



Aboriginal Heritage Act 2006

A New Way of Protecting Aboriginal Heritage in
Victoria

30 October 2007

What are we protecting?

- Sites with evidence of past Aboriginal occupation & resource use: scarred trees, mounds, burial sites, middens, artefact scatters, quarry sites, stone arrangements & structures and rock art sites.
 - Objects such as: stone tools, grinding stones, ceremonial items and skeletal remains.
 - Sites of spiritual significance (sacred sites).
 - Historic places (may or may not contain archaeological remains) such as: locations where Aboriginal people have lived and worked (mission buildings, reserved land, work camps), supply depots where rations were distributed, burials within cemeteries, locations relating to Aboriginal self-determination and massacre sites.
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Rock Art Sites

“This landscape is sacred to us , it carries the message of our past and our hope for the future. It is the mother of our existence and it whispers who we are. What happens to this land effects us deeply, any damage to it wounds us. It is our duty to speak on behalf of this land and to maintain its integrity. We cannot ignore our land or leave it unprotected.

What you do to Gariwerd you do also to us. We want you to treat it with respect and be reconciled by its wisdom. Please treat it gently for it is our life and all our futures.”

Tim Chatfield - Tjap Whurrong

Hand stencils in Manja Shelter (Gariwerd)



Rock art at Bunjil's Shelter in the Black Range

Stone Quarries



Mt William stone quarry

Dreaming story – *“Bunjil came to Mt William and the people there were being good. So he blessed that quarry and then all the rock from there became lucky, then all the stone axes became lucky. That’s why it was so extensively traded.”* Annette Xiberras - Wurundjeri

Artefact Scatters & Flaked Tools



Artefact scatter

“Shows the area was used; a place where people made tools.”

Trevor Abrahams - Gunditjmara



A group of flaked stone artefacts

Fish Traps & Stone Structures



A fish or eel trap (SW Victoria)

“This is how things were done before European settlement. There was a structure and social order. Aboriginal people didn’t just wander around the bush aimlessly.” Denise Lovett, Gunditjmarra



Stone footing of shelter (SW Victoria)

Shell Middens

“Don’t like the word; shell dump, rubbish dump. More likely to call it a camp site. Yilam

[Taungurung/Kulin word for camp]. Its a camp spot, where people have been living. Areas where different people had to be; unmarried men/women in

certain places. Its got life in it; you can know what’s happening; you can interpret it.”

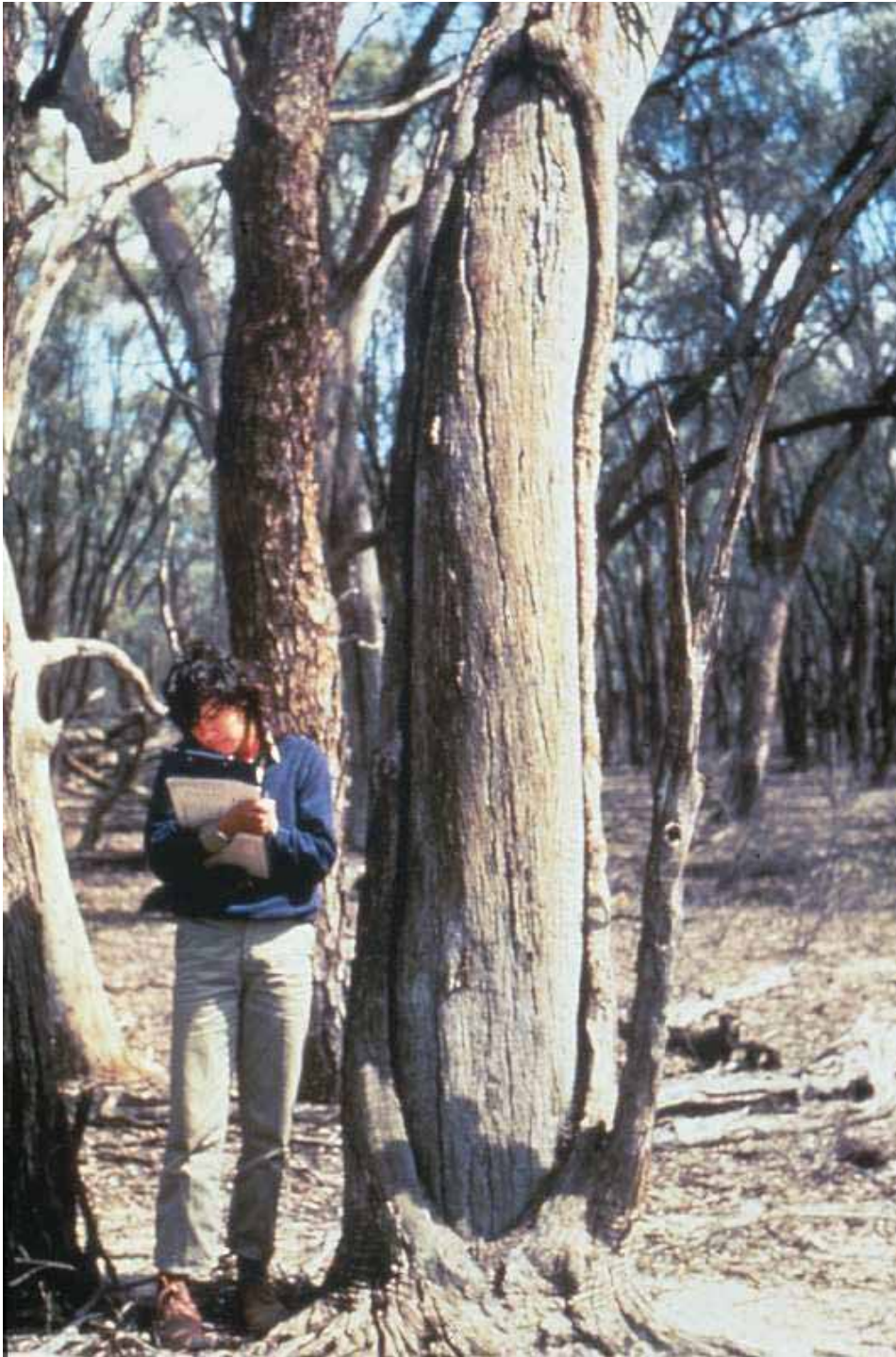
Mick Harding - Taungurung



Coastal shell midden



Freshwater midden exposed in a river bank



“Lots of trees have not yet been recorded.”

Its significant that our people were there for a long time, living in the forest.”

Alan Burns - Wiradjuri Yorta Yorta Yulupma

Aboriginal Heritage Act 2006

The *Aboriginal Heritage Act 2006* commenced operation on 28 May 2007.

This presentation includes:

- principles of the Act
- an overview of key provisions of the Act
- implications for land use

Provisions of the Act

The *Aboriginal Heritage Act 2006* retains--

- Protection of Aboriginal places, objects and human remains, regardless of registration or land tenure.
- The key principle of community-based decision making.
- Constraints on possessing Aboriginal remains and buying / selling traditional Aboriginal objects.
- Requirements to report discovery of Aboriginal places, objects and remains, and submit information gathered during assessments.
- The Victorian Aboriginal Heritage Register, with additional functions.
- A structure of short-term, interim and on-going declarations.
- Inspectors authorised to protect heritage, with revised powers and responsibilities.

What's New?

The *Aboriginal Heritage Act 2006* establishes—

- An Aboriginal Heritage Council.
- Registered Aboriginal Parties.
- Mandatory Cultural Heritage Management Plans for certain planning permits and project approvals.
- Improved procedures for Cultural Heritage Permits and Agreements.
- Cultural Heritage Audits.
- Dispute resolution through VCAT.
- An improved structure of offences and penalties.

Principles of the Legislation

The guiding principles of the Act may be broadly described as:

1. To protect, manage and conserve Aboriginal cultural heritage in Victoria.
2. To accord Aboriginal people rightful status as the primary guardians of their cultural heritage.

Protecting Aboriginal Heritage

The Act protects Aboriginal heritage in the following ways:

- Applies 'blanket' protection of all Aboriginal heritage
- Requires consideration of Aboriginal heritage as a normal part of land and natural resource management and development
- Applies effective criminal sanctions and enforcement powers

'Blanket' Heritage Protection

The outgoing state and Commonwealth acts applied this principle.

It is also a key recommendation of the Evatt (1996) report.

It means that all Aboriginal places, objects and human remains, regardless of registration or land tenure, are protected.

Aboriginal Heritage and Land Use

The Act:

- Requires consideration of Aboriginal heritage early in the land use planning phase
- Mandates cultural heritage management plans (CHMPs) in certain cases
- Links CHMPs with statutory decisions that authorise land development
- Provides for permits, audits, stop orders and declarations
- Provides independent review of decisions

Cultural Heritage Management Plans

Cultural heritage management plans are required when

- an activity requires an Environment Effects Statement
- directed by the Minister for Aboriginal Affairs or
- the 'triggers' in the regulations are applicable

A plan can also be prepared voluntarily.

Cultural Heritage Management Plans

The new system:

A cultural heritage management plan is required by the regulations when **all or part of an activity** is:

- a high impact activity; **AND**
- on an area of cultural heritage sensitivity

Activities and areas are all defined in the regulations.

Cultural Heritage Management Plans and Statutory Authorisations

If a Plan is required certain other statutory authorisations **can not be given** before the Plan is approved.

The sponsor can lodge an application and procedural notifications can be made **but**

- the ‘clock’ does not start until a copy of the approved Cultural Heritage Management Plan has been lodged
- statutory authorisations cannot be granted for activities that may be inconsistent with the Plan.

Cultural Heritage & Planning Issues

Reasons for changing:

- Many large developments went ahead without assessment of impacts on heritage.
- Developments were not assessed consistently by decision makers.
- Some types of relatively intensive land development were rarely assessed for potential heritage impacts.

This meant that Aboriginal heritage issues were often considered at a late stage in the planning or other approval process, or after works had commenced.

Cultural Heritage Permits

Permits are required for

- activities that will or are likely to harm Aboriginal cultural heritage,
- archaeological excavations,
- buying or selling an Aboriginal object, or
- removing cultural heritage from Victoria.

Permits are NOT available for activities requiring a cultural heritage management plan.

Regulated application fee.

Dispute resolution and review processes through VCAT.

Cultural Heritage Agreements

Cultural Heritage Agreements

- are similar to section 173 agreements under *Planning and Environment Act 1987*
- formalise long-term cultural heritage management partnerships
- are voluntary
- can establish ongoing management conditions
- can provide rights of access to an Aboriginal place or object

Stop Orders

Stop orders are similar to emergency declarations under Part IIA of the Commonwealth Act.

- An inspector or the Minister may issue a stop order.
- A stop order can require an activity to cease for up to 30 days.
- Appeal to VCAT is not available in relation to stop orders.
- Substantial penalties apply to actions contravening a stop order.

Protection Declarations

Protection declarations assist in maintaining the relationship between Aboriginal people and an Aboriginal place or object.

- The Minister may make an interim or on-going declaration, on the application of the Aboriginal Heritage Council or a RAP, or on his own motion.
- Minister must consult with the Aboriginal Heritage Council before making a declaration.
- An interim declaration can last for up to 3 months, and may be extended for an additional 3 months if required.

Cultural Heritage Audits

This broadly follows the environmental audit provisions of the EPBC Act.

The Minister may order an audit of an activity if it is believed that the development is contravening or will contravene recommendations of a CHMP or permit conditions, or is exceeding the impact on heritage that was foreseen in the CHMP or permit.

Penalties and Enforcement

Penalties have been updated to provide an effective deterrent.

Maximum penalty is up from \$50,000 to over \$1M.

Offences separate states of knowledge – knowing, reckless and negligent.

The Act creates Inspectors with entry, search and seizure powers.

Land Use Implications

All developers and land users must consider Aboriginal heritage impacts early.

Most activity will be able to continue without formal assessments, but these are still subject to the blanket protection provisions of the Act.

The remainder must formally assess impacts through the CHMP process.

Aboriginal Control of Cultural Heritage

The Act advances this principle by:

- Establishing the Aboriginal Heritage Council.
- Establishing Registered Aboriginal Parties.
- Better-aligning traditional owner and cultural heritage interests.
- Empowering RAPs to object to a permit application, evaluate a CHMP, participate in agreements.

Aboriginal Heritage Council

The Council is 11 Victorian traditional owners.

The Council registers Aboriginal organisations wishing to manage heritage in a particular area of Victoria – Registered Aboriginal Parties.

The Council also advises the Government on heritage matters.

Registered Aboriginal Parties

- Incorporated Aboriginal groups
- Native title holders, native title parties, traditional owners and Aboriginal groups with recognised interests can apply.
- Native title holders will be the exclusive registered Aboriginal party for the area of the positive determination.
- More than one Aboriginal party can be registered for an area. Both parties have the same powers.
- The Council can revoke or suspend registration of Aboriginal Parties.

Registered Aboriginal Parties

Why change?

- Commonwealth Act could not adapt to Native Title Act
- New Act empowers Aboriginal people, not Government, to decide who speaks for cultural heritage
- Enables traditional owners to have cultural heritage decision making powers
- New Act is flexible and adaptable – can deal with reality of Victorian Aboriginal community as well as further unforeseen legislative changes

Registered Aboriginal Parties

Powers:

1. Object to permits, and apply conditions
2. Evaluate CHMPs
3. Enter into agreements
4. Apply for declarations
5. Advise the Minister, Secretary and Council on heritage matters

Further Information

Aboriginal Affairs Victoria

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Or

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