

Changes to the Aboriginal Heritage Act 2006

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The Aboriginal Heritage Amendment Act 2016 (Amendment Act), which makes changes to the Aboriginal Heritage Act 2006, commenced today.

Amendments include a number of significant changes to the way that Aboriginal heritage is managed in Victoria.

It continues to be the case that Aboriginal heritage may not be legally harmed other than in accordance with Cultural Heritage Management Plans (CHMPs) or specific agreements and permits.

The Amendments are aimed at increasing protection for Aboriginal Cultural Heritage, improving reporting requirements and providing an increased role for Traditional Owners.

When do the changes take effect?

The Amendments come into effect today **01 August 2016**.

Regulations are currently being developed and some measures will be introduced gradually from this date.

What are the main changes?

The Amendment Regulations prescribe new fees for:

- Accessing the VAHR
- Applying to the Secretary for the evaluation of a CHMP, PAHT (Preliminary Aboriginal Heritage Test a new formal process to determine whether a CHMP is required) or Cultural Heritage Permit

The Amendment Regulations make several other regulatory changes, including:

- **Removing the requirement to prepare a CHMP** for the construction of three or more dwellings on, or the subdivision of, land that is less than 0.11 hectares and not located within 200m of the coastal waters of Victoria or the Murray River;
 - **Amending regulation (r) 43(3)** to clarify that the construction of a building or carrying out works is not a high impact activity if the proposed activity is for or associated with a purpose for which the land was lawfully used prior to the commencement day and the purpose is one listed under r43; and
 - **Requiring that descriptions of Aboriginal cultural heritage** in a CHMP are consistent with the registration of the Aboriginal cultural heritage on the VAHR. This will require that relevant Place Inspection forms are submitted to the VAHR before an application is submitted for the approval of a CHMP.
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- The ability to make minor amendments to a CHMP less than 5 years old
 - A “Stop the Clock” mechanism during the CHMP evaluation to facilitate the speedy resolution of issues which may occur during CHMP evaluation
 - New agreements for managing public land
 - New measures for managing Intangible Cultural Heritage and Ancestral Remains
 - Greater enforcement regulations: There is a new suite of offences which focus on adherence to the CHMP process.
 - Increased roles for Registered Aboriginal Parties and Traditional Owner
 - Wider access to VAHR
 - The Office of Aboriginal Affairs (OAAV) becomes Aboriginal Victoria (AV)
- It is anticipated that the relevant fees, standards, conditions, and forms required to administer the amended Aboriginal Heritage Act 2006 will be made on the 2 August.

Will this affect my Project?

Introduction of a voluntary Preliminary Aboriginal Heritage Test (PAHT):

The PAHT is aimed at replacing the current Due Diligence process which investigates whether a CHMP is required. The PAHT a formal process involving the Traditional Owners, with AV as the decision maker.

Removing the requirement to prepare a CHMP:

For the construction of three or more dwellings on, or the subdivision of, land that is less than 0.11 hectares and not located within 200m of the coastal waters of Victoria or the Murray River;

Amending regulation (r) 43(3):

To clarify that the construction of a building or carrying out works is not a high impact activity if the proposed activity is for or associated with a purpose for which the land was lawfully used prior to the commencement day and the purpose is one listed under r43;

Costs:

Applying to the Secretary for the evaluation of a CHMP, PAHT, or Cultural Heritage Permit.

For the administration fee due when lodging a Notice of Intent (NOI) for a CHMP (\$111.52 per CHMP).

Access to the Register for a CHMP (\$223.04 per CHMP)

Other access fees to the Register (\$223.04 per project/ purpose login number.

Enforcement:

There is a new suite of offences which focus on adherence to the CHMP process. It an offence to commence works without a CHMP (if one is required). “Recommendations” contained in a CHMP are now termed “Conditions” with associated penalties for non-compliance.

Timing:

The introduction of a “stop the clock” mechanism for approvals should facilitate the speedy resolution of issues during CHMP evaluation. This replaces the previous system which involved the 30-day evaluation period recommencing.

Terms and Abbreviations

AV/Aboriginal Victoria: formerly known as (The Office of) Aboriginal Affairs Victoria

AAG/Aboriginal Advisory Group:

A group made up of Traditional Owners, appointed to provide advice on a proposed activity and its impact on Aboriginal cultural heritage in the absence of a Registered Aboriginal Party (RAP). Their role will include participating in an assessment and consulting with the Sponsor of a CHMP.

ACHLMA/Aboriginal Cultural Heritage Land Management Agreement:

A formal agreement between a land manager and a registered Aboriginal party for the purposes of managing or protecting Aboriginal cultural heritage in a specified area.

PAHT/Preliminary Aboriginal Heritage Test:

A formal process to determine whether a CHMP is required.

RAP/Registered Aboriginal Party:

An Aboriginal Organisation that has been appointed to have rights and responsibilities under the Aboriginal Heritage Act.

Heritage Advisor:

Replaces the term Cultural Heritage Advisor. An individual that meets the necessary qualifications to prepare CHMPs.

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