether or not he or she is satisfied of the matters specified in subsection (2)(a) and (b), the Minister may consult with the Council.

44. Voluntary management plans

The proponent may prepare a management plan for a proposed land activity even though there is no requirement to do so.

45. Who may prepare management plans?

- (1) A management plan may be prepared by –
 - (a) the proponent; or
 - (b) an Aboriginal heritage consultant or other person on the proponent's behalf.
- (2) However, if subsection (1)(b) applies, the proponent remains responsible for the discharge of the various requirements of this Part relating to the preparation of the management plan.

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- (3) If, while a management plan is being prepared, there is a change in the identity of the proponent for any reason but there is no change in the nature or scale of the relevant land activity, the new proponent –
- (a) may proceed with the preparation of the plan; and
 - (b) is not required, in preparing the plan, to repeat any process completed by the former proponent; and
 - (c) may lodge the plan for approval once it has been prepared.

46. Notification of proposed management plans

- (1) Before commencing the preparation of a management plan, the proponent must notify the following persons of the proponent's intention to prepare the plan:
- (a) the Minister;
 - (b) the Council;
 - (c) if the relevant land activity requires a statutory authorisation, the relevant decision-maker.
- (2) The notification is to –
- (a) specify the proponent's name and contact details; and

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- (b) specify whether it is a mandatory management plan or voluntary management plan; and
 - (c) describe the relevant land activity; and
 - (d) identify the affected area; and
 - (e) specify the proposed methodology for the associated Aboriginal heritage assessment; and
 - (f) specify a day by which, or a period within which, the plan is expected to be prepared.
- (3) The Minister is to give the proponent written acknowledgement of the notification under subsection (1)(a) within 14 days after it is given.

47. Preparation requirements for management plans

- (1) In preparing a management plan, the proponent must carry out an Aboriginal heritage assessment in respect of the affected area.
- (2) The proponent must ensure that the management plan is prepared, and that the Aboriginal heritage assessment is carried out, in accordance with –
 - (a) the requirements of this Part; and
 - (b) the relevant regulatory requirements.
- (3) The management plan is to be prepared within –

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- (a) 12 months after the day on which the Minister is given notification under section 46(1)(a); or
- (b) such longer period as the Minister, on one occasion during that 12-month period, may allow the proponent on an application made and lodged under section 135.

48. Council to evaluate proposed management plans

- (1) The Council elects to evaluate each management plan of which it has been given notification under section 46(1)(b) if, within 30 days after the day on which it is given the notification, it does not notify the proponent and the Minister that it has elected not to evaluate the plan.
- (2) If the Council elects not to evaluate a management plan, the proponent may proceed with its preparation without further reference to the Council.

49. Requirements for Council evaluations

- (1) In this section –

preliminary consultation period means the 45-day period commencing on the day on which the proponent gives the Council notice under section 46(1)(b);

supplementary consultation period means –

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- (a) the 45-day period commencing on the day on which the proponent gives the draft management plan to the Council under subsection (6)(a); or
- (b) if a longer period is agreed (on one occasion only) by the proponent and the Council during that 45-day period, that longer period.
- (2) This section applies if, under section 48, the Council elects to evaluate a management plan.
- (3) The proponent –
- (a) is to make all reasonable efforts to consult the Council –
- (i) with regard to the management plan during its preparation; and
- (ii) with regard to the associated Aboriginal heritage assessment before commencing it; and
- (b) in carrying out the associated Aboriginal heritage assessment and preparing the management plan, is to take into account any representations made by the Council.
- (4) The Council is to make all reasonable efforts to consult and cooperate with the proponent in the carrying out of the associated Aboriginal heritage assessment and the preparation of the management plan.

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- (5) However, if the Council fails to make any representations under subsection (3) within the preliminary consultation period, the proponent may proceed with preparation of the management plan and the associated Aboriginal heritage assessment.
- (6) Once the proponent has a draft of the management plan –
 - (a) the proponent is to give a copy of the draft to the Council; and
 - (b) the proponent and Council must negotiate, and make every reasonable effort to reach agreement, on the matters specified in subsection (7)(a) and (b) within the supplementary consultation period.
- (7) In determining whether to approve the management plan, the Council is to have regard to –
 - (a) the proposed Aboriginal heritage measures, in particular –
 - (i) whether the management plan provides for the relevant land activity to be carried out in a way that avoids or (if that is not possible) minimises harm to Aboriginal heritage; and
 - (ii) whether the management plan makes satisfactory provision for the protection and management

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of any Aboriginal heritage likely to be impacted by the relevant land activity, both during the carrying out and after the cessation of the relevant land activity; and

- (b) the measures in the management plan for managing disputes, delays or other contingencies that may arise in respect of the relevant land activity or the plan itself.
- (8) If the proponent and the Council reach agreement on the matters specified in subsection (7)(a) and (b) within the supplementary consultation period, the Council is to approve the management plan to that effect.
- (9) Despite subsection (8), the management plan is not capable of being approved if –
- (a) it has not been prepared substantially in accordance with the procedural requirements of this Part and the relevant regulatory requirements; or
 - (b) it contains any measures that contravene section 50(2).
- (10) The Council approval is to be put in a separate instrument to the draft management plan and the Council is to provide a copy of it to the proponent.
- (11) While the management plan is being prepared, the Council, without limiting its ability to

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negotiate and reach agreement as required under subsection (6), may do any one or more of the following:

- (a) consult the proponent about the associated Aboriginal heritage assessment;
 - (b) consult the proponent about the Aboriginal heritage measures, and other measures, to be included in the management plan;
 - (c) consult persons having an interest in the affected area or adjoining land or in relevant Aboriginal heritage;
 - (d) consult relevant experts;
 - (e) consult such other persons and organisations as the Council thinks fit in the circumstances.
- (12) If there is a dispute between the Council and proponent that could substantially delay the preparation of the management plan, either party may refer the dispute to RMPAT for mediation.
- (13) RMPAT may mediate a dispute referred to it under subsection (12).
- (14) The referral of a dispute to RMPAT under subsection (12) does not extend the supplementary consultation period unless the Council and proponent agree, in writing, to both the extension and the period of the extension.

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- (15) If the Council and proponent fail to reach agreement on any matter specified in subsection (7)(a) and (b) within the supplementary consultation period or, if applicable, an extension of that period agreed under subsection (14), the proponent may proceed with the preparation of the management plan without further reference to the Council.

50. Form and content of management plans

- (1) A management plan is to –
- (a) set out the results of the associated Aboriginal heritage assessment; and
 - (b) set out the Aboriginal heritage measures of the plan; and
 - (c) comply with the relevant regulatory requirements.
- (2) A management plan is not to contain any provision that purports to require an owner of land in the affected area to grant any person permanent access to that land.

51. Applications for approval of management plans by Minister

- (1) If –
- (a) the Council elects not to evaluate a management plan; or

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- (b) although the Council had elected to evaluate a management plan, the proponent is proceeding with preparation of the management plan without further reference to the Council following a failure to reach agreement with the Council as specified in section 49(15) –

the proponent may apply to the Minister for approval of the management plan.

- (2) The application is to be made and lodged in accordance with section 135 and contain –
 - (a) a copy of the management plan; and
 - (b) the associated Aboriginal heritage assessment and any documentation prepared or obtained in or for the purposes of that assessment.
- (3) In considering the application, the Minister –
 - (a) is to consult the Council; and
 - (b) may consult such other persons as the Minister thinks fit in the circumstances; and
 - (c) with the permission of relevant owners, may inspect or arrange for the inspection of any land in or adjoining the affected area.

52. Determination of applications for approval of management plans

- (1) This section applies if the Minister receives an application for the approval of a management plan.
- (2) After considering an application for the approval of a management plan made under section 51, the Minister may –
 - (a) approve the management plan; or
 - (b) refuse to approve the management plan.
- (3) However, the management plan is not capable of being approved if –
 - (a) it has not been prepared substantially in accordance with the procedural requirements of this Part and the relevant regulatory requirements; or
 - (b) it contains any measures that contravene section 50(2).
- (4) In making the determination under subsection (2), the Minister is to have regard to –
 - (a) the objects of this Act; and
 - (b) the results of the Aboriginal heritage assessment of the affected area carried out pursuant to section 47; and
 - (c) if applicable, representations made and information obtained from consultations

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- carried out pursuant to section 51(3)(a) and (b); and
- (d) if applicable, the results of inspections carried out pursuant to section 51(3)(c); and
- (e) the proposed Aboriginal heritage measures, in particular –
- (i) whether the management plan provides for the relevant land activity to be carried out in a way that avoids or (if that is not possible) minimises harm to Aboriginal heritage; and
 - (ii) whether the management plan makes satisfactory provision for the protection and management of any Aboriginal heritage likely to be impacted by the relevant land activity, both during the carrying out and after the cessation of the relevant land activity; and
- (f) the measures in the management plan for managing disputes, delays or other contingencies that may arise in respect of the relevant land activity or the plan itself; and
- (g) such other matters as the Minister thinks fit in the circumstances.

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Note By virtue of section 10, the Minister is also required to take into account the objectives of the resource management and planning system, and the planning process, set out in Schedule 1 to the Planning Act.

- (5) The Minister is to make the determination under subsection (2) within 30 days after the day on which the application for the approval is lodged.
- (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 of the refusal, the reasons for the refusal and the proponent’s appeal rights; and
 - (b) notify the Council of the refusal.
- (8) If –
 - (a) the Minister consults the Council pursuant to section 51(3); and
 - (b) the Council submits advice; and
 - (c) the Minister does not follow that advice in making a determination to approve or refuse to approve the management plan –

the Minister, in the notification given to the Council under subsection (6) or (7), is to state the reasons for not following the advice.

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53. Registration, &c., of management plans

- (1) If the Minister or the Council approves a management plan, the Minister or Council is to –
 - (a) give an appropriate notification to the Secretary for registration purposes; and
 - (b) give the Secretary a copy of the plan.
- (2) On receipt of the notification, the Secretary is to update the Register accordingly.

54. Commencement of management plans

A management plan takes effect when the Minister or Council approves it or on such later day as the Minister or Council specifies in the approval.

55. Implementation of management plans

- (1) In this section –

effective management plan means an approved management plan that is in effect;

take, in relation to an action, includes omitting to take an action.
- (2) The proponent for an effective management plan must ensure that the Aboriginal heritage measures of the plan are implemented in accordance with the plan.

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- (3) A person must not, in carrying out the relevant land activity for a management plan –
- (a) take an action that contravenes or renders nugatory an Aboriginal heritage measure of the plan; or
 - (b) cause or allow another person to take an action that contravenes or renders nugatory an Aboriginal heritage measure of the plan.

56. Variation of management plans

- (1) The Minister may vary a management plan at any time.
- (2) The variation may be effected on –
 - (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council if the management plan was approved by the Council under section 49(8); or
 - (c) the application of the proponent made and lodged in accordance with section 135.
- (3) Without limiting what may comprise a variation, a variation may comprise a change of proponent.
- (4) In considering whether to vary a management plan, the Minister is to consult such persons (including the Council) as the Minister thinks fit in the circumstances.

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- (5) If the Minister varies a management plan on his or her own motion or on the recommendation of the Council, the Minister is to notify –
 - (a) the Council of the variation; and
 - (b) the proponent of the variation, the reasons for the variation, when the variation takes effect and, if the variation makes the management plan more restrictive, the proponent's appeal rights.
- (6) If the Minister varies a management plan on the application of the proponent, the Minister is to notify the Council, that proponent and, in the case of a variation of proponent, the new proponent of the variation and when the variation takes effect.
- (7) If, on receipt of the recommendation of the Council, the Minister refuses to vary a management plan, the Minister is to notify the Council of the refusal and the reasons for the refusal.
- (8) If, on receipt of the application of the proponent, the Minister refuses to vary a management plan, the Minister is to notify the proponent and, in the case of a variation of proponent, the proposed new proponent of the refusal, the reasons for the refusal and the first-mentioned proponent's appeal rights.
- (9) The variation of a management plan takes effect 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

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on such later day as the Minister specifies in the notice.

- (10) If a management plan is varied –
- (a) the Minister is to give an appropriate notification to the Secretary for registration purposes; and
 - (b) on receipt of the notification, the Secretary is to update the Register accordingly.

57. Cessation of management plans, &c.

- (1) An approval of a management plan is valid only for and in respect of –
- (a) the proponent specified in the plan; and
 - (b) the relevant land activity.
- (2) The approval for the management plan and the management plan cease to have effect –
- (a) when the proponent completes the relevant land activity and all of the Aboriginal heritage measures of the plan are fully implemented; or
 - (b) if the relevant land activity is not commenced within –
 - (i) the period of 3 years after the day on which the plan is approved; or

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(ii) such further period as the Minister, on one occasion during that 3-year period, may allow on the application of the proponent made and lodged under section 135 –

when that 3-year period or further period expires; or

(c) if the proponent commences but for any reason abandons or is unable to complete the relevant land activity or fully implement all Aboriginal heritage measures; or

(d) if, before the relevant land activity is completed and all Aboriginal heritage measures are fully implemented, the proponent (in the case of an individual) –

(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, before the relevant land activity is completed and all Aboriginal heritage measures are implemented, the proponent (in the case of a corporation), becomes

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subject to external administration under the Corporations Act; or

- (f) if the Minister, under subsection (3), revokes the approval, on the day specified in that revocation.
- (3) The Minister, by notice provided to the proponent for a management plan, may revoke the approval of that management plan if satisfied that the proponent has contravened section 55(2) or (3).
- (4) Before revoking the approval for a management plan, the Minister is to allow the proponent to make submissions in relation to the matter in the manner and within the time determined by the Minister.

58. Minister to notify external regulators if management plan required

- (1) This section applies if –
 - (a) pursuant to section 42(2)(c), the Minister requires a management plan for a proposed land activity; and
 - (b) the proposed land activity also needs an external regulatory approval.
- (2) On notifying the proponent of the management plan requirement, the Minister is to notify the external regulator of –
 - (a) the imposition, and date, of that requirement; and

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- (b) the proposed land activity; and
- (c) the location of the affected area; and
- (d) the identity of the proponent; and
- (e) such other particulars as the Minister thinks fit in the circumstances.

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

- (1) This section applies if –
 - (a) under section 42(2), a management plan is required for a proposed land activity or, under section 44, a voluntary management plan is being prepared for a proposed land activity; and
 - (b) the proposed land activity also needs a statutory authorisation.
- (2) If and when a management plan is approved for the proposed land activity, the proponent must give a copy of it to the relevant decision-maker for the statutory authorisation.
- (3) The relevant decision-maker must not confer the statutory authorisation for the proposed land activity unless a management plan has been approved for the proposed land activity.

Note This subsection does not prevent the proponent from applying for the statutory authorisation before, or at the same time as, applying for approval of the management plan.

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- (4) The relevant decision-maker must not confer the statutory authorisation for the proposed land activity if it would be inconsistent with the approved management plan.
- (5) If the relevant decision-maker is required to make the decision on whether to confer the statutory authorisation within a certain period, that period does not commence until the relevant decision-maker receives the copy of the approved management plan.
- (6) Subsection (5) does not affect any period for making a decision that is preliminary to the decision on whether to confer the statutory authorisation.
- (7) This section prevails over any contrary provision of another Act.

60. Discontinuation of management plan preparations

- (1) In this section –

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

discontinue, in relation to the preparation of a management plan, does not include the discontinuation of the preparation of the plan by a proponent if another person agrees to be the proponent for the plan and continue with its preparation.

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(2) If a proponent, for any reason, decides to discontinue the preparation of a management plan, the proponent must, within 14 days after making the decision –

- (a) notify the Minister of the decision; and
- (b) give all of the associated documents relating to the preparation of the plan, or copies of those documents, to the Minister.

Penalty: Fine not exceeding 20 penalty units.

61. Appeal rights

(1) In this section –

adverse administrative decision means –

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

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- (2) A person who is aggrieved by an adverse administrative decision made in respect of the person under this Part may appeal that decision.
- (3) The appeal is to be –
 - (a) made to RMPAT; and
 - (b) lodged within 14 days after the day on which the decision-maker notifies the person of the adverse administrative decision.
- (4) RMPAT is to hear and determine the appeal in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.

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62. Application of Part

This Part –

- (a) applies if a person proposes to carry out, or carries out, a regulated land activity and a mandatory management plan is not required in relation to that regulated land activity; but
- (b) does not apply if the person has an approved voluntary management plan in relation to that regulated land activity.

63. Application of Planning Act expressions

Unless the contrary intention appears in this Part, expressions that are defined in the Planning Act and used in this Part have, as they pertain to that Act, and apart from the expression “works”, the same meaning in this Part as they have in that Act.

64. Application of Planning Act, &c., to regulated land activities is subject to this Part

The provisions of this Part prevail, to the extent of any inconsistency, over the provisions of –

- (a) the Planning Act and any planning scheme or special planning order, or planning directive, in force under that Act; and

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- (b) the Water Management Act and any dam permit in force under that Act.

65. Legal status of regulated land activities for Planning Act, &c.

- (1) This section applies to a regulated land activity for which an external regulatory approval under the Planning Act is required.
- (2) For all purposes –
 - (a) a regulated land activity is taken to be a development under the Planning Act; and
 - (b) the relevant planning scheme or relevant special planning order, if it does not do so, is taken to require a permit for that development; and
 - (c) the relevant planning scheme or relevant planning order, if it does not do so, is taken to specify that development as being of a kind which a planning authority has a discretion to refuse or permit.

66. Application of section 57(3) of Planning Act

- (1) This section applies if an external application is an application for a planning permit made in relation to a regulated land activity.
- (2) In the case of an application for a planning permit that, but for section 65(2), would not be an application for a permit to which section 57

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of the Planning Act applies, the external regulator must not give, or require the applicant to give, a notice under section 57(3) of the Planning Act.

- (3) In the case of an application for a planning permit to which section 57 of the Planning Act applies regardless of section 65(2) of this Act –
- (a) the external regulator must not give, or require the applicant to give, a notice under section 57(3) of the Planning Act until the first of the following occurs:
 - (i) the planning authority has received notice under section 68(4) of this Act as to whether the Minister has no interest in the application for a permit or wishes to be involved in the determination of the application;
 - (ii) the period allowed under this Act for that Minister to give that notice to the planning authority has elapsed; and
 - (b) if the Minister has so notified the planning authority that he or she wishes to be involved in determining the application, the external regulator must not give, or require the applicant to give, a notice under section 57(3) of the Planning Act that includes any information that the Minister, in that

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notification, has stated must not be included in such a notice under section 57(3) of the Planning Act.

67. Regulated land activities require Aboriginal heritage approval

- (1) A person must not carry out a regulated land activity unless the regulated land activity has Aboriginal heritage approval.

Penalty: Fine not exceeding –

- (a) 125 penalty units for an individual; or
 - (b) 250 penalty units for a body corporate.
- (2) For the purposes of subsection (1), a regulated land activity is taken to have Aboriginal heritage approval if, and only if –
- (a) in a case of a regulated land activity that requires a discretionary planning permit, that discretionary planning permit has been conferred for the regulated land activity in accordance with the Planning Act and this Part; or
 - (b) in a case of a regulated land activity that requires a dam permit, that permit has been conferred for the regulated land activity in accordance with the Water Management Act and this Part.
- (3) However, subsection (1) does not apply if –

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- (a) the regulated land activity is an exempt land activity; or
- (b) the regulated land activity is necessarily incidental to the preparation of a recognised management plan; or
- (c) the regulated land activity is sanctioned by a management plan; or
- (d) the regulated land activity is carried out in an emergency under section 55 of the *Electricity Supply Industry Act 1995*; or
- (e) the regulated land activity is, otherwise, a necessary and proportionate response to an actual or impending emergency that threatens human life or property or threatens to injure any person; or
- (f) the person has demonstrated to the satisfaction of the Minister, in accordance with the relevant regulatory requirements, that –
 - (i) the affected area has sustained serious ground disturbance; and
 - (ii) the serious ground disturbance is, in extent, total or widespread; and
 - (iii) the serious ground disturbance was sustained before the regulated land activity commenced; and

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(iv) the serious ground disturbance was not caused to gain the benefit of this exemption.

(4) For the purposes of determining whether or not he or she is satisfied of the matters specified in subsection (3)(f), the Minister may consult with the Council.

68. External application to be sent to and considered by Minister

(1) In this section –

relevant period means –

(a) 7 days after the day on which the Minister receives an external application if the external application is a planning permit; or

(b) 14 days after the day on which the Minister receives an external application if the external application is a dam permit.

(2) This section applies if a person makes an external application.

(3) The external regulator must give a copy of the external application to the Minister as soon as practicable (and in any event within 5 days) after the application day.

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- (4) Within the relevant period, the Minister is to consider the external application and notify the external regulator that –
- (a) the Minister has no interest in the application; or
 - (b) the Minister wishes to be involved in determining the application.
- (5) If –
- (a) the Minister notifies the external regulator that he or she wishes to be involved in determining the external application; and
 - (b) the external application is an application for a planning permit –
- the Minister is to state in the notification that the information contained in, or which accompanied, the external application, and which is identified in the notification must not be included in a notice given by the applicant or the external regulator under section 57(3) of the Planning Act.
- (6) If the Minister notifies the external regulator that he or she wishes to be involved in determining the external application, the Minister may state in the notification that, to further consider the external application under section 72, he or she requires the additional information specified in the notification.

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- (7) Without limiting the additional information that the Minister may require under subsection (6), the Minister may require the results of an Aboriginal heritage assessment undertaken for the affected area.
- (8) If the Minister notifies the external regulator that he or she wishes to be involved in determining the external application and the external application is an application for a dam permit, the external regulator must notify the Minister, for the purposes of paragraph (b) of the definition of *relevant period* in section 72(1), of the day by which the Minister is to notify the external regulator of his or her determination under section 72(7).

69. Procedure if Minister requires additional information to consider external application

- (1) This section applies if, in respect of an external application, the Minister gives the external regulator a notification under section 68(4) stating that the Minister requires the additional information specified in the notification.
- (2) As soon as practicable after receiving the notification referred to in subsection (1), the external regulator must require the applicant to provide it with the additional information required by that notification.
- (3) For the purposes of subsection (2), the external regulator –

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- (a) in the case of an external application for a discretionary planning permit, is to use its power under section 54 of the Planning Act; and
 - (b) in the case of an external application for a dam permit, is to use its power under section 154 of the Water Management Act.
- (4) As soon as practicable after receiving the additional information, the external regulator must give it to the Minister.
- (5) As soon as practicable after receiving the additional information from the external regulator (and in any event within any period within which the external regulator is required to do or determine anything after receiving the additional information), the Minister must notify the external regulator as to whether or not he or she is satisfied that the additional information answers the requirement in the notification referred to in subsection (1).
- (6) For the purposes of section 54 of the Planning Act and any provision of the Water Management Act that requires the external regulator or another person to be satisfied that the additional information answers the requirement for additional information, the external regulator or other person is satisfied that the additional information answers the requirement for additional information when, and only when, notified by the Minister that he or she is so satisfied.

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

- (1) This section applies if, in respect of an external application for a discretionary planning permit –
 - (a) the Minister gives the external regulator notification under section 68(4)(a) that the Minister has no interest in the application; or
 - (b) the Minister fails to give the external regulator a notification of any kind under section 68(4) within the period that section requires.
- (2) Section 65(2) ceases to apply in relation to the regulated land activity to which the external application relates (the *relevant regulated land activity*).
- (3) If, but for section 65(2), no planning permit (discretionary or otherwise) in respect of the relevant regulated land activity would have been required under the Planning Act –
 - (a) the external application is taken to have been withdrawn; and
 - (b) the external regulator is to notify the applicant and the Minister that an external regulatory approval is not so required and that the external application is taken to have been withdrawn.
- (4) If, but for section 65(2), no discretionary planning permit would have been required in

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respect of the relevant regulated land activity under the Planning Act but another planning permit in respect of the relevant regulated land activity would have been so required, the external application is taken to be an external application made under the appropriate section of the Planning Act for that other planning permit and the external regulator is to –

- (a) determine the external application under the appropriate provisions of Division 2A of Part 3, or Division 2 of Part 4, of the Planning Act; and
 - (b) once it has determined the external application, notify the Minister of its determination.
- (5) If a discretionary planning permit is required under the Planning Act in respect of the relevant regulated land activity regardless of the operation of section 65(2), the external regulator is to –
 - (a) determine the external application under the appropriate provision of Division 2A of Part 3, or Division 2 of Part 4, of the Planning Act; and
 - (b) once it has determined the external application, notify the Minister of that determination.
- (6) The Minister is not entitled to –
 - (a) make representations under the Planning Act in relation to the withdrawal of the

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external application by reason of subsection (3)(a) or the determination of the external application (whether as an application for a discretionary planning permit or as an application for another planning permit) pursuant to subsection (5)(a) or subsection (4)(a); or

- (b) take any other action in relation to the external application.

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

- (1) This section applies if, in respect of an external application for a dam permit –
 - (a) the Minister gives the external regulator notification under section 68(4)(a) that the Minister has no interest in the application; or
 - (b) the Minister fails to give the external regulator a notification of any kind under section 68(4) within the period that section requires.
- (2) The external regulator may determine the external application without further reference to the Minister.
- (3) The Minister is not entitled to –
 - (a) make representations in relation to the external application; or

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- (b) take any other action in relation to the external application.
- (4) Once it has determined the external application, the external regulator is to notify the Minister of its determination.

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

- (1) In this section –

relevant period means –

- (a) in relation to an external application that is an application for a planning permit –
 - (i) in a case where the Minister has not given the external regulator notification under subsection (4) that he or she requires an extra 14 days to consider the external application, the period of 35 days after the application day if the external application is made under the Planning Act; or
 - (ii) in a case where the Minister has given the external regulator notification under

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subsection (4) that he or she requires an extra 14 days to consider the external application, the period of 49 days after the application day; or

- (b) in relation to an external application that is an application for a dam permit, the period ending on the relevant day specified in the notice provided to the Minister by the external regulator under section 68(8).
- (2) This section applies if, in respect of an external application, the Minister gives the external regulator notification under section 68(4)(b) that the Minister wishes to be involved in the determination of the application.
- (3) The Minister is to further consider the external application and in so doing –
- (a) is to have regard to the known and likely Aboriginal heritage impacts of the proposed regulated land activity; and
 - (b) is to have regard to the representations made in respect of the application, if any, that are relevant to the Minister’s own particular responsibilities; and
 - (c) may have regard to any other representations made in respect of the application; and

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- (d) is to have regard to any matters prescribed by the regulations; and
- (e) is to have regard to the objects of this Act and any relevant guidelines; and
- (f) may liaise with the external regulator; and
- (g) may liaise with the Council.

Note By virtue of section 10, the Minister is also required to take into account the objectives of the resource management and planning system, and the planning process, set out in Schedule 1 to the Planning Act.

- (4) As soon as practicable after the application day in relation to an external application that is an application for a planning permit, the Minister may notify the external regulator that he or she requires an extra 14 days to consider the external application, in which case –
 - (a) the external regulator is to notify the applicant of the Minister’s requirement; and
 - (b) if the Minister has liaised with the Council under subsection (3)(g), the Minister is to give a copy of the notification to the Council.
- (5) As soon as practicable after receiving a representation in relation to the external application, the external regulator must give a copy of the representation to the Minister.

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- (6) As soon as practicable after an external regulator agrees to, or confers, an extension of the period within which the external regulator must determine an external application that is an application for a planning permit, the external regulator must notify the Minister of the extension.
- (7) Before the relevant period expires, the Minister is to notify the external regulator that –
- (a) the Minister consents to the external regulatory approval being conferred; or
 - (b) the Minister consents to the external regulatory approval being conferred subject to the conditions specified in the notification; or
 - (c) the external regulatory approval should be refused.
- (8) If the Minister has liaised with the Council under subsection (3)(g), the Minister is to give a copy of the notification under subsection (7) to the Council.
- (9) For the purposes of subsection (7)(b), the Minister may, without limiting his or her discretion, specify conditions that provide for –
- (a) the regulated land activity to which the external application relates to be carried out in a way that avoids or (if that is not possible) minimises harm to Aboriginal heritage; and

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- (b) the protection and management of any Aboriginal heritage likely to be impacted by the regulated land activity to which the external application relates, both during the carrying out and after the cessation of the regulated land activity.
- (10) If the Minister consents under subsection (7)(a) to the external application being granted or the Minister fails to give the external regulator a notification of any kind under subsection (7) within the relevant period –
 - (a) the external regulator may determine the external application without further reference to the Minister; and
 - (b) the Minister is not entitled to take any further action in relation to the external application.
- (11) If the Minister consents under subsection (7)(b) to the external application being granted subject to the conditions specified in the notification under that subsection (the *Aboriginal heritage conditions*) and the external regulator confers the external regulatory approval –
 - (a) the external regulator must do so subject to (at least) the Aboriginal heritage conditions; and
 - (b) the external regulator must not make the external regulatory approval subject to a condition that conflicts with any of the Aboriginal heritage conditions; and

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- (c) the external regulator or any other person with responsibilities under the Planning Act or Water Management Act for overseeing or enforcing an external regulatory approval is not required or entitled to exercise any power under this Act, the Planning Act or the Water Management Act to enforce the Aboriginal heritage conditions unless the Minister and the external regulator agree otherwise, in writing.
- (12) If the Minister under subsection (7)(c) notifies the external regulator that the external application should be refused, the external regulator must refuse to confer the external regulatory approval.
- (13) On determining the external application, the external regulator must notify the Minister, in writing, of the determination.
- (14) For the purposes of subsection (13), a reference to the determination of the external application includes a reference to the withdrawal of the external application.
- (15) If the external regulator confers the external regulatory approval, it must give a copy of the approval –
- (a) to the Minister; and
 - (b) if the Minister has liaised with the Council under subsection (3)(g), to the Council; and

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(c) to the Secretary.

- (16) On receipt of an approval under subsection (15)(c), the Secretary is to enter the approval in the Register.

73. Amendment of external applications

- (1) This section applies if an external regulator receives a request pursuant to section 155B of the Water Management Act to amend an external application for a dam permit.
- (2) If the Minister has not given the external regulator notification under section 68(4) as to whether he or she has no interest in the external application or wishes to be involved in determining the external application and the 7-day period for giving that notification has not ended –
- (a) the external regulator may amend or refuse to amend the external application without reference to the Minister; and
 - (b) if the external regulator so amends the external application –
 - (i) the external regulator is to immediately notify the Minister, in writing, of the amendment and give the Minister a copy of the amendment or the external application as amended; and

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- (ii) section 68(4) and this Part applies to the external application, as amended, as if the Minister had received a copy of the external application, with the amendment incorporated, on the day on which the Minister receives the copy of the amendment or the external application as amended under subparagraph (i).
- (3) If the Minister has given notification under section 68(4)(a) that the Minister has no interest in the external application or has failed to give the external regulator any notification under section 68(4) within the period that section requires, the external regulator may amend or refuse to amend the external application without further reference to the Minister.
- (4) If the Minister has given notification under section 68(4)(b) that the Minister wishes to be involved in the determination of the external application, the external regulator, before amending the external application, must –
- (a) consult the Minister; and
 - (b) have regard to any representations made by the Minister pursuant to that consultation.
- (5) However, the external regulator is not obliged to comply with subsection (2) or (4) if it reasonably determines that the amendment will have no Aboriginal heritage impacts.

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74. Correction and amendment of external approvals

(1) This section applies if –

- (a) pursuant to section 55 or 56 of the Planning Act, an external regulator intends to make any correction or minor amendment of a discretionary planning permit; or
- (b) pursuant to section 161 or 162 of the Water Management Act, an external regulator intends to make any correction or amendment of a dam permit –

and the Minister has given notice under section 72(7)(a) or (b) that the Minister consents, or consents subject to the conditions specified in the notification, to the conferral of the discretionary planning permit or dam permit.

- (2) Before making the correction or amendment, the external regulator must –
- (a) consult the Minister; and
 - (b) have regard to any representations made by the Minister pursuant to that consultation.
- (3) However, the external regulator is not obliged to comply with subsection (2) if it reasonably determines that the correction or amendment will have –

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- (a) no impact on any Aboriginal heritage condition of the discretionary planning permit or dam permit; or
- (b) no other Aboriginal heritage impacts.

75. Contravention of Aboriginal heritage conditions

A person must not –

- (a) contravene an Aboriginal heritage condition of an external regulatory approval; or
- (b) cause or allow another person to contravene an Aboriginal heritage condition of an external regulatory approval.

Penalty: Fine not exceeding –

- (a) 125 penalty units for an individual; or
- (b) 250 penalty units for a body corporate.

76. Appeals concerning external applications

- (1) This section applies in respect of an external application that is an application for a discretionary planning permit or a dam permit.
- (2) If, in respect of an external application, the Minister gives the external regulator the notification under section 68(4)(b) that the

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Minister wishes to be involved in the determination of the external application and the applicant consequently lodges an appeal under –

- (a) section 61(3) of the Planning Act; or
- (b) section 276(1) of the Water Management Act in relation to a requirement under section 154 of the Water Management Act –

the Minister is joined as a respondent to the appeal.

- (3) If, in respect of an external application, the Minister gives the external regulator the notification under section 72(7)(a) or (b) that the Minister consents, or consents subject to the conditions specified in the notification, to the conferral of the external regulatory approval, the Minister is joined as a respondent to any appeal under –
 - (a) section 61(4) or (5) of the Planning Act in relation to the planning permit; or
 - (b) section 276(1) of the Water Management Act in relation to the dam permit.
- (4) If, in respect of an external application, the Minister gives the external regulator the notification under section 72(7)(c) that the external regulatory approval should be refused and the external regulatory approval is refused partly on the grounds of that notification and partly on other grounds, the Minister is joined as

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a respondent to any appeal in respect of the refusal under –

- (a) section 61(4) of the Planning Act; or
- (b) section 276(1) of the Water Management Act.

(5) If, in respect of an external application, the Minister gives the external regulator the notification under section 72(7)(c) that the external regulatory approval should be refused and the external regulatory approval is refused solely because of that notification, the Minister is the respondent to any appeal in respect of the refusal under –

- (a) section 61(4) of the Planning Act; or
- (b) section 276(1) of the Water Management Act –

and the relevant planning authority is not joined as a respondent.

(6) If, in respect of an external application, the Minister gives the relevant planning authority the notification under section 72(7)(c) that the external regulatory approval should be refused and the applicant applies under section 59(3) of the Planning Act to the Appeal Tribunal, within the meaning of that Act, the Minister is, for the purposes of that Act, joined as a respondent to the application.

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77. Referral to Minister of certain planning instruments

(1) In this section –

Commission means the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*;

planning authority has the same meaning as in the Planning Act;

planning instrument means –

- (a) a planning scheme within the meaning of the Planning Act; or
- (b) a special planning order within the meaning of the Planning Act; or
- (c) an amendment to such a planning scheme or such a special planning order;

planning interest notice means a notification under subsection (2).

- (2) The Minister may notify a planning authority that its municipal area is an area of planning interest to the Minister.
- (3) However, the Minister may only determine that a municipal area is an area of planning interest to the Minister if –

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- (a) the Minister has first consulted the Council; and
 - (b) the Minister is reasonably of the opinion that development in the municipal area is likely to have Aboriginal heritage impacts.
- (4) A planning interest notice is to specify the requirements imposed on the planning authority under subsection (5).
- (5) Except in respect of circumstances or activities, prescribed by the regulations, a planning authority to which a planning interest notice is given must, on or before the day on which the exhibition of a draft planning instrument in respect of land within the planning authority's municipal area begins under the Planning Act, notify the Minister –
 - (a) of the day on which the exhibition of the draft planning instrument is to begin; and
 - (b) that the Minister is invited to make representations under the Planning Act in relation to the draft planning instrument.
- (6) The Minister is to –
 - (a) notify the Commission and the Council if he or she gives a planning interest notice to a planning authority; and
 - (b) give the Council a copy of any notification he or she receives under subsection (5), and consult the Council

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before making any representations pursuant to paragraph (b) of that subsection.

(7) If –

- (a) the Commission grants or confirms a planning permit under section 43H of the Planning Act; and
- (b) the planning permit relates to an application, of a kind referred to in section 43A of the Planning Act, in respect of land within a municipal area in relation to which a notification has been given to the Commission under subsection (6)(a); and
- (c) the planning permit as so granted or confirmed is not in accordance with a representation of the Minister made, in relation to the application, under the Planning Act –

the Commission must give the Minister reasons in writing for granting or confirming a planning permit that is not in accordance with the representation.

78. Commission to invite and consider Ministerial representations on certain dispensations

(1) In this section –

application for dispensation means an application that –

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- (a) is made under section 30P of the Planning Act for a dispensation from a local provision of an interim planning scheme; and
- (b) relates to land that is within a municipal area in relation to which the Commission has received a notification under section 77(6)(a) of a planning interest notice, within the meaning of section 77;

Commission means the Tasmanian Planning Commission established under the *Tasmanian Planning Commission Act 1997*.

- (2) Within 7 days after receiving an application for a dispensation, the Commission must –
 - (a) give the Minister a copy of the application; and
 - (b) by notice, invite the Minister to make a representation under the Planning Act in relation to the application.
- (3) Before making any representations under the Planning Act in relation to the application for dispensation, the Minister is to consult the Council and give it a copy of the application.
- (4) If the Minister does make representations under the Planning Act in relation to the application for dispensation and Commission determines the application otherwise than in accordance those

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representations, the Commission is to notify the Minister of its reasons for so doing.

PART 7 – ABORIGINAL HERITAGE AGREEMENTS

79. Power of Council to enter into Aboriginal heritage agreements

- (1) The Council may enter into agreements providing for the protection or management of Aboriginal heritage.
- (2) Without limiting its possible scope, an Aboriginal heritage agreement may provide for one or more of the following:
 - (a) the protection, maintenance or use of an Aboriginal object;
 - (b) the protection, maintenance or use of an Aboriginal site;
 - (c) the use of, or access to, an Aboriginal object or Aboriginal site by Aboriginal persons;
 - (d) the rehabilitation of an Aboriginal object or Aboriginal site.
- (3) An Aboriginal heritage agreement may confer rights and obligations on any party to the agreement.
- (4) However, an Aboriginal heritage agreement may not –
 - (a) regulate any activity for which an Aboriginal heritage permit or management plan is required under this Act; or

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- (b) regulate any activity for which an external regulatory approval is required if the land activity also requires Aboriginal heritage approval under Part 6; or
 - (c) restrict or permit access to any land without the consent of its owner and, if the ownership and occupation of the land are in separate hands, the occupier.
- (5) An Aboriginal heritage agreement that purports to do any of the things mentioned in subsection (4) is, to that extent, void and unenforceable.
- (6) An Aboriginal heritage agreement has effect as a contract binding on the parties to the agreement and is enforceable accordingly.
- (7) An Aboriginal heritage agreement that relates to an Aboriginal site –
- (a) is not a dealing for the purposes of the *Land Titles Act 1980*; and
 - (b) does not attach to the land comprising or containing the Aboriginal site so as to bind any subsequent owner of the land.

80. Parties to agreements

- (1) The Council may enter into an Aboriginal heritage agreement with any person.
- (2) However, if an Aboriginal heritage agreement relates to an Aboriginal site, one of the parties to the agreement must be –

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- (a) if the land comprising or containing the Aboriginal site is Crown land, the Minister responsible for the administration of the *Crown Lands Act 1976*; or
- (b) in any other case, the owner of the land comprising or containing the Aboriginal site.

81. Form 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 Aboriginal site, the agreement is to include a description or map of the boundaries of the Aboriginal site by reference to its GDA coordinates.

82. Duration of agreements

- (1) An Aboriginal heritage agreement may provide that it takes effect wholly, or in part, on –
 - (a) its execution; or
 - (b) a later specified day; or
 - (c) the occurrence of a later specified event.
- (2) An Aboriginal heritage agreement may provide that it terminates wholly, or in part –
 - (a) on a specified day; or

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- (b) on the occurrence of a specified event; or
 - (c) by agreement between the parties.
- (3) However, an Aboriginal heritage agreement relating to an Aboriginal site is taken to terminate automatically on the sale of the land comprising or containing that Aboriginal site.

83. 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.

84. Lodgment and registration of agreements, &c.

- (1) Within 14 days after entering into or varying an Aboriginal heritage agreement, the Council is to lodge a copy of the agreement or variation with the Secretary.
- (2) Within 14 days after becoming aware that an Aboriginal heritage agreement has been terminated, the Council is to notify the Secretary of the termination.
- (3) On receipt of the agreement, variation or notification of termination, the Secretary is to update the Register accordingly.

PART 8 – AUDITS

85. Power of Minister to require audits of certain land activities

- (1) The Minister, by order, may require an authorised officer to carry out an audit of a controlled land activity if required circumstances exist.
- (2) For the purposes of subsection (1), the required circumstances exist if the Minister reasonably apprehends that –
 - (a) the conditions of the relevant approval are being materially contravened with respect to Aboriginal heritage; or
 - (b) the conditions of the relevant approval are deficient; or
 - (c) Aboriginal heritage measures required to be taken under the relevant approval are not being taken properly or at all; or
 - (d) the Aboriginal heritage impacts of the controlled land activity are greater than was contemplated when the relevant approval was conferred; or
 - (e) the Aboriginal heritage impacts of the controlled land activity are different from the impacts contemplated when the relevant approval was conferred; or
 - (f) there has been a material change in circumstances since the relevant approval

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- was conferred, with consequent implications for Aboriginal heritage; or
- (g) the relevant approval was conferred on erroneous premises, with consequent Aboriginal heritage implications; or
 - (h) having regard to the objects of this Act, it would be prudent to audit the controlled land activity for some other reason.
- (3) The audit order may be issued on –
- (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council.
- (4) If the Minister issues an audit order, the Minister also must issue a stop order stopping the controlled land activity.

86. Audit orders

- (1) An audit order is to –
- (a) be in writing; and
 - (b) be in a form approved by the Minister; and
 - (c) specify the Aboriginal heritage matters required to be audited; and
 - (d) specify the name of the authorised officer who is required to carry out the audit; and

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- (e) specify the period in which, or day by which, the audit is required to be completed.
- (2) The audit order may –
- (a) specify that the services of a specified consultant or expert be engaged for the audit; and
 - (b) contain directions regarding the form and content of the audit report; and
 - (c) specify such other matters and contain such procedural and other directions as the Minister thinks fit in the circumstances.
- (3) The audit order may not purport to direct the auditor to make or not make a particular finding.
- (4) On issuing the audit order, the Minister is to –
- (a) give it to the authorised officer who is required to carry out the audit; and
 - (b) give a copy of it to the responsible person for the controlled land activity; and
 - (c) give a copy of it to the Council.
- (5) The Minister may give a copy of the order to such other persons as he or she thinks fit in the circumstances.

87. Conduct of audits

An authorised officer who is required by an audit order to carry out an audit must –

- (a) carry out the audit; and
- (b) comply with the directions set out in the audit order.

88. Audit reports

(1) Once an audit has been completed, the auditor is to –

- (a) prepare a report on its outcome; and
- (b) give the report to the Minister.

(2) The audit report is to –

- (a) be in the form, if any, required by the relevant audit order; and
- (b) identify any contraventions of the controlled land activity; and
- (c) include any matter required to be included by the relevant audit order.

(3) The audit report may contain any recommendations the auditor, having regard to the objects of this Act and the relevant audit order, thinks necessary or expedient concerning any 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 controlled land activity;
- (d) Aboriginal heritage conditions;
- (e) Aboriginal heritage measures;
- (f) measures relating to the conduct of the controlled land activity to avoid or minimise harm to Aboriginal heritage.

89. Approval or refusal of audit reports

- (1) On receipt of 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 he or she does not agree with its findings or recommendations.

90. Actions following approval of audit reports

- (1) In this section –
 - relevant external Act*, in relation to an external regulatory approval, means the

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Act under which that approval was conferred.

- (2) This section applies if the Minister approves an audit report.
- (3) The Minister –
 - (a) is to notify the auditor, the responsible person, the Council and the Secretary 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 he or she thinks fit in the circumstances.
- (4) On receipt of the notification under subsection (3)(a), the Secretary is to update the Register accordingly.
- (5) If the audit report recommends the variation of the relevant approval, the Minister may –
 - (a) implement that recommendation in accordance with the applicable procedure under this Act; or
 - (b) request, by notice in writing, that the relevant external regulator implement that recommendation in accordance with the applicable procedure under the relevant external Act.
- (6) Subject to the relevant external Act, an external regulator is to comply with a request of the

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Minister given under subsection (5) and, for that purpose, the request is taken to be sufficient grounds for effecting the relevant variation.

- (7) The Minister may take such other actions under this Act consequent on the findings and recommendations contained in the audit report as he or she thinks fit in the circumstances.

91. Action following rejection of audit reports

- (1) This section applies if the Minister rejects an audit report.
- (2) The Minister may –
- (a) take no further action in the matter; or
 - (b) remit the matter to the auditor (with or without directions) for remediation and resubmission; or
 - (c) by a further audit order, order a fresh audit in the matter.
- (3) The power under subsection (2)(c) may only be exercised, once, during the 3-month period following the day of rejection and, if the power is exercised, no subsequent audit may be ordered in respect of the same matter in the 24-month period following the day of the further audit order.
- (4) The Minister –
- (a) is to notify the auditor, the responsible person, the Council and the Secretary of

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- the rejection and of any action taken under subsection (2); 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 (2), as he or she thinks fit in the circumstances.
- (5) On receipt of the notification under subsection (4)(a), the Secretary is to update the Register accordingly.

PART 9 – STOP ORDERS

92. Power of Minister to stop certain land activities

- (1) The Minister, by order, may require a person to stop a land activity or proposed land activity if the required circumstances specified in subsection (2) or (3) exist.
- (2) For the purposes of subsection (1), the required circumstances exist if the Minister issues an audit order or reasonably apprehends that –
 - (a) the person is carrying out the land activity, or proposing to carry out the proposed land activity, in contravention of this Act; and
 - (b) the land activity or proposed land activity is harming or is likely to harm Aboriginal heritage; and
 - (c) Aboriginal heritage cannot be properly protected unless the land activity or proposed land activity is stopped.
- (3) For the purposes of subsection (1), the required circumstances exist if the Minister reasonably apprehends that –
 - (a) the land activity or proposed land activity is impacting on or is likely to impact on a nominated object or site; and
 - (b) the land activity is harming or likely to harm the nominated object or site; and

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- (c) the nominated object or site cannot be properly protected unless the land activity is stopped.
- (4) The stop order may be issued on –
 - (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council.
- (5) If the stop order is issued, the Minister is to –
 - (a) notify the Council accordingly; and
 - (b) give a copy of the order to the Council and to the Secretary.
- (6) On receipt of the copy of the stop order, the Secretary is to enter the stop order in the Register.

93. Power of authorised officers to stop certain land activities temporarily

- (1) An authorised officer, by order, may require a person to stop a land activity or proposed land activity temporarily if the required circumstances specified in subsection (2) or (3) exist.
- (2) For the purposes of subsection (1), the required circumstances exist if the authorised officer reasonably apprehends that –
 - (a) the person is carrying out the land activity, or proposing to carry out the

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- proposed land activity, in contravention of this Act; and
- (b) the land activity is harming or likely to harm Aboriginal heritage; and
 - (c) Aboriginal heritage cannot be properly protected unless the land activity is stopped; and
 - (d) the need for the stoppage is urgent and, in the circumstances, it is not possible or expedient to refer the matter to the Minister for possible action under section 92.
- (3) For the purposes of subsection (1), the required circumstances exist if the authorised officer reasonably apprehends that –
- (a) the land activity or proposed land activity is impacting on or is likely to impact on a nominated object or site; and
 - (b) the land activity is harming or likely to harm the nominated object or site; and
 - (c) the nominated object or site cannot be properly protected unless the land activity is stopped; and
 - (d) the need for the stoppage is urgent and, in the circumstances, it is not possible or expedient to refer the matter to the Minister for possible action under section 92.

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- (4) If the interim stop order is issued, the authorised officer is to –
 - (a) notify the Minister and the Council accordingly; and
 - (b) give a copy of the order to the Minister, the Council and the Secretary.
- (5) On receipt of the copy, the Secretary is to enter the interim stop order in the Register.

94. Form and content of stop orders and interim stop orders

- (1) A stop order is to –
 - (a) be in writing; and
 - (b) be in a form approved by the Minister; and
 - (c) identify the relevant land activity and land; and
 - (d) identify or describe the Aboriginal heritage or the nominated object or site in respect of which the order is issued; and
 - (e) specify the perceived harm to the Aboriginal heritage or the nominated object or site in respect of which the order is issued; and
 - (f) state what the order requires.
- (2) An interim stop order is to –

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- (a) be in writing; and
- (b) be in a form approved by the Minister or the Secretary; and
- (c) identify the relevant land activity and land; and
- (d) specify or describe the relevant Aboriginal heritage or the nominated object or site in respect of which the order is issued; and
- (e) specify the perceived harm to the Aboriginal heritage or the nominated object or site in respect of which the order is issued; and
- (f) state what the order requires.

95. Duration of stop orders and interim stop orders

(1) In this section –

nominated object or site (by Council motion)

means a nominated object or site in respect of which the Council, on its own motion, has determined to consider whether to recommend to the Secretary that the object or site be registered as nominated Aboriginal heritage;

nominated object or site (on application)

means a nominated object or site in respect of which an application has been made for the registration of the object or site as nominated Aboriginal heritage.

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- (2) A stop order comes into force as soon as it is served on the affected person (*time of service*) and remains in force –
- (a) in the case of a nominated object or site that is a nominated object or site (on application), until the first of the following occurs:
 - (i) the application requesting registration of the nominated object or site as nominated Aboriginal heritage is finally determined;
 - (ii) the expiration of the period of 30 days (calculated from the precise time of service) or such shorter period as is specified in the order; or
 - (b) in the case of a nominated object or site that is a nominated object or site (by Council motion), until the first of the following occurs:
 - (i) the Council makes the preliminary registration determination in accordance with the regulations if the order comes into force before that determination is made and that determination is not to recommend to the Secretary that the object or site be registered as nominated Aboriginal heritage;

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- (ii) the nominated object or site is registered as nominated Aboriginal heritage;
 - (iii) it is finally determined that the nominated object or site is not to be registered as nominated Aboriginal heritage;
 - (iv) the expiration of the period of 30 days (calculated from the precise time of service) or such shorter period as is specified in the order; or
- (c) in any other case, for the period of 30 days (calculated from the precise time of service) or for such shorter period as is specified in the order.
- (3) An interim stop order –
- (a) comes into force as soon as it is served; and
 - (b) remains in force for 48 hours (calculated from the precise time of service) unless sooner revoked by the Minister.

96. Extension of stop orders

- (1) The Minister, by instrument in writing before a stop order would otherwise cease to be in force, may extend it, once, for a further period not exceeding 14 days.

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- (2) The Minister is to serve notice of the extension on the person who is subject to the order.
- (3) An interim stop order is not capable of being extended.
- (4) If a stop order is extended –
 - (a) the Minister is to give an appropriate notification to the Secretary; and
 - (b) on receipt of the notification, the Secretary is to update the Register accordingly.

97. Service of stop orders and interim stop orders

- (1) In this section –

affixed as prescribed means securely affixed in a conspicuous position (if necessary on a pole), in a weatherproof form and with a bright red or bright orange border;

relevant land means the land on which the land activity, or proposed land activity, that is the subject of the stop order or interim stop order is being, or is proposed to be, carried out;

stop order includes a notice extending the order

- (2) Without limiting section 133 in its application to stop orders or interim stop orders –

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- (a) such an order is also effectively served on a person if it is affixed as prescribed on the relevant land; and
 - (b) such an order is also effectively served on a body corporate if it is given to a person who is on the relevant land and apparently supervising or directing the relevant land activity or preparations for the relevant land activity.
- (3) The affixing as prescribed of a stop order or interim stop order on any land, and the associated entry onto that land, does not constitute a trespass.
- (4) If a stop order or interim stop order is affixed as prescribed on any land, a person must not move, remove, deface, destroy or obscure that order without lawful authority.

Penalty: Fine not exceeding 10 penalty units.

98. Revocation of stop orders and interim stop orders

- (1) A stop order may be revoked by the Minister at any time on his or her own motion or on the application of the person subject to the order.
- (2) An interim stop order may be revoked by –
 - (a) the authorised officer who issued it; or
 - (b) the Minister; or
 - (c) the Secretary –

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at any time on his or her own motion or on the application of the person subject to the order

- (3) If a stop order or interim stop order is revoked, the Minister or other person who revokes the order is to –
 - (a) serve notice of the revocation on the person who is subject to the order; and
 - (b) notify the Council.
- (4) If a stop order is revoked, the Minister is to notify the Secretary of the revocation.
- (5) If an interim stop order is revoked by a person other than the Secretary, the person is to notify the Secretary of the revocation.
- (6) On receipt of a notification under subsection (4) or (5), or on personally revoking an interim stop order, the Secretary is to update the Register accordingly.

99. 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
- (b) 10 000 penalty units for a body corporate.

100. Effect of stop orders on audits

Unless it makes specific provision to the contrary, 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 89.

101. Appeal rights

(1) In this section –

adverse administrative decision means –

- (a) a decision by the Minister to issue a stop order; or
- (b) a decision by an authorised officer to issue an interim stop order; or
- (c) a decision by the Minister to extend a stop order;

notified of the relevant decision includes, in the case of an order, served with the order.

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- (2) A person who is aggrieved by an adverse administrative decision affecting the person under this Part may appeal against that decision.
- (3) The appeal is to be –
 - (a) made in writing to RMPAT; and
 - (b) instituted within 14 days after the person is notified of the relevant decision.
- (4) RMPAT is to hear and determine the appeal in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.

**PART 10 – ABORIGINAL HERITAGE PROTECTION
ORDERS**

102. Power of Minister to issue Aboriginal heritage protection orders

- (1) The Minister may issue an order for the protection of a registered Aboriginal object or registered Aboriginal site if the Minister is satisfied that –
 - (a) the Aboriginal people of Tasmania have a special relationship with the object or site; and
 - (b) the protection of the object or site is essential for the preservation of that special relationship.
- (2) The order may be issued on –
 - (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council.
- (3) The order may be issued as –
 - (a) an Aboriginal heritage enduring protection order if the Minister is satisfied that the registered Aboriginal object or registered Aboriginal site requires ongoing protection; or
 - (b) an interim protection order if the Minister is satisfied that the registered Aboriginal object or registered

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Aboriginal site requires temporary protection.

- (4) If an order is issued –
- (a) the Minister is to give a copy of it to the Secretary; and
 - (b) on receipt of the copy, the Secretary is to update the Register accordingly.

103. Form and content of protection orders

A protection order is to –

- (a) be in a form approved by the Minister; and
- (b) specify whether it is an enduring protection order or interim protection order; and
- (c) identify the registered Aboriginal object or registered Aboriginal site in respect of which it is issued; and
- (d) state why it has been issued, including the nature of the special relationship that the Aboriginal people of Tasmania have with that object or site; and
- (e) specify the protective measures to be taken in respect of that object or site; and
- (f) specify, if applicable, who is responsible for taking the protective measures; and

- (g) specify such other matters as the Minister thinks fit in the circumstances; and
- (h) contain the information, if any, required by the regulations.

104. Publication of protection orders

- (1) In this section –

affixed as prescribed means securely affixed in a conspicuous position (if necessary on a pole) and in a weatherproof form with a bright red or bright orange border.

- (2) The Minister is to publish a protection order in –

- (a) the *Gazette*; and
- (b) at least one daily newspaper published and circulating generally in Tasmania.

- (3) If the protection order requires a person other than a State servant to take protective measures in respect of the registered Aboriginal object or registered Aboriginal site specified in the order, the Minister must give the person an individual copy of the order.

- (4) The Minister may publish the protection order in such other ways as the Minister thinks fit in the circumstances including, without limiting the Minister's discretion, by causing copies of the order to be affixed as prescribed on any land near, or comprising or containing, the registered Aboriginal object or registered Aboriginal site specified in the order.

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- (5) The affixing as prescribed of a copy of the order on any land pursuant to subsection (4), and the associated entry onto that land, does not constitute a trespass.
- (6) If a copy of the order is affixed as prescribed on any land pursuant to subsection (4), a person must not move, remove, deface, destroy or obscure that copy without lawful authority.

Penalty: Fine not exceeding 10 penalty units.

105. Duration of protection orders

- (1) An enduring protection order –
 - (a) comes into force on the day on which it is published in the *Gazette* or on such later day as is specified in the order; and
 - (b) remains in force until revoked.
- (2) An interim protection order –
 - (a) comes into force on the day on which it is published in the *Gazette* or on such later day as is specified in the order; and
 - (b) remains in force for a period of 3 months.
- (3) The Minister, by notice before an interim protection order would otherwise expire, may extend it in force, once, for a further period not exceeding 3 months.

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- (4) An extension of an interim protection order may be conferred on –
 - (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council.
- (5) If an interim protection order is extended –
 - (a) the Minister is to give an appropriate notification to the Secretary; and
 - (b) on receipt of the notification, the Secretary is to enter the extension in the Register.

106. Variation or revocation of protection orders

- (1) The Minister, by notice, may vary or revoke a protection order for any reason the Minister considers sufficient.
- (2) The variation or revocation may be conferred on –
 - (a) the Minister’s own motion; or
 - (b) the written recommendation of the Council; or
 - (c) the written application, made and lodged in accordance with section 135, of a person affected by the order.
- (3) If a protection order is varied or revoked –

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- (a) the Minister is to give a copy of the variation or revocation to the Secretary; and
- (b) on receipt of the copy, the Secretary is to update the Register accordingly.

107. Publication of extension, variation or revocation of protection orders

(1) In this section –

affixed as prescribed means securely affixed in a conspicuous position (if necessary on a pole) and in a weatherproof form with a bright red or bright orange border.

(2) The Minister is to publish a notice extending, varying or revoking a protection order in –

- (a) the *Gazette*; and
- (b) at least one daily newspaper published and circulating generally in Tasmania.

(3) If a protection order requires a person other than a State servant to take protective measures in respect of the registered Aboriginal object or registered Aboriginal site specified in the order, the Minister must give the person individual notice of the extension, variation or revocation.

(4) The Minister may publish the notice extending, varying or revoking a protection order in such other ways as the Minister thinks fit in the circumstances including, without limiting the Minister's discretion, by causing relevant notices

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to be affixed as prescribed on any land near, or comprising or containing, the registered Aboriginal object or registered Aboriginal site specified in the order.

- (5) The affixing as prescribed of a notice on any land pursuant to subsection (4), and the associated entry onto that land, does not constitute a trespass.
- (6) If a notice is affixed as prescribed at any place pursuant to subsection (4), a person must not remove, deface, destroy or obscure that notice without lawful authority.

Penalty: Fine not exceeding 10 penalty units.

108. Consultation on protection orders, &c.

- (1) Before issuing, extending, varying or revoking a 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 extension, variation or revocation; and
 - (b) consider the matters and representations, if any, arising from those consultations.
- (2) For the purposes of subsection (1), the Minister is to allow at least 14 days for the consultations and the making of representations.

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109. Effect of protection orders

A protection order has effect according to its terms 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 management plan;
- (d) any Aboriginal heritage agreement;
- (e) any other agreement.

110. Contravention of protection orders

A person must not contravene a protection order.

Penalty: Fine not exceeding –

- (a) 5 000 penalty units for an individual; or
- (b) 10 000 penalty units for a body corporate.

111. Appeal rights

(1) In this section –

adverse administrative decision means a decision by the Minister to –

- (a) issue a protection order; or

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- (b) extend an interim protection order; or
 - (c) vary a protection order; or
 - (d) require, by means of the issue of a protection order, a person to take a protective measure in respect of Aboriginal heritage.
- (2) A person who is aggrieved by an adverse administrative decision affecting the person under this Part may appeal that decision.
- (3) The appeal is to be –
 - (a) made to RMPAT; and
 - (b) instituted within –
 - (i) if the appeal is instituted by a person who received individual notice of the adverse administrative decision under this Part, 14 days after the person was given that notice; or
 - (ii) in any other case, 14 days after the day on which the adverse administrative decision was published in the *Gazette*.
- (4) RMPAT is to hear and determine the appeal in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.

PART 11 – ABORIGINAL HERITAGE REGISTER

112. The Aboriginal Heritage Register

- (1) The Secretary is to establish and maintain a register (the *Aboriginal Heritage Register*) of the following:
- (a) Aboriginal human remains;
 - (b) Aboriginal objects, including collections of Aboriginal objects;
 - (c) Aboriginal sites;
 - (d) nominated Aboriginal heritage;
 - (e) Aboriginal heritage permits;
 - (f) management plans;
 - (g) Aboriginal heritage agreements;
 - (h) stop orders (including interim stop orders);
 - (i) protection orders;
 - (j) audit orders and audit reports under Part 8;
 - (k) external regulatory approvals that are subject to Aboriginal heritage conditions;
 - (l) orders declaring exempt areas and areas of high sensitivity made under section 9;

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- (m) matters or things prescribed by the regulations, if any.
- (2) The Register may include such other matters as the Secretary considers necessary or appropriate.
- (3) In maintaining the Register and in discharging other responsibilities under this Part, the Secretary is to have regard to –
 - (a) the objects of this Act; and
 - (b) any relevant registration criteria; and
 - (c) any relevant guidelines.
- (4) Before entering human remains, an object or an area of Tasmania on the Register, the Secretary is to be satisfied that the human remains, object or area are or is Aboriginal human remains, an Aboriginal object or an Aboriginal site.

113. Form of Register

- (1) The Register –
 - (a) is to be in the form or forms approved by the Secretary; and
 - (b) is to contain a separate part for entries relating to nominated Aboriginal heritage; and
 - (c) may consist of more than one document; and

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- (d) is to contain, for each entry, such identifying, descriptive and other details as the Secretary considers necessary or appropriate.
- (2) However –
- (a) an entry relating to an instrument referred to in section 112(1)(e), (f), (g), (h), (i), (j), (k) or (l) is to contain details of the area in respect of which the instrument has effect; and
 - (b) an entry relating to an Aboriginal object or Aboriginal site is to contain –
 - (i) a general description of the Aboriginal object or Aboriginal site; and
 - (ii) details of its location by reference to a plan in the Central Plan Register or its GDA coordinates, or both; and
 - (iii) any associated reports.
- (3) The Secretary may amend the Register as he or she considers necessary or appropriate to maintain its accuracy and utility and, without limiting the generality of this, may correct or update any entry and omit any redundant entry.
- (4) The power of the Secretary under subsection (3) to amend the Register is subject to any restrictions or prohibitions specified in the regulations.

114. Access to Register

(1) In this section –

infrastructure service means –

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

(2) The Register is not a public register.

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- (3) The Council is entitled to have access to the Register at any time for any purpose related to the discharge of its responsibilities.
- (4) The Secretary, on application and with the agreement of the Council, may grant any of the following persons access to the Register but only for the purposes respectively indicated and to such extent as the Secretary and the Council, jointly, consider necessary:
 - (a) one or more representatives of the managing authority in relation to Crown land, for the purposes of managing that Crown land;
 - (b) the general manager or an employee of a council, to enable the council to discharge its responsibilities within its municipal area;
 - (c) an authorised officer, to enable the authorised officer to discharge the responsibilities of that office;
 - (d) a person undertaking research (including initial research to determine whether the person should apply for an Aboriginal heritage permit to undertake scientific research), for the purpose of obtaining information relevant to that research;
 - (e) the Valuer-General, for the purpose of discharging his or her statutory responsibilities;

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- (f) a State servant, for the purpose of discharging his or her duty to protect or manage Aboriginal heritage;
 - (g) a person who provides an infrastructure service, for the purposes of establishing and maintaining infrastructure, and managing land, required in relation to the provision of that infrastructure service.
- (5) The application is to be made and lodged in accordance with section 135.
- (6) To avoid doubt, subsection (4) does not prevent the Secretary from refusing to disclose information to a person specified in that subsection if the Secretary considers, on the advice of the Council, that the information is of such special sensitivity that it ought not to be disclosed.
- (7) To avoid doubt, nothing in this section is to be taken as preventing the Secretary from –
- (a) disclosing registered information to the Minister; or
 - (b) disclosing registered information required by a court, RMPAT or other tribunal; or
 - (c) disclosing registered information to the Director of Public Prosecutions or a law enforcement agency; or

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- (d) granting State servants access to the Register for administrative purposes associated with maintaining the Register.
- (8) The Secretary, in consultation with the Council, may establish protocols for granting persons access to the Register under this section.

115. General public access to registered information

- (1) In this section –

management control means any of the following:

- (a) Aboriginal heritage permit;
- (b) management plan;
- (c) external regulatory approval;
- (d) Aboriginal heritage agreement;
- (e) stop order;
- (f) interim stop order;
- (g) protection order;
- (h) order under section 9 declaring an exempt area or an area of high sensitivity;

synopsis, of the Register, is a version of the Register that has been edited so as to –

- (a) provide information on Aboriginal heritage in, on or

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under particular land or a particular area of the State, including geographic and mapping information derived from the Register; and

- (b) exclude or neutralise any information that the Secretary, after consulting the Council, considers could be harmful to any Aboriginal heritage if publicly disclosed or is of such special sensitivity that it ought not be publicly disclosed; and
 - (c) exclude or neutralise any information that the Council, by notice, has specifically recommended to the Minister or Secretary not be publicly disclosed.
- (2) To further the objectives of this Act and assist the Tasmanian public, the Secretary is to –
- (a) establish and maintain a synopsis of the Register in the form of a computer database; and
 - (b) make that computer database available for public inspection by means of the world wide web.
- (3) In the discharge of his or her responsibilities under subsection (2), the Secretary is to ensure that a member of the public searching the computer database can obtain a quick, accurate

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and readily understandable indication as to which areas of Tasmania contain Aboriginal heritage and are subject to management controls.

116. General advice on entries in Register

(1) In this section –

representative includes any person who is acting on behalf of another person.

(2) The Secretary, on application, may advise any person whether the Register contains an entry in relation to any area and indicate, in general terms –

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

(b) what the entry means in terms of the use or development of the area.

(3) The application is to be made and lodged in accordance with section 135.

(4) An application made by any of the following persons and for the purpose respectively indicated is to be determined within 5 days after the day on which it is lodged:

(a) an owner, mortgagee or occupier of land, or a representative of such an owner, mortgagee or occupier of land, for the purpose of obtaining information relevant to the enjoyment, use or development of that land or dealings concerning that land;

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- (b) a prospective purchaser, mortgagee or occupier of land, or a representative of such a purchaser, mortgagee or occupier of land, for the purpose of obtaining information relevant to the prospective enjoyment, use or development of that land or dealings concerning that land;
- (c) a person who is, or a representative of a person who is –
 - (i) an applicant for an Aboriginal heritage permit; or
 - (ii) a proponent for a recognised management plan; or
 - (iii) an applicant for an external regulatory approval –

for the purpose of obtaining information relevant to the land to which the Aboriginal heritage permit, recognised management plan or external regulatory approval relates.

- (5) An application made –
 - (a) by a person not referred to in subsection (4); or
 - (b) for a purpose not referred to in that subsection –

is to be determined within 10 days after the day on which it is lodged.

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- (6) However, nothing in this section obliges the Secretary to disclose registered information, in full or in part, if –
- (a) the Secretary, after consulting with the Council, considers that the disclosure could be harmful to any Aboriginal heritage; or
 - (b) the Secretary, after consulting with the Council, considers that the information is of such special sensitivity that it ought not be disclosed; or
 - (c) the Council, by notice, has recommended to the Minister or Secretary that the registered information not be disclosed either –
 - (i) at all; or
 - (ii) to the specific applicant or to a person of a class of which the applicant is one.

PART 12 – ENFORCEMENT

117. Authorised officers

- (1) The Secretary may appoint a State servant employed in the Department to be an authorised officer for the purposes of this Act and the State servant may hold that office in conjunction with State Service employment.
- (2) The Secretary, with the consent of the Head of another State Service Agency, may appoint a State servant employed in that Agency to be an authorised officer for the purposes of this Act and the State servant may hold that office in conjunction with State Service employment.
- (3) An authorised officer holds office for such period and on such conditions as are specified in the authorised officer's instrument of appointment.

118. Ex-officio authorised officers

- (1) A police officer is, by virtue of his or her office, authorised to discharge any Aboriginal heritage responsibility in respect of any part of the State.
- (2) A parks ranger in respect of particular land or a particular part of the State is, by virtue of his or her status as a parks ranger, authorised to discharge any Aboriginal heritage responsibility in respect of that land or that part of the State.
- (3) To avoid doubt, if a provision of this Part provides that it is an offence for a person to do

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or omit to do something with respect to an authorised officer who is discharging an Aboriginal heritage responsibility, the person also commits the offence if he or she does or omits to do the thing with respect to a police officer or parks ranger who is discharging that responsibility pursuant to subsection (1) or (2).

119. Identity cards

- (1) The Secretary –
 - (a) is to issue each authorised officer with an identity card; and
 - (b) may issue a person who is a police officer or parks ranger with an identity card for use in connection with the discharge of Aboriginal heritage responsibilities.
- (2) The identity card 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 signed by the person to whom it is issued; and
 - (d) be in a form approved by the Secretary.
- (3) An authorised officer must –

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- (a) carry his or her identity card at all times when discharging Aboriginal heritage responsibilities; and
 - (b) if requested to do so by any person who is or may be affected by the discharge of those responsibilities, produce the identity card for inspection by that person.
- (4) A police officer discharging Aboriginal heritage responsibilities must, if practicable, comply with a request to identify himself or herself by –
 - (a) producing the identity card, if any, issued to the police officer under this section; or
 - (b) stating, orally or in writing, the police officer's name, rank and place of duty, or his or her identification number.
- (5) A parks ranger discharging Aboriginal heritage responsibilities must, if practicable, comply with a request to identify himself or herself by –
 - (a) producing the identity card, if any, issued to the parks ranger under this section; or
 - (b) stating, orally or in writing, the parks ranger's name.
- (6) However, a failure by an authorised officer, police officer or parks ranger to comply with subsection (3), (4) or (5) in any instance does not invalidate the discharge of the relevant Aboriginal heritage responsibilities.

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- (7) The Secretary is to retrieve a person's identity card if and when the person for any reason loses the status that required or entitled the person to be issued with it.

120. Power to require name and address

- (1) An authorised officer who reasonably suspects that a person has committed an offence against this Act may require the person to state the person's name and address.
- (2) The authorised officer may further require the person to produce evidence of the correctness of the stated name or address if the authorised officer reasonably believes that name and address to be false.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under subsection (1) or (2).

Penalty: Fine not exceeding 10 penalty units.

121. Power of seizure

- (1) An authorised officer may seize an object from any person or place if the authorised officer reasonably believes that –
- (a) the object is an Aboriginal object; and
 - (b) an offence has been committed under this Act with respect to the object.

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- (2) An authorised officer may seize a document from any person or place if the authorised officer reasonably believes that –
- (a) the document is an Aboriginal heritage permit or other document issued under this Act; and
 - (b) the holder of the Aboriginal heritage permit or other document has committed an offence under this Act.
- (3) An authorised officer may seize a thing from any person or place if the authorised officer reasonably believes that it –
- (a) has been used in, or in connection with, the commission of an offence under this Act; or
 - (b) constitutes evidence of the commission of an offence under this Act.

122. Dealing with objects, documents or things seized

- (1) In this section –

holding period, in relation to a seized item, means the period of 6 months after the day on which it was seized under section 121;

related proceedings, in relation to a seized item, means proceedings for an offence under this Act in relation to which the item was seized;

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seized item means an object, document or thing seized by an authorised officer from a person under section 121.

- (2) If an authorised officer seizes an object, document or thing from a person under section 121, the authorised officer must give the person a receipt for the seized item.
- (3) The receipt is to –
 - (a) identify the seized item; and
 - (b) state why the seized item was seized; and
 - (c) state the time and place of seizure; and
 - (d) identify the authorised officer; and
 - (e) be in a form approved by the Secretary.
- (4) An authorised officer must transfer a seized item that is an Aboriginal object seized under section 121(1) to the custody of the Council.
- (5) A seized item other than an Aboriginal object seized under section 121(1) is in the custody of the Secretary.
- (6) The Council or Secretary must hold a seized item in its, his or her custody in safe custody.
- (7) If related proceedings are not commenced within the holding period, the Council or Secretary must return a seized item in its, his or her custody to its owner at the end of that period.

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- (8) If related proceedings are commenced within the holding period, the Council or Secretary must return a seized item in its, his or her custody to its owner at the end of those proceedings unless the court hearing the related proceedings, on application by the Council or Secretary, orders its confiscation.
- (9) In addition to any other order it may make, the court hearing related proceedings may order the confiscation of a seized item if the court is of the opinion that the seized item has been used for the purpose of committing a relevant offence or that there is some other proper reason for ordering its confiscation.
- (10) If a court orders the confiscation of a seized item –
 - (a) the Council or Secretary may dispose of it as it thinks fit; and
 - (b) no compensation is payable to any person in respect of its seizure or confiscation.

123. Power of search and entry

- (1) An authorised officer may search any premises, vehicle or container if he or she reasonably believes that an Aboriginal object, or a document or other thing that he or she is entitled to seize under this Act, is in the premises, vehicle or container.

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- (2) To search a vehicle under this section, an authorised officer may require that it be stopped and, if he or she considers it necessary or expedient to do so having regard to the physical conditions, 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) To discharge responsibilities under section 121 or this section, an authorised officer may do all or any of the following things at all reasonable times without warrant:
 - (a) enter any premises, vehicle or container;
 - (b) in any 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 committed;
 - (c) in any premises, vehicle or container lawfully entered, open any container.
- (4) To discharge responsibilities under section 121 or this section in respect of any premises, vehicle or container, an authorised officer may require the person apparently in charge of the premises, vehicle or container, or any employee or agent of such a person, to afford the authorised officer such assistance as he or she may reasonably require.

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- (5) Without reasonable excuse, a person must not refuse or fail to comply with a requirement made under this section.

Penalty: Fine not exceeding 10 penalty units.

- (6) In the discharge of his or her responsibilities under section 121 or this section, an authorised officer is not entitled to enter any premises being used as a principal residence except with –
- (a) the permission of its occupier; or
 - (b) a warrant under subsection (7).
- (7) If, on the application of an authorised officer, a magistrate or justice is satisfied that there is reasonable cause to permit entry to any premises being used as a principal residence, the magistrate or justice may issue a warrant authorising an authorised officer to enter the premises specified in the warrant to discharge responsibilities under section 121 or this section, or both, in those premises.

124. Power to require information

- (1) An authorised officer who lawfully enters any premises, vehicle or container may require any person present in the premises, vehicle or container to give the officer any information, and produce any document, that the officer reasonably requires to ascertain whether this Act is being complied with.

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- (2) Without reasonable excuse, a person must not refuse or fail to comply with a requirement made under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

- (3) Without limiting what might constitute a reasonable excuse under subsection (2), it is such an excuse if the giving of the information or document would tend to incriminate the person.

- (4) When requiring a person to give information or a document under subsection (1), an authorised officer must advise the person that –

(a) unless the person has a reasonable excuse, it is an offence for the person to refuse or fail to comply with the requirement; and

(b) the person has such an excuse if the giving of the information or document would tend to incriminate the person.

125. Power to require persons to leave protected places

- (1) In this section –

protected place means –

(a) a registered Aboriginal site; or

(b) a place in respect of which a stop order is in force.

- (2) An authorised officer who reasonably suspects that a person at a protected place has committed

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an offence against this Act may require the person to leave the protected place.

- (3) Without reasonable excuse, a person must not refuse or fail to comply with a requirement made under subsection (2).

Penalty: Fine not exceeding 10 penalty units.

126. Power of arrest

- (1) A police officer or parks ranger who is discharging an Aboriginal heritage responsibility pursuant to section 118 may arrest, without warrant, any person found offending if that person –
- (a) refuses or fails, without apparent reasonable excuse, to comply with a requirement under section 120 to state the person's name and address; or
 - (b) in response to a requirement under section 120, states a name or address that the authorised officer reasonably believes to be false; or
 - (c) refuses or fails, without apparent reasonable excuse, to comply with a requirement under section 120 to produce evidence of the correctness of a stated name or address; or
 - (d) does not, on demand, deliver up to the authorised officer anything in the person's custody or under the person's

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control that the authorised officer is entitled to seize under this Act; or

(e) refuses or fails, without apparent reasonable excuse, to comply with a requirement under section 125 to leave a protected place.

(2) A person is taken to be *found offending* for the purposes of subsection (1) if, by reason of any act, omission or conduct, he or she causes someone observing the person to reasonably suspect that the person has just committed, or is in the process of committing, an offence against this Act.

127. Obstruction of authorised officers

(1) In this section –

authorised officer includes a police officer or parks ranger discharging an Aboriginal heritage responsibility pursuant to section 118.

(2) A person must not –

(a) obstruct or hinder; or

(b) threaten; or

(c) attempt to intimidate; or

(d) attempt to improperly influence –

an authorised officer in the discharge of an Aboriginal heritage responsibility.

Penalty: Fine not exceeding 50 penalty units.

128. Infringement notices

(1) In this section –

infringement offence means an offence against this Act or the regulations that is prescribed by the regulations to be an infringement offence.

(2) An authorised officer may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice may not be served on an individual who has not attained 18 years of age.

(4) 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.

(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.

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- (6) The penalty prescribed for an infringement offence is not to exceed 20% of the maximum penalty that could be imposed on an individual by a court in respect of the offence.

129. 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.

130. Offences by bodies corporate

- (1) In this section –

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

executive liability offence means an offence against a section of this Act, other than any of the following sections:

- (a) section 21;
- (b) section 23(2);
- (c) section 42(4)(a);

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(d) section 42(4)(b);

(e) section 104(6);

(f) section 107(6);

officer, in relation to a body corporate,
means –

(a) a person who is an officer of a corporation (within the meaning of section 9 of the Corporations Act); or

(b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

(2) If a body corporate commits an executive liability offence, an officer of the body corporate also commits an executive liability offence if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

(3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to –

(a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and

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- (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) It is a defence to a charge for an executive liability offence for an officer of a body corporate to prove that the body corporate would not have been found guilty of the offence because of a defence available to it.
- (5) An officer of a body corporate may be convicted of an executive liability offence whether or not the body corporate has been prosecuted for, or found guilty of, the offence.

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

- (1) If a person concerned in the management of a body corporate, or an employee or agent of the body corporate, acting within the scope of his or her actual or apparent authority commits an offence against this Act, the body corporate is taken to have also committed the offence and, for that purpose, the conduct and state of mind of the person, employee or agent is imputed to the body corporate.

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- (2) A body corporate referred to in subsection (1) may be convicted of an offence against this Act whether or not the person, employee or agent referred to in that subsection is charged with or convicted of the offence.
- (3) A reference in subsection (1) to the state of mind of a person, employee or agent includes a reference –
 - (a) to the knowledge, intention, opinion, belief and purpose of the person, employee or agent; and
 - (b) to the reasons of the person, employee or agent for that intention, opinion, belief and purpose.

132. Time for instituting summary proceedings

- (1) Proceedings for a summary offence against this Act may be instituted at any time within 5 years after the alleged offence was committed.
- (2) Subsection (1) has effect notwithstanding section 26 of the *Justices Act 1959* or any other law.

PART 13 – MISCELLANEOUS

133. 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) faxed to the person's fax number; or

(iv) emailed to the person's email address; 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) faxed to the person's fax number; or

(iii) emailed to the person's email address.

134. 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.

135. Application procedure

- (1) In this section –

administrative application means an application under this Act other than an application for the review of a decision;

relevant authority means the person to whom the application is required to be made.

- (2) An administrative application in respect of any matter under this Act is to –
- (a) be lodged with the relevant authority; and
 - (b) be in a form provided or approved by the relevant authority; and
 - (c) be accompanied by the prescribed fee, if any; and

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- (d) be supported by such evidence or information as the relevant authority requires, either at the time of lodgement or subsequently; and
 - (e) comply with such additional requirements as relate, under the relevant section of this Act, to the specific application.
- (3) The relevant authority is not obliged to consider or determine an administrative application made under this Act if the application –
- (a) fails to comply with subsection (2) in a material way; or
 - (b) is the same or substantially the same as an unsuccessful administrative application made by the same applicant within the preceding 12 months and, on its face, discloses nothing new.

136. Waiver and refund of fees

- (1) In this section –

relevant authority means the person to whom the relevant fee is required to be paid.

- (2) The relevant authority may waive or refund the whole or any part of any fee payable or paid under this Act.

137. Regulations

(1) In this section –

external guidelines means guidelines other than those issued under section 20.

(2) The Governor may make regulations for the purposes of this Act.

(3) Without limiting the generality of subsection (2), the regulations may –

(a) require the payment of fees in respect of any matter under or relating to this Act, and prescribe those fees; and

(b) provide for any matter relating to –

(i) Aboriginal heritage permits; and

(ii) management plans and their preparation; and

(iii) external regulatory approvals; and

(iv) Aboriginal heritage assessments and the carrying out of such assessments; and

(v) Aboriginal heritage agreements; and

(vi) audits; and

(vii) stop orders (including interim stop orders); and

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- (viii) protection orders; and
 - (ix) 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
 - (x) nominated Aboriginal heritage and registration of objects and sites as nominated Aboriginal heritage; and
 - (xi) registration criteria; and
 - (xii) appeal rights in respect of decisions taken under regulations.
- (4) The regulations may provide for the conferral of exemptions from –
- (a) the operation of this Act or any of its provisions; or
 - (b) the operation of any provision of the regulations.
- (5) 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.
- (6) The regulations may authorise any matter to be from time determined, applied or regulated by the Minister, the Council or the Secretary.

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- (7) 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.
- (8) 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.
- (9) A reference in subsection (8) 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.
- (10) 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

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later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

138. Status of delegated instruments under Act

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

139. Review of Act

- (1) The Minister is to review this Act within 3 years after the day on which this section commences.
- (2) 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 the third anniversary of the day on which this section commences.

140. 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 Environment, Parks and Heritage; and
- (b) the department responsible to that Minister in relation to the administration

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of this Act is the Department of Primary Industries, Parks, Water and Environment.

141. Savings and transitional provisions

The savings and transitional provisions set out in Schedule 4 have effect.

142. Legislation repealed

The legislation specified in Schedule 5 is repealed.

143. Legislation revoked

The legislation specified in Schedule 6 is revoked.

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SCHEDULE 1 – MEMBERSHIP OF COUNCIL

Section 15(6)

1. 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 further terms but may not serve any more than 2 terms in succession.

2. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her 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.

3. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

4. 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.

5. Vacation of office

- (1) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) is removed from office under subclause (2) or (3).
- (2) The Governor may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Council without the permission of the other members; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of

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- 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
- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or
 - (d) 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
 - (e) is convicted of an offence under this Act; or
 - (f) ceases permanently to reside in Tasmania.
- (3) The Governor may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.
- (4) A member must not be removed from office otherwise than in accordance with this clause.

6. Filling of vacancies

- (1) If the office of a member becomes vacant, the Governor may appoint an Aboriginal person to the vacant office for the remainder of that member's term of office.
- (2) Despite clause 5(4), the Governor may remove from office at any time a member appointed under subclause (1).

7. Validation of proceedings, &c.

- (1) An act or proceeding of the Council or of a person acting under a direction of the Council is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Council or of a person acting under a direction of the Council are, despite the subsequent discovery of a defect in the appointment of a member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Council had been fully constituted.

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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 appointment of any member.

SCHEDULE 2 – MEETINGS OF COUNCIL

Section 15(7)

1. 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) What constitutes reasonable notice for subclauses (1) and (2) is to be determined by the Council.
- (4) Notwithstanding subclauses (1) and (2), the Council must ensure that it meets at least once in each month.

2. Presiding at meetings

- (1) The chairperson is to preside at all meetings of the Council at which he or she is present.

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- (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.

3. Quorum and voting at meetings

- (1) Four members constitute a quorum at a meeting of the Council.
- (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) the member presiding has a deliberative vote only; and
 - (b) a question is decided –
 - (i) by a majority of votes of the members present and voting; or
 - (ii) in the negative if there is an equality of votes of the members present and voting.
- (4) At a meeting of the Council where a member is excluded from being present and taking part in the consideration and decision of the Council in relation to a matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of members specified as constituting a quorum in subclause (1) less the number of appointed members so excluded.

4. 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.

5. Minutes

The Council is to keep accurate minutes of its meetings.

6. 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.

Penalty: Fine not exceeding 10 penalty units.

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- (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 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.

7. 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 18(2)

1. Membership of committees

- (1) A committee consists of such number of persons as the Council determines.
- (2) A committee may be comprised, 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 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.

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- (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 Schedule 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 his or her knowledge, must disclose the nature of the interest to a meeting of the committee.

Penalty: Fine not exceeding 10 penalty units.

- (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 –

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- (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 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.

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 141

1. Interpretation

In this Schedule –

repeal day means the day on which the
Aboriginal Relics Act 1975 is repealed.

2. Existing statutory authorisation

(1) In this clause –

relevant decision-maker has the same
meaning as in section 59;

statutory authorisation has the same meaning
as in section 59.

(2) If –

(a) a relevant decision-maker received, but
had not determined, an application for a
statutory authorisation for a proposed
land activity before the repeal day; and

(b) section 42(2) would otherwise apply to
the proposed land activity –

the proposed land activity is exempt from the
requirement, imposed by that section, that it
have a management plan until the application is
determined or withdrawn.

- (3) If an application for a statutory authorisation referred to in subclause (2) is granted or the statutory authorisation is issued or conferred on or after the repeal day, the proposed land activity is exempt from the requirement, imposed by section section 42(2), that it have a management plan while that statutory authorisation is in force.
- (4) If on the repeal day –
- (a) a statutory authorisation is in force in respect of a proposed land activity; and
 - (b) section 42(2) would otherwise apply to the proposed land activity –
- the proposed land activity is exempt from the requirement, imposed by that section, that it have a management plan while that statutory authorisation is in force.
- (5) If –
- (a) a relevant decision-maker received, but had not determined, an application for a statutory authorisation for a proposed land activity before the repeal day; and
 - (b) the application is granted, or the statutory authorisation is issued or conferred, on or after the repeal day; and
 - (c) section 67(1) would otherwise apply to a person carrying out the proposed land activity –

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section 67(1) does not apply to the carrying out of the proposed land activity to which the statutory authorisation relates while the statutory authorisation is in force.

3. Permits relating to relics under *Aboriginal Relics Act 1975*

(1) In this clause –

Minister means the Minister administering of the *Aboriginal Relics Act 1975*, as in force immediately before the repeal day;

permit means a permit granted under section 14(1) of the *Aboriginal Relics Act 1975* as in force immediately before the repeal day.

(2) If –

(a) the Minister received, but had not determined under the *Aboriginal Relics Act 1975*, an application for a permit for a proposed land activity before the repeal day; and

(b) section 42(2) would otherwise apply to the proposed land activity, or section 31(1) or section 67(1) would otherwise apply to a person carrying out the proposed land activity –

the *Aboriginal Relics Act 1975* is taken to be still in force for the purposes of dealing with, and determining, the application.

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(3) If –

- (a) the Minister received, but had not determined, an application for a permit for a proposed land activity before the repeal day; and
- (b) section 42(2) would otherwise apply to the proposed land activity –

the proposed land activity is exempt from the requirement, imposed by that section, that it have a management plan until the application is determined or withdrawn.

(4) If –

- (a) immediately before the repeal day, a permit in respect of a land activity is in force and section 42(2) would otherwise apply so as to require a management plan in relation to the land activity were the land activity a proposed land activity; or
- (b) on or after the repeal day, an application for a permit referred to in subclause (2) in respect of a proposed land activity to which section 42(2) would otherwise apply is granted –

the land activity or proposed land activity to which the permit relates is exempt, while that permit is in force, from the requirement, imposed by section 42(2), that it have a management plan.

(5) If –

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- (a) a permit referred to in subclause (4)(a) is in force immediately before the repeal day; or
- (b) a permit referred to in subclause (4)(b) is conferred pursuant to subclause (2) –

the permit continues or is in force according to its terms.

(6) If on the repeal day –

- (a) a permit is in force permitting a person to do or refrain from doing any act; and
- (b) the doing or refraining from doing that act would otherwise constitute an offence under section 29(1), (2) or (3) or section 30(1) –

the permit is taken to be an Aboriginal heritage permit for the purposes of section 29(5)(a) or section 30(3)(a), as appropriate.

(7) If –

- (a) on or after the repeal day, an application for a permit referred to in subclause (2) by a person to whom section 31(1) or section 67(1) would otherwise apply is granted; and
- (b) that permit authorises the relevant land activity –

that permit continues in force according to its terms and is taken to be an Aboriginal heritage permit for the purposes of section 31(1) or to be

an Aboriginal heritage approval for the purposes of section 67(1), as appropriate.

(8) If –

- (a) immediately before the repeal day, a permit is in force in respect of a proposed land activity; and
- (b) section 31(1) or section 67(1) would otherwise apply to the person holding the permit; and
- (c) that permit authorises the relevant land activity –

that permit continues in force according to its terms and is taken to be an Aboriginal heritage permit for the purposes of section 31(1) or an Aboriginal heritage approval for the purposes of section section 67(1), as appropriate.

(9) However, a permit that –

- (a) has effect immediately before the repeal day; or
- (b) is conferred on or after the repeal day –

expires 2 years after the repeal day despite the terms of the permit.

(10) If a permit is not, by reason of this clause, taken to be an Aboriginal heritage permit –

- (a) the Minister may cancel or suspend it under section 38; and

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- (b) that section applies as if the permit were an Aboriginal heritage permit and the land activity to which the permit relates were a restricted activity.

4. Registration of relics

- (1) In this clause –

authorized officer has the same meaning as in the *Aboriginal Relics Act 1975*;

Director has the same meaning as in the *Aboriginal Relics Act 1975*;

relic means a relic, within the meaning of section 2(3) of the *Aboriginal Relics Act 1975* –

- (a) that, immediately before the repeal day, is listed as a relic on the Tasmanian Aboriginal Site Index; or
- (b) of which the Director or an authorized officer has been informed under section 10 of the *Aboriginal Relics Act 1975*;

Tasmanian Aboriginal Site Index means the database kept, immediately before the repeal day, by the responsible Department in relation to the *Aboriginal Relics Act 1975*.

- (2) A relic is to be taken to be registered Aboriginal heritage unless and until the Secretary

determines otherwise or, after being entered in the Register, it is removed from the Register.

- (3) As soon as practicable on or after the repeal day, the Secretary is to enter each relic in the appropriate part of the Register unless the Secretary determines that the relic is not Aboriginal heritage.

5. Guidelines

- (1) In this clause –

initial guidelines means the first guidelines issued by the Minister under section 20;

relevant period means the period –

- (a) commencing on the day on which the initial guidelines take effect; and
- (b) ending –
- (i) 2 years after that day; or
- (ii) on the day on which a declaration in the guidelines, under subclause (3), takes effect –

whichever first occurs.

- (2) The initial guidelines are taken, for the relevant period, to have adopted, wholly and without

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modification, the codes, standards, guidelines or other documents prescribed by the regulations.

- (3) Despite subclause (2), the guidelines may declare at any time that any codes, standards, guidelines or other documents referred to in that subclause are not adopted or have ceased to be adopted.

6. References to *Aboriginal Relics Act 1975*

- (1) A reference in any Act or other document to the *Aboriginal Relics Act 1975* is taken, if appropriate, to be or to include a reference to this Act.
- (2) 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.

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SCHEDULE 5 – LEGISLATION REPEALED

Section 142

Aboriginal Relics Act 1975 (No. 81 of 1975)

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SCHEDULE 6 – LEGISLATION REVOKED

Section 143

Proclamation under the Aboriginal Relics Act 1975 (No. 49 of 1976)

Aboriginal Relics (West Point Aboriginal Site) Order 1979 (No. 217 of 1979)

Aboriginal Relics (Sundown Point Aboriginal Site) Order 1979 (No. 235 of 1979)

Aboriginal Relics (Trial Harbour Aboriginal Site) Order 1981 (No. 307 of 1981)